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7  
8 THE SUPERIOR COURT OF THE STATE OF ARIZONA  
9 IN AND FOR THE COUNTY OF MARICOPA

10 Team 44 Restaurants, LLC; Dominick's  
11 Italian Steakhouse LLC; Ocean 44  
12 Scottsdale, LLC; Arcadia Steakhouse LLC  
13 DBA Steak 44; Steak 48 Chicago LLC;  
Steak 48 River Oaks, LLC,

14 Plaintiffs,

15 vs.

16 The American Insurance Company;  
17 Greenwich Insurance Company,

18 Defendants.  
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CASE NO.: CV2021-002105

**COMPLAINT FOR:**

1. **DECLARATORY RELIEF**
2. **BREACH OF CONTRACT**

**JURY TRIAL REQUESTED**

TABLE OF CONTENTS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Page

I. NATURE OF THE CASE..... 1

II. JURISDICTION.....3

III. VENUE ..... 4

IV. PARTIES..... 4

V. FACTUAL ALLEGATIONS..... 5

    A. The Greenwich Insurance Policy Covers All Risks Unless Expressly Limited or Excluded in the Contract. .... 6

    B. The American Insurance Policy Covers All Risks Unless Expressly Limited or Excluded in the Contract. .... 8

    C. The COVID-19 Pandemic Hits the United States..... 10

    D. Texas Takes Governmental Action Prohibiting the Use of and Access to the Steak 48 Restaurant. .... 11

    E. Defendant Greenwich Denies Team 44’s Insurance Claim. .... 12

    F. Arizona Takes Governmental Action Forcing Team 44 to Alter the Premises to Three of its Locations. .... 13

    G. Illinois Takes Governmental Action Forcing Team 44 to Alter the Premises to its Steak 48 Chicago Location. .... 14

    H. American Denies Team 44’s Insurance Claim..... 16

VI. CLAIMS FOR RELIEF..... 18

    FIRST CLAIM FOR RELIEF Declaratory Judgment (Against GREENWICH)..... 18

        A. The Greenwich Policy ..... 19

            1. Loss of access or use constitutes direct physical loss. .... 20

            2. Governmental action resulted in Plaintiffs Team 44 Restaurants, LLC and Steak 48 River Oaks, LLC’s loss of use or access to the premises or business personal property, a non-excluded direct physical loss. .... 20

            3. No Other Exclusions Apply to Preclude Coverage..... 22

        B. Declaratory Relief ..... 23

    SECOND CLAIM FOR RELIEF Declaratory Judgment (Against AMERICAN) ..... 23

1	C.	The American Policy.....	24
2	1.	Loss of access or use constitutes direct physical loss.....	25
3	2.	Governmental action resulted in Team 44 Restaurants, LLC; Dominick’s Italian Steakhouse LLC; Ocean 44 Scottsdale, LLC; Steak 44; and Steak 48 Chicago LLC’s loss of use or access to the premises or business personal property, a non-excluded direct physical loss. ....	25
4			
5			
6	3.	No Other Exclusions Apply to Preclude Coverage.....	27
7	D.	Declaratory Relief.....	28
8		THIRD CLAIM FOR RELIEF Breach of Contract (Against GREENWICH).....	29
9		FOURTH CLAIM FOR RELIEF Breach of Contract (Against AMERICAN) .....	30
10		DEMAND FOR JURY TRIAL .....	31
11		PRAYER FOR RELIEF .....	31
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			

1 I. NATURE OF THE CASE

2 1. Plaintiffs Team 44 Restaurants, LLC; Dominick’s Italian Steakhouse LLC; Ocean  
3 44 Scottsdale, LLC; Arcadia Steakhouse LLC DBA Steak 44 (“Steak 44”); Steak 48 River Oaks.  
4 LLC; and Steak 48 Chicago LLC (collectively “Plaintiffs” and/or “Team 44”) bring this action as  
5 policy holders seeking a declaratory judgment ordering their insurance providers, The American  
6 Insurance Company (“American”) and Greenwich Insurance Company (“Greenwich”) to honor  
7 valid contracts of insurance requiring payment for lost business income, extra expenses, and other  
8 business-related losses in light of action by governmental authority requiring the insureds to make  
9 physical alterations to and partial closures of their covered businesses or premises. This Complaint  
10 also seeks damages for breach of contract for benefits due under the insurance policy contracts.

11 2. An insurer that promises “the higher the level of protection you choose, the more  
12 protected you’ll be if you’re faced with a claim” should keep that promise to ensure its insureds’  
13 livelihoods are protected. *See* AXA BUSINESS INSURANCE, [https://www.axa.co.uk/business-](https://www.axa.co.uk/business-insurance/)  
14 [insurance/](https://www.axa.co.uk/business-insurance/) (last accessed Dec. 28, 2020). Defendants understand that business interruption  
15 insurance is critical because it helps keep capital flowing and “can protect your work, your people,  
16 your reputation, and ultimately, your future livelihood” (*Id.*) and that “[w]hatever the trigger, the  
17 financial loss for companies if they are unable to provide products and services – or customers  
18 stay away – can be enormous” (ALLIANZ BUSINESS INTERRUPTION INSURANCE,  
19 <https://www.agcs.allianz.com/solutions/business-interruption.html> (last accessed Dec. 28, 2020).

20 3. Though Defendants assure prospective customers that they “have the scale,  
21 resources, insight and attitude to deliver the products and services your business needs to go  
22 further ... confidently [and] securely” (ABOUT AXA XL, <https://axaxl.com/about-us> (last visited  
23 Jan. 22, 2021)) and “a long held global reputation for delivering exceptional claims service” (*See*  
24 Exhibit B (the “American Policy”) at 1) through their respective business interruption policies,  
25 Defendants have proven during the COVID-19 pandemic that this reputation is undeserved.  
26 Defendants have reflexively denied or will reflexively deny coverage based on consideration of  
27 their own interests, in contravention of basic interpretation principles requiring exclusions to be  
28

1 construed narrowly and equal consideration to be given to the insureds' interests, without a proper  
2 investigation, and with no disclosed outside counsel opinion supporting their positions.

3 4. Plaintiffs bring this action under separate policies issued by Defendants to Plaintiffs  
4 that provide for business interruption coverage, also known as business income and extra expense  
5 protection, to various businesses owned and operated by Plaintiffs.

6 5. Plaintiffs dutifully paid premiums to Defendants—to the tune of hundreds of  
7 thousands of dollars per year—so that when the unimaginable hit, Plaintiffs would be protected.  
8 Plaintiffs purchased robust policies that purport to cover every one of those unimaginable risks  
9 unless the policy exclusions removed that risk from coverage.

10 6. When the novel coronavirus (COVID-19) hit the United States, governments across  
11 the country acted to protect public health by entering orders limiting business operations, use of or  
12 access to facilities, travel, and in-person social interactions. The governmental orders also directed  
13 businesses to undertake certain affirmative actions, such as routine disinfecting cleanings of their  
14 business premises. These orders, directly and indirectly, caused Plaintiffs to suffer the very losses  
15 Defendants promised to reimburse. These governmental orders are a quintessential, well-known  
16 exercise of police powers. "The state's inherent prerogative to protect the public's health, safety,  
17 and welfare is known as the police power." *See* Gostin, Lawrence and Wiley, Lindsey, *Public*  
18 *Health Law*, University of California Press, p. 11. Using or accessing one's real property or  
19 employing or putting into service (or removing therefrom) one's equipment and business property,  
20 is inherently physical in nature. And ousting or precluding the use of or access to real property  
21 results in a loss of a physical nature.

22 7. Rather than giving equal consideration to the interests of the insureds, as  
23 Defendants must do, evaluating each claim based on all information that could be gathered from a  
24 fair and neutral individualized investigation, as Defendants also must do, or securing an outside  
25 counsel opinion on coverage to avoid bias, as industry standards require, Defendant Greenwich  
26 unilaterally decided its denial decision was correct and that no other reasonable interpretation of  
27 the policy language to the contrary exists. Likewise, upon information and belief, Defendant  
28

1 American has unilaterally issued denials for all claims related to governmental orders limiting the  
2 use of or access to insureds' property resulting from the COVID-19 pandemic.

3 8. In the policy language, however, Defendant Greenwich did not choose to exclude  
4 all governmental action from coverage. Greenwich instead chose to limit such coverage to  
5 scenarios in which "(1) access to the area immediately surrounding the damaged property is  
6 prohibited by civil authority as a result of the damage, and the insured property is within that area,  
7 but not more than one mile from the damaged property; and (2) the action of civil authority is  
8 taken in response to dangerous physical conditions resulting from the damage or continuation of  
9 the Covered Cause of Loss that caused the damage." Greenwich denied Plaintiff coverage on the  
10 grounds that "the government mandate here was not the result of physical loss."

11 9. Notably, neither "physical conditions" nor "physical loss" is defined in the  
12 Greenwich Policy. Greenwich's interpretation of the policy contract is wrong, and its denial of  
13 coverage for losses caused by limitations on the physical use and access to insureds' property  
14 breached the contract.

