

1 David M. Birka-White (State Bar No. 85721)  
2 dbw@birka-white.com  
3 BIRKA-WHITE LAW OFFICES  
4 178 E. Prospect Avenue  
5 Danville, CA 94526  
6 Telephone: (925) 362-9999  
7 Facsimile: (925) 362-9970

8 [Additional Counsel Listed on Signature Page]

9 Attorneys for Plaintiff  
10 G & P HOSPITALITY, LLC d/b/a STUBBORN MULE

11 **UNITED STATES DISTRICT COURT**  
12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
13 **WESTERN DIVISION**

14  
15 G & P HOSPITALITY, LLC d/b/a  
16 STUBBORN MULE,

17 Plaintiff,

18 v.

19  
20 THE TRAVELERS COMPANIES,  
21 INC., THE TRAVELERS  
22 INDEMNITY COMPANY, and  
23 TRAVELERS CASUALTY  
24 INSURANCE COMPANY OF  
25 AMERICA,

26 Defendants.

Case No. 2:20-cv-5148

**COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiff G & P Hospitality, LLC d/b/a Stubborn Mule (“Plaintiff”) brings  
2 this Complaint against Defendants The Travelers Companies, Inc., The Travelers  
3 Indemnity Company, and Travelers Casualty Insurance Company of America  
4 (“Defendants”) and, upon information and belief, alleges as follows:

5 **NATURE OF THE CASE**

6 1. This is a civil action seeking declaratory relief arising from Plaintiff’s  
7 contracts of insurance with Defendants.

8 2. In light of the Coronavirus global pandemic and state and local orders  
9 mandating that all non-essential in store businesses must shut down on March 16,  
10 2020, Plaintiff’s restaurants have suffered business loss.

11 3. Plaintiff’s insurance policies provide coverage for all non-excluded  
12 business losses, and thus provide coverage here.

13 4. As a result, Plaintiff is entitled to declaratory relief that its business is  
14 covered for all business losses that have been incurred in an amount greater than  
15 \$150,000.00.

16 **JURISDICTION AND VENUE**

17 5. This Court has subject matter jurisdiction over this action pursuant to 28  
18 U.S.C. § 1332, because there is complete diversity of citizenship between Plaintiff  
19 and Defendants. Plaintiff has suffered business losses at each restaurant in an amount  
20 greater than \$150,000.00. The amount in controversy necessary for diversity  
21 jurisdiction over a declaratory judgment action is measured by the value of those  
22 business losses. *Id.* § 1332(a).

23 6. This Court has personal jurisdiction over Defendants. Defendants have  
24 engaged in substantial business in this District, including the formation of the Policies  
25 underlying Plaintiff’s claims, and Defendants have therefore personally availed  
26 themselves of jurisdiction in this District.

27 7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2)  
28 because a substantial part of the events or omissions giving rise to Plaintiff’s claims

1 occurred in this District, including the formation of the Policies underlying Plaintiff's  
2 claims.

3 **PARTIES**

4 8. Plaintiff is a limited liability company that owns and operates a  
5 restaurant, Stubborn Mule, located at 661 W Arrow Highway, San Dimas, CA 91773.  
6 Plaintiff is owned by Patrick Malone and Geoffery Rau, who are all citizens of  
7 California.

8 9. Defendant The Travelers Companies, Inc. ("Travelers") is an insurance  
9 carrier that provides business interruption insurance to Plaintiff. Defendant Travelers  
10 is headquartered at One Tower Square Hartford, Connecticut 06183. Defendant  
11 Travelers is a citizen of Connecticut.

12 10. Defendant The Travelers Indemnity Company ("Travelers Indemnity")  
13 is an insurance company affiliated with Travelers that insured Plaintiff for business  
14 interruption insurance. Defendant Travelers Indemnity is headquartered at One  
15 Tower Square Hartford, Connecticut 06183. Defendant Travelers Indemnity is a  
16 citizen of Connecticut.

17 11. Defendant Travelers Casualty Insurance Company of America  
18 ("Travelers Casualty") is an insurance company affiliated with Travelers that insured  
19 Plaintiff for business interruption insurance. Defendant Travelers Casualty is  
20 headquartered at One Tower Square Hartford, Connecticut 06183. Defendant  
21 Travelers Casualty is a citizen of Connecticut.

22 **FACTUAL ALLEGATIONS**

23 **I. Insurance Coverage**

24 12. At all relevant times, Defendants issued a policy to Plaintiff to cover  
25 business interruption loss from May 1, 2019 until May 1, 2020 for its restaurant at  
26 661 W Arrow Highway, San Dimas, CA 91773 (the "Insured Property"). The policy  
27 number is 680-9J94085A-19-42. This policy was intended to cover losses to business  
28 interruption. *See* Declaration, attached hereto as Exhibit 1 (the "Policy").

1           13. The Policy is currently in full effect in providing, among other things,  
2 personal property, business income and extra expense, contamination coverage and  
3 additional coverage.

4           14. Plaintiff submitted a claim for a date of loss pursuant to its Policy  
5 seeking coverage under this policy. Defendants rejected Plaintiff's claim for  
6 coverage for business loss and business interruption and other claims, contending,  
7 *inter alia*, that Plaintiff did not suffer physical damage to its property directly and  
8 stating other reasons why Plaintiff purportedly is not entitled to coverage for the  
9 losses and damages. Defendants also claimed the Policy does not cover losses due to  
10 the Virus Exclusion Clause.

11           15. Plaintiff faithfully paid policy premiums to Defendants, specifically to  
12 provide, among other things, additional coverages in the event of business  
13 interruption or closures by order of Civil Authority and for business loss for property  
14 damage.

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

21           17. The Policy is an all-risk policy, insofar as it provides that covered causes  
22 of loss under the policy means coverage for all covered losses, including but not  
23 limited to direct physical loss or direct physical damage, unless the loss is specifically  
24 excluded or limited in the Policy.

25           18. The Policy also covers for damages resulting from business interruption  
26 when there is property damage. The exclusion for viruses does not apply to this  
27 pandemic. The Policy does not identify any exclusions for a pandemic.  
28

1 19. Based on information and belief, Defendants have accepted the policy  
2 premiums with no intention of providing any coverage for business losses or the Civil  
3 Authority extension due to a loss and shutdown and property damage.

4 **II. The Coronavirus Pandemic**

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

9 21. The virus that causes COVID-19 remains stable and transmittable in  
10 aerosols for up to three hours, up to four hours on