15 10. Likewise, the American Policy does not exclude all governmental action from  
16 coverage. Instead, the American Policy excludes only "seizure or destruction of property by  
17 governmental authority." No such seizure or destruction of property has occurred here. Rather,  
18 Plaintiffs' use and access have been limited by governmental orders and Plaintiffs should have  
19 been granted coverage under its American Policy.

20 11. Plaintiffs seek compensatory damages, statutory damages, attorney's fees, interest,  
21 and declaratory relief.

## 22 II. JURISDICTION

23 12. Subject-matter jurisdiction is proper in the Superior Court of the State of Arizona  
24 for the County of Maricopa, which is a court of general jurisdiction. This court has jurisdiction  
25 pursuant to A.R.S. § 12-123.

26 13. Personal jurisdiction is proper over Defendant Greenwich under Arizona Rule of  
27 Civil Procedure Rule 4.2(a), which provides that Arizona courts are authorized to exercise  
28

1 jurisdiction over parties “to the maximum extent permitted by the Arizona Constitution and the  
2 United States Constitution.”

3 14. Personal jurisdiction is proper over Defendant Greenwich for the additional reasons  
4 that Defendant Greenwich entered into a contract of insurance with certain Plaintiffs in Arizona.

5 15. Personal jurisdiction is proper over Defendant American under Arizona Rule of  
6 Civil Procedure Rule 4.2(a), which provides that Arizona courts are authorized to exercise  
7 jurisdiction over parties “to the maximum extent permitted by the Arizona Constitution and the  
8 United States Constitution.”

9 16. Personal jurisdiction is proper over Defendant American for the additional reasons  
10 that Defendant American entered into a contract of insurance with certain Plaintiffs in Arizona.

### 11 III. VENUE

12 17. Venue is proper in this court pursuant to A.R.S. § 12-401 because all Defendants  
13 have entered into and subsequently breached a contract of insurance with one or more plaintiffs in  
14 the County of Maricopa.

### 15 IV. PARTIES

16 18. Plaintiff Team 44 Restaurants, LLC contracted with Defendant Greenwich for  
17 commercial property, liability, and other insurance, and the policy at issue was effective May 9,  
18 2019. Plaintiff Team 44 contracted with Defendant American for commercial property, liability,  
19 and other insurance, and the policy at issue was effective September 9, 2019. Plaintiff Team 44 is  
20 an Arizona domestic limited-liability company headquartered in Scottsdale, Arizona and is a  
21 citizen of Arizona. Plaintiff Team 44 is the sole owner of Dominick’s Italian Steakhouse LLC;  
22 Steak 44; Ocean 44 Scottsdale, LLC; Steak 48 Chicago LLC; and Steak 48 River Oaks, LLC.

23 19. Plaintiff Dominick’s Italian Steakhouse LLC contracted with Defendant American  
24 for commercial property, liability, and other insurance, and the policy at issue was effective  
25 September 9, 2019. Dominick’s Italian Steakhouse LLC is an Arizona domestic limited-liability  
26 company headquartered in Scottsdale, Arizona and is a citizen of Arizona.

27 20. Plaintiff Ocean 44 Scottsdale, LLC; contracted with Defendant American for  
28 commercial property, liability, and other insurance, and the policy at issue was effective

1 September 9, 2019. Ocean 44 Scottsdale, LLC is an Arizona domestic limited-liability company  
2 headquartered in Scottsdale, Arizona and is a citizen of Arizona. Ocean 44 Scottsdale, LLC is a  
3 fine dining restaurant located at 4748 N Goldwater Blvd, Scottsdale, AZ 85251.

4 21. Plaintiff Steak 44 contracted with Defendant American for commercial property,  
5 liability, and other insurance, and the policy at issue was effective September 9, 2019. Steak 44 is  
6 an Arizona domestic limited-liability company headquartered in Scottsdale, Arizona and is a  
7 citizen of Arizona. Steak 44 is a fine dining restaurant located at 5101 N 44th St, Phoenix, AZ  
8 85018.

9 22. Plaintiff Steak 48 Chicago LLC contracted with Defendant American for  
10 commercial property, liability, and other insurance, and the policy at issue was effective  
11 September 9, 2019. Steak 48 Chicago LLC is an Arizona domestic limited-liability company  
12 headquartered in Scottsdale, Arizona and is a citizen of Arizona. Steak 44 is a fine dining  
13 restaurant located at 615 North Wabash Avenue Chicago, Illinois 60611.

14 23. Plaintiff Steak 48 River Oaks, LLC contracted with Defendant Greenwich for  
15 commercial property, liability, and other insurance, and the policy at issue was effective May 9,  
16 2019. Steak 48 River Oaks, LLC is a Texas domestic limited liability company with its  
17 headquarters in Scottsdale, Arizona. Steak 48 River Oaks is a fine dining restaurant located at  
18 4444 Westheimer Rd, Houston, TX 77027.

19 24. Upon information and belief, Defendant Greenwich is a Delaware corporation with  
20 its principal place of business in Stamford, Connecticut. Defendant Greenwich is a member of the  
21 AXA Insurance Group.

22 25. Upon information and belief, Defendant American is an Ohio corporation with its  
23 principal place of business in Chicago, Illinois. American is a member of the Allianz Insurance  
24 Group.

## 25 V. FACTUAL ALLEGATIONS

26 26. Team 44 is an Arizona citizen, which owns and operates four restaurants located in  
27 Arizona (Dominick's Italian Steakhouse, Steak 44, and Ocean 44), Illinois (Steak 48 Chicago),  
28

1 and Texas (Steak 48 River Oaks). Team 44's restaurants are fine dining establishments known for  
2 their provision of superior service for on premise dining.

3 27. The operating expenses of some of its locations are more than \$2 million annually  
4 and yet, each location brings in more than a \$1 million net profit in the years they are fully  
5 operational.

6 **A. The Greenwich Insurance Policy Covers All Risks Unless Expressly Limited or**  
7 **Excluded in the Contract.**

8 28. To protect their thriving businesses from interruption and other perils, Plaintiffs  
9 Team 44 Restaurants, LLC and Steak 48 River Oaks, LLC purchased business insurance from  
10 Defendant Greenwich, including loss of income, extra expense, property, liability, and other  
11 coverages.

12 29. Plaintiffs Team 44 Restaurants, LLC and Steak 48 River Oaks, LLC are insured  
13 under policy number PHK-0950665-03, which consists of various standardized endorsements and  
14 forms used by Defendant, together with other specific documents indicating Plaintiffs' coverage  
15 (collectively, the "Greenwich Policy"). A complete and accurate copy of the Greenwich Policy is  
16 attached hereto as Exhibit A.

17 30. Team 44 paid more than \$118,000.00 annually for the Greenwich Policy, dutifully  
18 making payments every year.

19 31. The relevant Greenwich Policy's effective period is May 9, 2019 to May 9, 2020.

20 32. The Policy is a renewal policy, which was renewed on approximately May 9, 2020.  
21 The policy currently in effect contains material terms identical to the policy in effect at the time  
22 Team 44 made its claim.

23 33. Team 44's Greenwich Policy consists of the policy jacket and its policy provisions,  
24 the declarations or information page, and the endorsements.

25 34. Team 44 paid more than \$118,000.00 for the applicable period of coverage under  
26 the Greenwich Policy's Commercial Lines Policy. This commercial coverage applies to Team 44's  
27 Steak 48 River Oaks location as specifically identified in the Commercial Lines Policy- Common  
28

1 Policy Declarations page. This location's building and personal property are covered by the  
2 Greenwich Policy.

3 35. In exchange for payment of the premium, Defendant Greenwich agreed to provide  
4 the insurance coverages described in the Policy.

5 36. The Greenwich Policy is an "all risks" policy. That is, the policy covers the insured  
6 for any peril, imaginable or unimaginable, unless expressly limited or excluded. In the event a  
7 covered peril results in physical loss or damage to Team 44's covered business premises or  
8 property, the Greenwich Policy will pay for lost business income and extra expenses. Business  
9 income means net income (net profit or loss) that would have been earned had no physical loss or  
10 damage occurred, and continuing normal operating expenses incurred (including payroll). Extra  
11 expense means the costs incurred because of the physical loss or damage—that is, those costs that  
12 would have otherwise been avoided. In the event of physical loss or damage, the Greenwich  
13 Policy pays for both.

14 37. Specifically, as the property coverage form schedule indicates (*see* Exhibit A), the  
15 Greenwich Policy provides property coverage under Form CP 00 30 (10-12) and Form CP 00 30  
16 (09-17), entitled Business Income (and Extra Expense) Coverage Form and Causes of Loss-  
17 Special Form, respectively.

18 38. Under the Business Income coverage, Defendant Greenwich covers net income that  
19 would have been earned and incurred and continuing normal operating expenses incurred,  
20 including payroll during the suspension of business.

21 39. Under the Extra Expense coverage, Defendant Greenwich must pay the "necessary  
22 expenses you incur during the 'period of restoration' that you would not have incurred if there had  
23 been no direct physical loss or damage to property caused by or resulting from a Covered Cause of  
24 Loss."

25 40. The Greenwich Policy's Special Form - Covered Causes of Loss paragraph  
26 establishes the applicable Covered Causes of Loss, which is defined as "direct physical loss unless  
27 the loss is excluded or limited in this policy." This language covers all physical loss to the  
28 property risks unless excluded by Section B.

1           41.     The Greenwich Policy contains several exclusions, which identify risks that  
2 preclude coverage for loss or damage caused by those risks. In denying coverage, Defendant  
3 Greenwich pointed to three exclusions in particular. *See* Exhibit B. Greenwich Denial Letter.

4           42.     First, Defendant Greenwich points to a provision excluding losses due to delay,  
5 loss of use or loss of market.

6           43.     Second, Defendant Greenwich points to a provision excluding losses resulting from  
7 “[a]cts or decisions, including the failure to act or decide, of any person, group, organization, or  
8 governmental body.” But the Greenwich Policy clearly states that when this excluded cause of loss  
9 “results in a Covered Cause of Loss, the Policy will cover the loss or damage caused by that  
10 Covered Cause of Loss.” The governmental orders resulted in direct physical damage to Team  
11 44’s property.

12           44.     Third, Defendant Greenwich points to a provision excluding losses resulting from  
13 “any virus, bacterium, or other microorganism that induces or is capable of inducing physical  
14 distress, illness, or disease.”

15           45.     Neither these nor any other exclusions in the Greenwich Policy preclude coverage  
16 for the governmental orders pursuant to which Plaintiffs suffered a “direct physical loss” under the  
17 Greenwich Policy. The governmental orders therefore constitute a covered “direct physical loss”  
18 under the Greenwich Policy.

19 **B.     The American Insurance Policy Covers All Risks Unless Expressly Limited or**  
20 **Excluded in the Contract.**

21           46.     To protect its thriving business from interruption and other perils, Plaintiffs Team  
22 44 Restaurants, LLC; Dominick’s Italian Steakhouse LLC; Ocean 44 Scottsdale, LLC; Steak 44;  
23 and Steak 48 Chicago LLC purchased business insurance from Defendant American, including  
24 loss of income, extra expense, property, liability, and other coverages.

25           47.     These plaintiffs are insured under policy number MZX 80999300, which consists  
26 of various standardized endorsements and forms used by Defendant American, together with other  
27 specific documents indicating Team’s coverage (collectively, the “American Policy”). A true and  
28 accurate copy of the American Policy is attached as Exhibit C.

1           48.     Team 44 paid more than \$199,000.00 annually for the American Policy, dutifully  
2 making payments every year.

3           49.     The American Policy's effective period is September 9, 2019 to September 9, 2020.

4           50.     The American Policy is a renewal policy, which was renewed on approximately  
5 September 9, 2020. The policy currently in effect contains material terms identical to the policy in  
6 effect at the time Team 44 made its claim.

7           51.     Team 44's American Policy consists of the policy jacket and its policy provisions,  
8 the declarations or information page, and the endorsements.

9           52.     Team 44 paid more than \$199,000.00 for the applicable period of coverage under  
10 the American Policy. This commercial coverage applies to Team 44's locations as specifically  
11 identified under the American Policy's General Declarations. The Ocean 44, Steak 44, Steak 48  
12 Chicago and Dominick's Italian Steakhouse buildings and personal property are covered under the  
13 American Policy.

14           53.     In exchange for payment of the premium, Defendant American agreed to provide  
15 the insurance coverages described in the American Policy.

16           54.     The American Policy is an "all risks" policy. That is, the policy covers the insured  
17 for any peril, imaginable or unimaginable, unless expressly limited or excluded. In the event a  
18 covered peril results in physical loss or damage to Team 44's business premises or property, the  
19 American Policy will pay for lost business income and extra expenses. Business income means net  
20 income (net profit or loss) that would have been earned had no physical loss or damage occurred,  
21 and continuing normal operating expenses incurred (including payroll). Extra expense means the  
22 costs incurred because of the physical loss or damage—that is, those costs that would have  
23 otherwise been avoided. In the event of physical loss or damage, the American Policy pays for  
24 both.

25           55.     Specifically, as the property coverage form schedule indicates, *see* Exhibit C, the  
26 American Policy provides property coverage under Form CP 00 30 (10-91) entitled Business  
27 Income Coverage Form and the Policy's Special Causes of Loss Form.

28

1           56.     Under the Business Income coverage, Defendant American covers net income that  
2 would have been earned and incurred and continuing normal operating expenses incurred,  
3 including payroll during the suspension of business.

4           57.     Under the Extra Expense coverage, Defendant American must pay for the  
5 necessary expenses during the period of restoration that would not have incurred if there had been  
6 no direct physical loss or damage to property caused by or resulting from a covered cause of loss.

7           58.     The American Policy's Special Causes of Loss Form (Special Form) paragraph  
8 establishes the applicable covered causes of loss, which are defined as "the Basic Causes of Loss  
9 and Risks of Direct Physical Loss not covered by the Basic Causes of Loss unless the loss is  
10 excluded or limited as stated in Sections B and C [of the American Policy]." This language covers  
11 all physical loss to the property risks unless excluded by Sections B and C.

12           59.     The American Policy contains several exclusions, which identify risks that preclude  
13 coverage for loss or damage caused by those risks. None of these exclusions in the American  
14 Policy preclude coverage for the governmental orders pursuant to which Plaintiffs suspended their  
15 business operations. The governmental orders therefore constitute a covered "direct physical loss"  
16 under the American Policy.

17 **C.     The COVID-19 Pandemic Hits the United States.**

18           60.     The first public reports of COVID-19 appeared on December 31, 2019, indicating  
19 the outbreak of the virus in Wuhan, China.

20           61.     On January 21, 2020, the first American COVID-19 case was confirmed in the  
21 State of Washington. *See* CENTER FOR DISEASE CONTROL, [https://www.cdc.gov/  
22 media/releases/2020/p0121-novel-coronavirus-travel-case.html](https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html) (last accessed Apr. 28, 2020).

23           62.     According to news reports, shortly thereafter, by January 26, 2020, the United  
24 States Centers for Disease Control ("CDC") confirmed the first COVID-19 case in California. *See*  
25 CALIFORNIA DEPARTMENT OF PUBLIC HEALTH, [https://www.cdph.ca.gov/Programs/CID/DCDC  
26 /Pages/Immunization/ncov2019.aspx](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx) (last accessed Apr. 28, 2020).

27           63.     On March 13, 2020, the President of the United States declared a national  
28 emergency.

1           64.     Yet, throughout this entire period from December 2019 through March 2020,  
2 Plaintiffs did not suffer an interruption or cessation of their thriving businesses.

3 **D.     Texas Takes Governmental Action Prohibiting the Use of and Access to the Steak 48**  
4 **Restaurant.**

5           65.     Beginning March 17, 2020, all restaurants in Harris County, where the Steak 48  
6 River Oaks restaurant is located, were prohibited from on-premises dining, and Team 44 was  
7 forced to shift its Steak 48 River Oaks business to curbside dining only. *Hidalgo, Turner, Order*  
8 *Bars to Close*, HOUSTON CHRONICLE [https://www.houstonchronicle.com/news/houston-](https://www.houstonchronicle.com/news/houston-texas/houston/article/Houston-Harris-County-expected-to-close-bars-15135586.php)  
9 [texas/houston/article/Houston-Harris-County-expected-to-close-bars-15135586.php](https://www.houstonchronicle.com/news/houston-texas/houston/article/Houston-Harris-County-expected-to-close-bars-15135586.php) (Mar. 16,  
10 2020).

11           66.     This prohibition on-premises dining lasted until May 1, 2020.

12           67.     On May 1, 2020, Harris County issued new governmental orders, which permitted  
13 on-premises dining but limited capacity to 25%. Pulsinelli, Olivia, *Year in Review: How the*  
14 *COVID-19 Pandemic Impacted Houston in 2020*, HOUSTON BUSINESS JOURNAL, [https://](https://www.bizjournals.com/houston/news/2020/12/31/year-in-review-covid-timeline.html)  
15 [www.bizjournals.com/houston/news/2020/12/31/year-in-review-covid-timeline.html](https://www.bizjournals.com/houston/news/2020/12/31/year-in-review-covid-timeline.html) (Dec. 31,  
16 2020).

17           68.     As a direct result of this governmental order, Team 44 was required to make  
18 physical changes to the premises of the Steak 48 River Oaks restaurant. This included the addition  
19 of flowers arrangements to tables to indicate non-use and other changes to the dining area to  
20 ensure diners were properly socially distanced from one another, additional wages for a full-time  
21 sanitizer position to regularly and repetitively wipe down high touch surfaces, introduction of  
22 hand sanitizing stations for guests and employees, introduction of single use, disposable menus,  
23 providing of PPE for staff (masks), re-purposing of bar cocktail tables to use as area for guests to  
24 wait to be seated to prevent groups from being in entry way and eliminating use of tables for  
25 revenue generation, posting of signage as required by City/State regulations. reconfiguration of  
26 table settings and service procedures to comply with City/State requirements, and the regular  
27 application of harsh, corrosive chemicals to all surfaces.

28

1 **E. Defendant Greenwich Denies Team 44's Insurance Claim.**

2 69. In April 2020, and in light of the foregoing civil authority orders, Team 44 notified  
3 Defendant Greenwich of its claim for related business losses and extra expenses.

4 70. Despite regular and persistent follow up, Team 44 did not receive a claims  
5 questionnaire until July 2020.

6 71. Team 44 submitted the completed questionnaire on July 27, 2020. The claim  
7 indicated a loss date beginning March 17, 2020.

8 72. By letter dated July 30, 2020, Greenwich denied Team 44's claim. *See* Exhibit B.

9 73. In reaching the determination to deny, Greenwich conducted no investigation into  
10 the covered premises to determine the precise physical loss or damage that resulted from the  
11 governmental orders described herein. Greenwich made no attempt to communicate with any of  
12 the covered entities from the time that Team 44 filed its claim and the time Greenwich denied the  
13 claim, did not ask for any additional information, and did not view in any way the covered  
14 premises.

15 74. The entities covered under the Greenwich Policy followed the requirements and  
16 guidance of all governmental orders described herein, resulting in the curtailment of its business  
17 operations. As explained above, beginning March 17, 2020 until May 1, 2020, Team 44 closed its  
18 Steak 48 River Oaks restaurant to on-premises dining and shifted to curbside and to-go business  
19 only. On May 1, 2020, Team 44 made further alterations to operate Steak 48 River Oaks at 25%  
20 capacity as required by local ordinances. Steak 48 River Oaks also disinfected all exposed surfaces  
21 routinely, sometimes as often as every thirty minutes, using the required alcohol-based  
22 disinfectant chemical solutions. Steak 48 River Oaks further ensured all employees on the  
23 premises wore masks at all times, that diners wore masks until they were seated at their tables, that  
24 all required notices were visibly posted, and that disinfectant chemical solutions, wipes, and hand  
25 sanitizers were made available at multiple points all throughout the premises.

26 75. The denial is wrong. The governmental action affecting the Steak 48 River Oaks  
27 property—executive orders that directly or indirectly limit direct physical access to or use of  
28 Plaintiffs' real property and business equipment—has caused a loss of income and an increase in

1 expense. This risk—of governmental action—is nowhere limited or excluded in the Greenwich  
2 Policy.

3 **F. Arizona Takes Governmental Action Forcing Team 44 to Alter the Premises to Three**  
4 **of its Locations.**

5 76. In March 2020, Arizona’s state and local governments entered civil authority  
6 orders forced to close or curtail its business operations in Arizona.

7 77. Beginning March 20, 2020 all Arizona restaurants located in counties with  
8 recorded cases of COVID-19 were required to shut down on site dining. *See* State of Arizona  
9 Executive Order 2020-09.

10 78. This order impacted Maricopa County, where Team 44’s Ocean 44, Steak 44, and  
11 Dominick’s’ Italian Steakhouse are located. Plaintiffs were forced to limit operations at all three  
12 locations, were forced to close on-premises dining and shift to a curbside/to-go business model.

13 79. By March 30, 2020, Arizona Governor Doug Ducey issued an order requiring all  
14 businesses which perform “essential functions” to: implement sanitizations measures established  
15 by the US Department of Labor and the Arizona Department of Health and Safety (AZDHS). *See*  
16 Arizona Executive Order 2020-18. The order further required such businesses implement  
17 procedures that facilitate physical distancing of at least six feet between individuals.

18 80. On May 5, 2020, the Governor issued guidelines allowing restaurants to reopen on  
19 May 11, 2020 provided they establish and implement practices for businesses to facilitate social  
20 distancing, limiting the number of diners, and otherwise following the protocol set forth by the  
21 CDC. *See* Arizona Executive Order 2020-34.

22 81. On July 9, 2020, as the number of COVID-19 cases in Arizona steadily increased,  
23 the Governor issued an order limiting restaurant capacity to 50% for on-premises dining. *Gov.*  
24 *Ducey Limits Restaurant Occupancy, Announces More West Valley Testing*, AZ FAMILY  
25 [https://www.azfamily.com/news/continuing\\_coverage/coronavirus\\_coverage/gov-ducey-limits-restaurant-occupancy-announces-more-west-valley-testing-amid-coronavirus-pandemic/](https://www.azfamily.com/news/continuing_coverage/coronavirus_coverage/gov-ducey-limits-restaurant-occupancy-announces-more-west-valley-testing-amid-coronavirus-pandemic/article_83e45458-c219-11ea-8029-e3f76b7b18ee.html)  
26 [article\\_83e45458-c219-11ea-8029-e3f76b7b18ee.html](https://www.azfamily.com/news/continuing_coverage/coronavirus_coverage/gov-ducey-limits-restaurant-occupancy-announces-more-west-valley-testing-amid-coronavirus-pandemic/article_83e45458-c219-11ea-8029-e3f76b7b18ee.html) (Jul. 9, 2020).  
27  
28

1 **G. Illinois Takes Governmental Action Forcing Team 44 to Alter the Premises to its**  
2 **Steak 48 Chicago Location.**

3 82. In March 2020, Illinois' state and local governments entered civil authority orders  
4 forced to close or curtail its business operations in Illinois.

5 83. Beginning March 16, 2020 all Illinois restaurants were required to shut down on-  
6 site dining. *See Pritzker Announces All Bars, Restaurants Will Be Closed Through March 30,*  
7 *Deliver and Pick Up Will be Available*, CHICAGO TRIBUNE, [https://www.chicagotribune.com/](https://www.chicagotribune.com/coronavirus/ct-coronavirus-all-restaurants-to-close-20200315-vqniup2pa5e65bb33ics26rloq-story.html)  
8 [coronavirus/ct-coronavirus-all-restaurants-to-close-20200315-vqniup2pa5e65bb33ics26rloq-](https://www.chicagotribune.com/coronavirus/ct-coronavirus-all-restaurants-to-close-20200315-vqniup2pa5e65bb33ics26rloq-story.html)  
9 [story.html](https://www.chicagotribune.com/coronavirus/ct-coronavirus-all-restaurants-to-close-20200315-vqniup2pa5e65bb33ics26rloq-story.html) (Mar. 15, 2020).

10 84. The prohibition of on-site dining set by Illinois Governor J.B. Pritzker was initially  
11 set for two weeks, intended to end on March 30, 2020. *All Illinois Bars, Dine-In Restaurants Will*  
12 *Close to the Public for 2 Weeks Due to COVID-19 Concerns* WGN TV, [https://wgntv.com/news/](https://wgntv.com/news/coronavirus/all-bars-restaurants-to-be-closed-to-dine-in-customers-in-illinois-due-to-covid-19-concerns/)  
13 [coronavirus/all-bars-restaurants-to-be-closed-to-dine-in-customers-in-illinois-due-to-covid-19-](https://wgntv.com/news/coronavirus/all-bars-restaurants-to-be-closed-to-dine-in-customers-in-illinois-due-to-covid-19-concerns/)  
14 [concerns/](https://wgntv.com/news/coronavirus/all-bars-restaurants-to-be-closed-to-dine-in-customers-in-illinois-due-to-covid-19-concerns/) (Mar. 15, 2020).

15 85. On March 20, 2020, as the COVID-19 case count in Illinois rose, Governor  
16 Pritzker issued a statewide "stay-at-home" order, ordering Illinois residents to limit their activities  
17 outside their homes to those deemed "essential." *Illinois Governor Imposes Stay-at-Home Order*  
18 *to Curb Virus*, ABC NEWS, [https://abcnews.go.com/Health/wireStory/ap-sources-illinois-](https://abcnews.go.com/Health/wireStory/ap-sources-illinois-governor-order-shelter-place-69715851)  
19 [governor-order-shelter-place-69715851](https://abcnews.go.com/Health/wireStory/ap-sources-illinois-governor-order-shelter-place-69715851) (Mar. 20, 2020).

20 86. Governor Pritzker's order included an extension of the state's prohibition on on-  
21 premises dining from March 20 to April 7, 2020. *Id.*

22 87. On March 31, 2020, Governor Pritzker extended Illinois' stay-at-home order to  
23 April 30, 2020. *Governor Pritzker Extends Stay-at-Home Order to April 30*, WGN-TV,  
24 [https://www.timeout.com/chicago/news/governor-pritzker-extends-illinois-stay-at-home-order-](https://www.timeout.com/chicago/news/governor-pritzker-extends-illinois-stay-at-home-order-through-april-30)  
25 [through-april-30](https://www.timeout.com/chicago/news/governor-pritzker-extends-illinois-stay-at-home-order-through-april-30) (Mar. 31, 2020).

26 88. On April 23, 2020, Governor Pritzker again amended the stay-at-home order to  
27 include a mandate that all persons medically able, over the age of two, wear face coverings.

28

1 Additionally, the stay-at-home order was extended until May 30, 2020, meaning that Illinois  
2 restaurants were unable to open their businesses for on-premises dining until June 2020.

3 89. On May 24, 2020, Governor Pritzker released new guidelines for businesses to  
4 reopen upon the expiration of the stay-at-home order effective at that time and entry into Phase III  
5 of Illinois' reopening plan, Restore Illinois. *Pritzker Releases New Guidance for Workplaces as*  
6 *Illinois Prepares to Reopen*, WBEZ CHICAGO, [https://www.wbez.org/stories/pritzker-releases-](https://www.wbez.org/stories/pritzker-releases-new-guidance-for-workplaces-as-illinois-prepares-to-reopen/0466edac-0570-4348-b35e-2c2bb8f0e8ae)  
7 [new-guidance-for-workplaces-as-illinois-prepares-to-reopen/0466edac-0570-4348-b35e-](https://www.wbez.org/stories/pritzker-releases-new-guidance-for-workplaces-as-illinois-prepares-to-reopen/0466edac-0570-4348-b35e-2c2bb8f0e8ae)  
8 [2c2bb8f0e8ae](https://www.wbez.org/stories/pritzker-releases-new-guidance-for-workplaces-as-illinois-prepares-to-reopen/0466edac-0570-4348-b35e-2c2bb8f0e8ae) (May 24, 2020).

9 90. The Phase III Restore Illinois guidelines limited restaurants to outdoor dining only,  
10 employees were required to wear face coverings, tables were required to be rearranged to provide  
11 a minimum of six feet between tables, all waiting areas had to be shut down, and parties were  
12 limited to no more than six persons. *See* Illinois Department of Commerce & Economic  
13 Opportunity, *Phase 3: Recovery, Restaurants & bars for outdoor dining guidelines.*, available at  
14 <https://dceocovid19resources.com/assets/Restore-Illinois/businessguidelines3/restaurantbars.pdf>  
15 (last accessed Feb. 1, 2021)

16 91. On June 26, 2020, Illinois entered Phase IV of Restore Illinois and restaurants were  
17 open to indoor dining for the first time since March 2020. However, indoor dining was limited to  
18 25% capacity and groups were limited to no more than 10 persons. *Illinois Moves to Phase 4*  
19 *Friday. Here's What You Need to Know*, WBEZ CHICAGO, [https://www.wbez.org/stories/illinois-](https://www.wbez.org/stories/illinois-moves-to-phase-4-on-friday-heres-what-you-need-to-know/e4aa477f-b1eb-4d07-95c8-0943fa71ea81)  
20 [moves-to-phase-4-on-friday-heres-what-you-need-to-know/e4aa477f-b1eb-4d07-95c8-](https://www.wbez.org/stories/illinois-moves-to-phase-4-on-friday-heres-what-you-need-to-know/e4aa477f-b1eb-4d07-95c8-0943fa71ea81)  
21 [0943fa71ea81](https://www.wbez.org/stories/illinois-moves-to-phase-4-on-friday-heres-what-you-need-to-know/e4aa477f-b1eb-4d07-95c8-0943fa71ea81) (June 25, 2020).

22 92. As COVID-19 cases rise and fall and Illinois shifts between various phases of the  
23 Restore Illinois plan, restrictions on restaurants and other businesses decrease and increase again.  
24 *Timeline: How COVID-19 upended the Chicago-area restaurant industry*, Chicago Tribune,  
25 [https://www.chicagotribune.com/dining/ct-coronavirus-viz-chicago-dining-restaurants-timeline-](https://www.chicagotribune.com/dining/ct-coronavirus-viz-chicago-dining-restaurants-timeline-2020-20201230-shiyie5mtnavfplwoexqkxxnve-list.html)  
26 [2020-20201230-shiyie5mtnavfplwoexqkxxnve-list.html](https://www.chicagotribune.com/dining/ct-coronavirus-viz-chicago-dining-restaurants-timeline-2020-20201230-shiyie5mtnavfplwoexqkxxnve-list.html) (Dec. 30, 2020).

27 93. Illinois restaurants have arguably been hit the hardest of any state due to  
28 governmental restrictions on their property. Indeed as of January 2021, Illinois had the longest

1 running ban on indoor dining of any state at 75 days. *Restaurant Group Urges Pritzker to Lift*  
2 *Indoor Dining Ban*, WBBM, [https://www.radio.com/wbbm780/news/local/restaurant-group-urges-](https://www.radio.com/wbbm780/news/local/restaurant-group-urges-pritzker-to-lift-indoor-dining-ban)  
3 [pritzker-to-lift-indoor-dining-ban](https://www.radio.com/wbbm780/news/local/restaurant-group-urges-pritzker-to-lift-indoor-dining-ban) (Jan. 14, 2021).

4 **H. American Denies Team 44's Insurance Claim.**

5 94. On April 6, 2020, and in light of the foregoing civil authority orders, Team 44  
6 initiated the claims process with American notifying its insurer of its claim for business losses and  
7 extra expenses under the American Policy.

8 95. American was evasive and uncooperative, failing to immediately provide Team 44  
9 with a claims questionnaire.

10 96. Despite continual efforts to submit its claim with American, Team 44 was not  
11 provided with a claims questionnaire until August 21, 2020.

12 97. Team 44 submitted the completed claims questionnaire to American on September  
13 8, 2020. Plaintiff received no response from American.

14 98. In the face of continued delay, Team 44's counsel stepped in and contacted  
15 American's claims adjuster on October 7, 2020 by electronic mail.

16 99. None of the covered entities nor their insurance counsel received any response from  
17 American's adjuster until December 1, 2020, on which counsel received a letter sent via U.S. mail  
18 only, which was dated November 15, 2020 but postmarked November 25, 2020 ("November  
19 Correspondence").

20 100. In its November Correspondence, American's claims adjuster claimed to have sent  
21 correspondence to Team 44 on October 16, 2020 seeking additional financial documentation to  
22 support Team 44's claim. None of the covered entities under the American Policy has received  
23 such correspondence.

24 101. The November Correspondence inappropriately purports to close Team 44's claim  
25 because the insured entities did not respond to the alleged October 16, 2020 correspondence from  
26 American.

27 102. On December 8, 2020, Team 44's insurance counsel responded to American's  
28 November Correspondence, (1) informing American that while additional financial documentation

1 should not be required in rendering an initial coverage decision, the information requested was  
2 forthcoming; (2) instructing American not to close the claim; (3) seeking a copy of the October 16,  
3 2020 letter American allegedly sent to the insured; and (4) instructing American to send all  
4 correspondence electronically to counsel to avoid further delay.

5 103. To date, neither the insured nor its insurance counsel has received the October 16,  
6 2020 letter from American.

7 104. On December 10, 2020, Team 44's insurance counsel again contacted American's  
8 adjuster to ensure he received counsel's December 8, 2020 correspondence. American did not  
9 respond.

10 105. On December 29, 2020, counsel provided financial records for all locations insured  
11 under the American Policy. In this correspondence, counsel requested that American's adjuster  
12 immediately inform counsel should additional documentation be required and further informed the  
13 adjuster that any additional documentation requested would be provided expeditiously. American  
14 did not respond.

15 106. On January 7, 2021, Team 44's counsel again followed up with American's  
16 adjuster.

17 107. None of the insured entities nor their insurance counsel has received any  
18 communications from American since receiving its November Correspondence.

19 108. After approximately nine months, American has not rendered a coverage decision.

20 109. On information and belief, American is systemically denying claims for loss of  
21 business income and extra expenses resulting from governmental orders resulting from the  
22 COVID-19 pandemic. Because of this, and because American has continually failed to respond to  
23 correspondence, Team 44 deems its claim for coverage denied.

24 110. Team 44's Arizona restaurants followed the requirements and guidance of all  
25 governmental orders described herein, resulting in the curtailment of its business operations. At  
26 each of the Arizona restaurants, Plaintiffs also disinfected all exposed surfaces routinely,  
27 sometimes as often as every thirty minutes, using the required alcohol-based disinfectant chemical  
28 solutions. Plaintiffs further ensured all employees on the premises wore masks at all times, that all

1 patrons wore masks until seated, that all required notices were visibly posted, and that disinfectant  
2 chemical solutions, wipes, and hand sanitizers were made available at multiple points all  
3 throughout the premises.

4 111. Team 44 also installed Plexiglas dividers in the dining areas of its Steak 44, Ocean  
5 44, Dominick's Italian Steakhouse, and Steak 48 Chicago locations.

6 112. To accommodate the Illinois' prohibition on indoor dining, Team 44 also added an  
7 outdoor dining area to its Steak 48 Chicago location.

8 113. The denial is wrong. The governmental action affecting Plaintiffs' property—  
9 executive orders that directly or indirectly limit direct physical access to or use of Team 44's real  
10 property and business equipment—has caused a loss of income and an increase in expense. This  
11 risk—of governmental action—is nowhere limited or excluded in the Policy.

12 114. The plaintiffs insured under the American Policy fully complied and cooperated  
13 with American throughout the claims process. Plaintiffs timely notified the insurer of their claim.  
14 waited for a response, followed up regularly with American's claims adjuster, provided the  
15 information requested, and gave American ample time to render a claims decision, which it failed  
16 to do.

## 17 VI. CLAIMS FOR RELIEF

### 18 FIRST CLAIM FOR RELIEF

#### 19 DECLARATORY JUDGMENT (AGAINST GREENWICH)

20 115. Plaintiffs Team 44 Restaurants, LLC and Steak 48 River Oaks, LLC re-allege and  
21 incorporate the preceding paragraphs as if set forth herein.

22 116. Plaintiffs Team 44 Restaurants, LLC and Steak 48 River Oaks, LLC bring this  
23 cause of action seeking a declaration that it violates state law and the insurance contracts for  
24 Defendant Greenwich to ignore the narrow nature of the governmental-action exclusion and to  
25 adopt a narrow interpretation of what must cause a suspension of business. The Policy requires  
26 that a loss of business be caused by "direct physical loss" of or damage to property at the  
27 described premises.

28

1           117. Greenwich's interpretation that the requirement of "direct physical loss" is not  
2 satisfied by losing physical access or use and quiet enjoyment of Plaintiffs Team 44 Restaurants,  
3 LLC and Steak 48 River Oaks, LLC's property is wrong. The undefined phrase "direct physical  
4 loss" is reasonably construed to mean the direct loss of the ability to physically access or use  
5 property. Losing the ability to access or use one's property is a loss of physical, material rights and  
6 advantages, substantial and important. Considering that exclusions to coverage must be narrowly  
7 construed, that language drafted by the insurer with ambiguity should be construed against the  
8 drafter, and that Plaintiffs' interpretation is supported by dictionary definitions of the terms,  
9 coverage should be afforded.

10 **A. The Greenwich Policy**

11           118. Under the Business Income coverage, Greenwich must "pay for the actual loss of  
12 Business Income you sustain due to the necessary 'suspension' of your 'operations' during the  
13 'period of restoration.'"

14           119. Under the Extra Expense coverage, Greenwich must pay the "necessary expenses  
15 you incur during the 'period of restoration' that you would not have incurred if there had been no  
16 direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss."

17           120. Under the Greenwich Policy, "suspension means: (a) The slowdown or cessation of  
18 your business activities; or (b) That a part or all of the described premises is rendered  
19 untenable, if coverage for Business Income including 'Rental Value' or 'Rental Value'  
20 applies."

21           121. Under the Greenwich Policy, "'Operations' means (a) your described business  
22 activities occurring at the described premises; or (b) The tenantability of the described premises, if  
23 coverage for Business Income including 'Rental Value' or 'Rental Value' applies."

24           122. Under the Greenwich Policy, "Period of restoration" means the period of time that  
25 begins: (1) 72 hours after the time of direct physical loss or damage for Business Income  
26 Coverage; or (2) Immediately after the time of direct physical loss or damage for Extra Expense  
27 coverage."

28

1 123. Additionally, under Business Income and Extra Expense coverage, the loss or  
2 damage must be caused by “direct physical loss.”

3 **1. Loss of access or use constitutes direct physical loss.**

4 124. The Greenwich Policy does not define the phrase “direct physical loss.”

5 125. Common usage of the words in the phrase dictates that ouster and  
6 prohibition/interdiction of access and use by insureds and others (agents, tenants, customers, etc.)  
7 are physical losses. Such losses are direct in that ouster of and prohibition/interdiction of access  
8 and use by all nonessential people results directly in a physical loss.

9 126. Physical means relating to “material things” that are “perceptible especially through  
10 the senses.” *See* “Physical.” Merriam-Webster.com Dictionary, Merriam-Webster,  
11 <https://www.merriam-webster.com/dictionary/physical> (last accessed Apr. 24, 2020). It is also  
12 defined in a way that is tied to the body: “of or relating to the body.” *Id.* Another Merriam-  
13 Webster Dictionary refines the concept of material this way: “of or relating to natural or material  
14 things as opposed to things mental, moral, spiritual, or imaginary.” *See* “Physical.” Webster’s  
15 Third New International Dictionary, Unabridged. 2020. Web. 24 Apr. 2020.

16 127. Prohibiting the physical presence on the premises of all persons (except for those  
17 facilitating minimal maintenance) and the prohibition of the physical use of equipment, fixtures  
18 and furniture constitutes a physical loss that caused the suspension of business operations.

19 **2. Governmental action resulted in Plaintiffs Team 44 Restaurants, LLC and**  
20 **Steak 48 River Oaks, LLC’s loss of use or access to the premises or business**  
21 **personal property, a non-excluded direct physical loss.**

22 128. Coverage under the “all risks” Policy is provided for any risk of direct physical loss  
23 unless expressly limited or excluded.

24 129. One risk addressed in the Paragraph B exclusions is governmental action. *See* Form  
25 CP 10 30 (09-17), Paragraph B.1.c.

26 130. By recognizing governmental action in the Paragraph B exclusions, the Greenwich  
27 Policy confirms governmental action as a risk of direct physical loss and a Covered Cause of Loss.

28 131. The Policy excludes some but not all governmental action from coverage. The  
Greenwich Policy excludes coverage for governmental orders requiring seizure and destruction

1 only. Specifically, this provision excludes any loss or damage caused directly or indirectly by  
2 governmental action that consists of seizure or destruction of property by order of governmental  
3 authority unless the destruction was done to prevent the spread of a fire. As ordinarily used,  
4 “seizure” means “taking possession of person or property by legal process.” The provision  
5 excludes no other governmental action from coverage (i.e., governmental orders not seeking  
6 seizure or destruction).

7 132. The governmental orders affecting the Greenwich property do not require seizure  
8 or destruction because the government did not destroy the property of Plaintiff or take physical  
9 possession of, or title to, such property. Instead, the orders limit access to and use of covered  
10 property at the premises described in the Policy declarations.

11 133. The Policy does not exclude the governmental action described herein.

12 134. The business-income losses, extra expenses, and other losses sustained by the  
13 insured plaintiffs were caused by or resulted from the aforementioned governmental orders which  
14 resulted in direct physical damage to the property, a Covered Cause of Loss.

15 135. The policy further requires that the business-income losses be incurred because of  
16 the necessary suspension of operations during the period of restoration. Team 44 Restaurants, LLC  
17 and Steak 48 River Oaks, LLC suffered losses because of suspension of operations during the  
18 period of restoration.

19 136. The direct loss of physical access to and use of the premises listed in the  
20 Declarations, and business property thereon, for tenants and their vendors, agents, employees, and  
21 customers caused the suspension of the operations by the insured plaintiffs.

22 137. Because the Greenwich Policy covers all risks, including governmental action that,  
23 for the good of the public, limits physical access to and use of property (real and personal),  
24 coverage is required.

25 138. The governmental action affecting Plaintiffs Team 44 Restaurants, LLC and Steak  
26 48 River Oaks, LLC’s property—executive orders that directly or indirectly limit direct physical  
27 access to the insured plaintiffs’ real and personal property—has caused a loss of income and an  
28 increase in expense, exactly the “outside force” that interrupts business and causes insureds to

1 close their doors for a period of time, that requires that capital continue to flow to keep the  
2 business afloat and to help replace lost income and pay expenses such as salaries and mortgages.  
3 This governmental action is precisely the unexpected jolt that motivates the purchase of insurance.

4 **3. No Other Exclusions Apply to Preclude Coverage.**

5 139. No other applicable exclusions or limitations apply to preclude coverage for the  
6 direct physical losses caused by or resulting from the governmental action described herein.

7 140. The existing virus exclusion is inapplicable because the insured plaintiffs' losses  
8 were caused by governmental action, not the physical presence of the virus on the covered  
9 premises. Greenwich conducted no investigation and have no evidence to satisfy its burden of  
10 showing the physical presence of a virus on the insured properties, which is required when  
11 asserting an exclusion. Greenwich denied all claims without investigating the relevant properties.

12 141. Coverage is owed from the time governmental action forced the covered plaintiffs  
13 to curtail their businesses practices. Plaintiffs Team 44 Restaurants, LLC and Steak 48 River  
14 Oaks, LLC's property was subject to governmental orders in Texas that did not seek to seize or  
15 destroy the property. The governmental orders do not constitute governmental seizures because at  
16 no point did any governmental entity in Texas take physical possession of the property or legal  
17 title to the property. The orders properly exercised the police powers of their respective state and  
18 local governments to protect public health, affecting Team 44 Restaurants, LLC and Steak 48  
19 River Oaks, LLC's property, which caused a loss of the ability to physically access and use the  
20 insured property.

21 142. Under each successive order, Team 44 Restaurants, LLC and Steak 48 River Oaks,  
22 LLC's property was limited to the minimum necessary operations or required closure. The  
23 governmental action also prohibited, via stay-at-home orders or travel restrictions, all nonessential  
24 movement by all residents. These governmental orders resulted in losing physical access to and  
25 physical use and enjoyment of the insured property by its owners, customers, vendors, employees,  
26 and others.

27 143. Nor does the provision entitled "Consequential Losses" that excludes "Delay, loss  
28 of use or loss of market" preclude coverage.

1           144. Consequential damages are special or indirect damages. Put differently,  
2 consequential damages are “[l]osses that do not flow directly and immediately from an injurious  
3 act but that result indirectly from the act. — Also termed indirect damages.” *See* Consequential  
4 Damages, Black’s Law Dictionary (11th ed. 2019) (emphasis in original).

5           145. The exclusion for “loss of use” therefore applies only if that “loss of use” is itself  
6 consequential. That is not the case here. The insured-against peril—governmental action—resulted  
7 directly and immediately in Plaintiffs Team 44 Restaurants, LLC and Steak 48 River Oaks, LLC’s  
8 physical loss of access or use.

9           146. Limiting the “loss of use” exclusion to consequential losses also renders sensible an  
10 exclusion that otherwise swallows the entire Policy.

11 **B. Declaratory Relief**

12           147. Plaintiffs, Team 44 Restaurants, LLC and Steak 48 River Oaks, LLC seek a  
13 declaration of rights under Greenwich’s Policy language and a declaration of the rights and  
14 liabilities of the parties herein.

15           148. This Court has the power to declare the rights of the Parties herein.

16           149. Plaintiffs Team 44 Restaurants, LLC and Steak 48 River Oaks, LLC seek a  
17 Declaratory Judgment finding that the Greenwich Policy covers Business Income and Extra  
18 Expense during the period of restoration caused by or resulting from governmental action that  
19 forced Plaintiffs to suspend operations, subject to no limitations or exclusions under the Policy.

20 **SECOND CLAIM FOR RELIEF**

21 **DECLARATORY JUDGMENT (AGAINST AMERICAN)**

22           150. Plaintiffs Team 44 Restaurants, LLC; Dominick’s Italian Steakhouse LLC Ocean  
23 44 Scottsdale, LLC; Steak 44; and Steak 48 Chicago LLC re-allege and incorporate the preceding  
24 paragraphs as if set forth herein.

25           151. Plaintiffs Team 44 Restaurants, LLC; Dominick’s Italian Steakhouse LLC; Ocean  
26 44 Scottsdale, LLC; and Steak 44 bring this cause of action seeking a declaration that it violates  
27 state law and the insurance contracts for Defendant American to ignore the narrow nature of the  
28 governmental-action exclusion and to adopt a narrow interpretation of what must cause a

1 suspension of business. The Policy requires that a “suspension” be caused by “direct physical  
2 loss” of or damage to property at the described premises.

3 152. Upon information and belief American uses an interpretation that the requirement  
4 of “direct physical loss” is not satisfied by losing physical access or use and quiet enjoyment to the  
5 insured’s property. Such an interpretation is wrong.

6 153. The undefined phrase “direct physical loss” is reasonably construed to mean the  
7 direct loss of the ability to physically access or use property. Losing the ability to access or use  
8 one’s property is a loss of physical, material rights and advantages, substantial and important.  
9 Considering that exclusions to coverage must be narrowly construed, that language drafted by the  
10 insurer with ambiguity should be construed against the drafter, and that Plaintiffs’ interpretation is  
11 supported by dictionary definitions of the terms, coverage should be afforded.

12 **C. The American Policy**

13 154. Under the Business Income coverage, American must “pay for the actual loss of  
14 Business Income you sustain due to the necessary suspension of your **operations** during the  
15 **period of restoration.**” *See* Ex. C (emphasis in original).

16 155. Under the Extra Expense coverage, American must “pay any Extra Expense to  
17 avoid or minimize the suspension of business and to continue **operations**: (1) At the described  
18 premises; or (b) At replacement premises or at temporary locations, including: (i) Relocation  
19 expenses; and (ii) Costs to equip and operate the replacement or temporary locations.” *Id.*

20 156. Under the American Policy, “suspension means: (a) The partial slowdown or  
21 complete cessation of your business activities; or (b) That a part or all of the described premises is  
22 rendered untenable, if coverage for Business Income applies.”

23 157. Under the American Policy, “‘Operations’ means: (a) Your business activities  
24 occurring at the described premises; and (b) The tenantability of the described premises, if  
25 coverage for Business Income including **Rental Value** or **Rental Value** applies.”

26 158. Under the American Policy, “Period of restoration” means the period of time that:  
27 (a) Begins with the date of direct physical loss or damage cause by or resulting from and Covered  
28 Cause of Loss at the described premises; and (b) Ends on the date when the property at the

1 described premises should be repaired, rebuilt or replaced with reasonable speed and similar  
2 quality.”

3 159. Additionally, under Business Income and Extra Expense coverage, the loss or  
4 damage must be caused by “direct physical loss.”

5 **1. Loss of access or use constitutes direct physical loss.**

6 160. The American Policy does not define the phrase “direct physical loss.”

7 161. Common usage of the words in the phrase dictates that ouster and  
8 prohibition/interdiction of access and use by insureds and others (agents, tenants, customers, etc.)  
9 are physical losses. Such losses are direct in that ouster of and prohibition/interdiction of access  
10 and use by all nonessential people results directly in a physical loss.

11 162. Physical means relating to “material things” that are “perceptible especially through  
12 the senses.” *See* “Physical.” Merriam-Webster.com Dictionary, Merriam-Webster,  
13 <https://www.merriam-webster.com/dictionary/physical> (last accessed Apr. 24, 2020). It is also  
14 defined in a way that is tied to the body: “of or relating to the body.” *Id.* Another Merriam-  
15 Webster Dictionary refines the concept of material this way: “of or relating to natural or material  
16 things as opposed to things mental, moral, spiritual, or imaginary.” *See* “Physical.” Webster’s  
17 Third New International Dictionary, Unabridged. 2020. Web. 24 Apr. 2020.

18 163. Prohibiting the physical presence on the premises of all persons (except for those  
19 facilitating minimal maintenance) and the prohibition of the physical use of equipment, fixtures  
20 and furniture constitutes a physical loss that caused the suspension of business operations.

21 **2. Governmental action resulted in Team 44 Restaurants, LLC; Dominick’s**  
22 **Italian Steakhouse LLC; Ocean 44 Scottsdale, LLC; Steak 44; and Steak 48**  
23 **Chicago LLC’s loss of use or access to the premises or business personal**  
24 **property, a non-excluded direct physical loss.**

25 164. Coverage under the “all risks” American Policy is provided for any risk of direct  
26 physical loss unless expressly limited or excluded.

27 165. One risk addressed in the Paragraph B exclusions is governmental action. *See* Form  
28 141035 (12-88), Paragraph B.1.c.

1           166. By recognizing governmental action in the Paragraph B exclusions, the Policy  
2 confirms governmental action as a risk of direct physical loss and a Covered Cause of Loss.

3           167. The American Policy excludes some but not all governmental action from  
4 coverage. The Policy excludes coverage for governmental orders requiring seizure and destruction  
5 only. Specifically, this provision excludes any loss or damage caused directly or indirectly by  
6 governmental action that consists of seizure or destruction of property by order of governmental  
7 authority unless the destruction was done to prevent the spread of a fire. As ordinarily used,  
8 "seizure" means "taking possession of person or property by legal process." The provision  
9 excludes no other governmental action from coverage (i.e., governmental orders not seeking  
10 seizure or destruction).

11           168. The governmental orders affecting Plaintiffs Team 44 Restaurants, LLC;  
12 Dominick's Italian Steakhouse LLC; Ocean 44 Scottsdale, LLC; Steak 44; and Steak 48 Chicago  
13 LLC's property do not require seizure or destruction because the government did not destroy the  
14 property of the insured plaintiffs or take physical possession of, or title to, such property. Instead,  
15 the orders limit access to and use of covered property at the premises described in the Policy  
16 declarations.

17           169. The American Policy does not exclude the governmental action described herein.

18           170. The business-income losses, extra expenses, and other losses sustained by Team 44  
19 Restaurants, LLC; Dominick's Italian Steakhouse LLC; Ocean 44 Scottsdale, LLC; Steak 44; and  
20 Steak 48 Chicago LLC were caused by or resulted from the aforementioned governmental orders,  
21 a Covered Cause of Loss.

22           171. The policy further requires that the business-income losses be incurred because of  
23 the necessary suspension of operations during the period of restoration. Team 44 Restaurants,  
24 LLC; Dominick's Italian Steakhouse LLC; Ocean 44 Scottsdale, LLC; Steak 44; and Steak 48  
25 Chicago LLC suffered losses because of suspension of operations during the period of restoration.

26           172. The direct loss of physical access to and use of the premises listed in the  
27 Declarations, and business property thereon, for tenants and their vendors, agents, employees, and  
28 customers caused the suspension of the operations by the covered entities.

1           173. Because the American Policy covers all risks, including governmental action that,  
2 for the good of the public, limits physical access to and use of property (real and personal).  
3 coverage is required.

4           174. The governmental action affecting Team 44 Restaurants, LLC; Dominick's Italian  
5 Steakhouse LLC; Ocean 44 Scottsdale LLC; Steak 44; and Steak 48 Chicago LLC's property—  
6 executive orders that directly or indirectly limit direct physical access to Team 44 Restaurants,  
7 LLC; Dominick's Italian Steakhouse LLC; Ocean 44 Scottsdale, LLC; Steak 44; and Steak 48  
8 Chicago LLC's real and personal property—has caused a loss of income and an increase in  
9 expense, exactly the "outside force" that interrupts business and causes insureds to close their  
10 doors for a period of time, that requires that capital continue to flow to keep the business afloat  
11 and to help replace lost income and pay expenses such as salaries and mortgages. This  
12 governmental action is precisely the unexpected jolt that motivates the purchase of insurance.

13           **3. No Other Exclusions Apply to Preclude Coverage.**

14           175. No other applicable exclusions or limitations apply to preclude coverage for the  
15 direct physical losses caused by or resulting from the governmental action described herein.

16           176. The existing virus exclusion is inapplicable because Plaintiffs Team 44  
17 Restaurants, LLC; Dominick's Italian Steakhouse LLC; Ocean 44 Scottsdale, LLC; Steak 44; and  
18 Steak 48 Chicago LLC's losses were caused by governmental action, not the physical presence of  
19 the virus on the covered premises. Defendant conducted no investigation and have no evidence to  
20 satisfy its burden of showing the physical presence of a virus on the insured properties, which is  
21 required when asserting an exclusion. Defendant denied all claims without investigating the  
22 relevant properties.

23           177. Coverage is owed from the time governmental action forced the covered plaintiffs  
24 to curtail their businesses practices. Plaintiffs Team 44 Restaurants, LLC; Dominick's Italian  
25 Steakhouse LLC; Ocean 44 Scottsdale, LLC; Steak 44; and Steak 48 Chicago LLC's property was  
26 subject to governmental orders in Arizona that did not seek to seize or destroy the property. The  
27 governmental orders do not constitute governmental seizures because at no point did any  
28 governmental entity in Arizona take physical possession of the property or legal title to the

1 property. The orders properly exercised the police powers of their respective state and local  
2 governments to protect public health, affecting Team 44's property, which caused a loss of the  
3 ability to physically access and use the insured property.

4 178. Under each successive order, the insured property was limited to the minimum  
5 necessary operations or required closure. The governmental action also prohibited, via stay-at-  
6 home orders or travel restrictions, all nonessential movement by all residents. These governmental  
7 orders resulted in losing physical access to and physical use and enjoyment of Plaintiffs Team 44  
8 Restaurants, LLC; Dominick's Italian Steakhouse LLC; Ocean 44 Scottsdale, LLC; Steak 44; and  
9 Steak 48 Chicago LLC's property by its owners, customers, vendors, employees, and others.

10 179. Nor does the provision entitled "Consequential Losses" that excludes "Delay, loss  
11 of use or loss of market" preclude coverage.

12 180. Consequential damages are special or indirect damages. Put differently,  
13 consequential damages are "[l]osses that do not flow directly and immediately from an injurious  
14 act but that result indirectly from the act. — Also termed indirect damages." *See* Consequential  
15 Damages, Black's Law Dictionary (11th ed. 2019) (emphasis in original).

16 181. The exclusion for "loss of use" therefore applies only if that "loss of use" is itself  
17 consequential. That is not the case here. The insured-against peril—governmental action—resulted  
18 directly and immediately in Plaintiffs Team 44 Restaurants, LLC; Dominick's Italian Steakhouse  
19 LLC; Ocean 44 Scottsdale, LLC; Steak 44; and Steak 48 Chicago LLC's physical loss of access or  
20 use.

21 182. Limiting the "loss of use" exclusion to consequential losses also renders sensible an  
22 exclusion that otherwise swallows the entire Policy.

#### 23 **D. Declaratory Relief**

24 183. Plaintiffs Team 44 Restaurants, LLC; Dominick's Italian Steakhouse LLC; Ocean  
25 44 Scottsdale, LLC; Steak 44; and Steak 48 Chicago LLC seek a declaration of rights under  
26 American's Policy language and a declaration of the rights and liabilities of the parties herein.

27 184. This Court has the power to declare the rights of the Parties herein.  
28

1 185. Plaintiffs Team 44 Restaurants, LLC; Dominick's Italian Steakhouse, LLC; Ocean  
2 44 Scottsdale, LLC; Steak 44; and Steak 48 Chicago LLC seek a Declaratory Judgment finding  
3 that the American Policy covers Business Income and Extra Expense during the period of  
4 restoration caused by or resulting from governmental action that forced Plaintiffs to suspend  
5 operations, subject to no limitations or exclusions under the Policy.

6 **THIRD CLAIM FOR RELIEF**

7 **BREACH OF CONTRACT (AGAINST GREENWICH)**

8 186. Plaintiffs Team 44 Restaurants, LLC and Steak 48 River Oaks, LLC re-allege and  
9 incorporate the preceding paragraphs as if set forth herein.

10 187. Plaintiffs Team 44 Restaurant, LLC and Steak 48 River Oaks, LLC; have a valid  
11 contract of insurance with Greenwich, whereby the insured plaintiffs agreed to make and did make  
12 premium payments to Greenwich in exchange for Greenwich's promise to indemnify the  
13 policyholders for losses including, but not limited to, Business Income and Extra Expense.

14 188. Plaintiffs Team 44 Restaurants, LLC and Steak 48 River Oaks, LLC are current on  
15 all premiums required under the Greenwich Policy and the Greenwich Policy is in full effect.

16 189. The policy requires payment of losses incurred caused by or resulting from the  
17 forced suspension of operations mandated by government orders issued in the business' respective  
18 states, including but not limited to Business Income and Extra Expense. Coverage for these losses  
19 is in no way limited or excluded under the policy terms.

20 190. Despite that the Greenwich Policy affording coverage, Defendant Greenwich  
21 denies the Policy affords coverage and denied coverage to Plaintiffs Team 44 Restaurants, LLC  
22 and Steak 48 River Oaks, LLC.

23 191. In addition, American has taken the position, without seeking independent  
24 coverage advice, that its policy language does not afford coverage where governmental action  
25 limited or prohibited certain use, access, and deployment of insureds' property and that such claim  
26 would, as a business practice, be denied.

27 192. Greenwich's entire decision was rendered based on its reading of the contract  
28 language, and not by any specifics relating to each insured (as no investigation occurred here).

1 193. Greenwich's failure to affirm coverage and pay benefits breaches the contract and  
2 constitutes a failure to pay the benefits required by the contract.

3 194. As a result of Greenwich's breach of contract, Plaintiffs Team 44 Restaurants, LLC  
4 and Steak 48 River Oaks, LLC have suffered and will continue to suffer monetary losses, and  
5 without prompt relief will be forced to shutter indefinitely.

6 **FOURTH CLAIM FOR RELIEF**

7 **BREACH OF CONTRACT (AGAINST AMERICAN)**

8 195. Plaintiffs Team 44 Restaurants, LLC; Dominick's Italian Steakhouse LLC; Ocean  
9 44 Scottsdale, LLC; Steak 44; and Steak 48 Chicago LLC re-allege and incorporate the preceding  
10 paragraphs as if set forth herein.

11 196. Plaintiffs Team 44 Restaurants, LLC; Dominick's Italian Steakhouse LLC; Ocean  
12 44 Scottsdale, LLC; Steak 44; and Steak 48 Chicago LLC have a valid contract of insurance with  
13 American, whereby the insured plaintiffs agreed to make and did make premium payments to  
14 American in exchange for American's promise to indemnify the policyholders for losses  
15 including, but not limited to, Business Income and Extra Expense.

16 197. Plaintiffs Team 44 Restaurants, LLC; Dominick's Italian Steakhouse LLC; Ocean  
17 44 Scottsdale, LLC; Steak 44; and Steak 48 Chicago LLC are current on all premiums required  
18 under the American Policy and the American Policy is in full effect.

19 198. The policy requires payment of losses incurred caused by or resulting from the  
20 forced suspension of operations mandated by government orders issued in the business' respective  
21 states, including but not limited to Business Income and Extra Expense. Coverage for these losses  
22 is in no way limited or excluded under the policy terms.

23 199. Despite that the American Policy affording coverage, Defendant American denies  
24 or will deny the Policy affords coverage and denied or will deny coverage to Plaintiffs Team 44  
25 Restaurants, LLC; Dominick's Italian Steakhouse LLC; Ocean 44 Scottsdale, LLC; Steak 44; and  
26 Steak 48 Chicago LLC.

27 200. In addition, American has uniformly taken the position, without seeking  
28 independent coverage advice, that its policy's language does not afford coverage where

1 governmental action limited or prohibited certain use, access, and deployment of insureds'  
2 property and that such claim would, as a business practice, be denied.

3 201. Upon information and belief, American has been systemically denying claims for  
4 coverage based on its reading of the contract language, and not by any specifics relating to each  
5 insured.

6 202. By making its decision known, and by failing to conduct any investigation into  
7 Team 44's claim, American has anticipatorily breached the contract.

8 203. American's failure to affirm coverage and pay benefits breaches the contract and  
9 constitutes a failure to pay the benefits required by the contract.

10 204. As a result of American's breach of contract, Plaintiffs Team 44 Restaurants, LLC;  
11 Dominick's Italian Steakhouse LLC; Ocean 44 Scottsdale, LLC; Steak 44; and Steak 48 Chicago  
12 LLC have suffered and will continue to suffer monetary losses, and without prompt relief will be  
13 forced to shutter indefinitely.

14 **DEMAND FOR JURY TRIAL**

15 205. Plaintiffs demand a trial by jury on all issues so triable.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs pray for the following judgment:

- 18 A. Declaratory relief, as described herein;  
19 B. An Order finding Defendant Greenwich to have breached the Policy contract;  
20 C. An Order finding Defendant American to have breached the Policy contract;  
21 D. Compensatory damages;  
22 E. An award of attorney's fees and costs, as provided by law and/or as would be  
23 reasonable from any recovery of monies recovered for or benefits bestowed upon Plaintiffs;  
24 F. Pre- and post-judgment interest at the highest rate allowed by law; and  
25 G. Such other and further relief as this Court may deem just, equitable, or proper,  
26 including a designation that any unclaimed monies may go to the next best use.

27  
28

1 DATED: February 5, 2021

Respectfully submitted

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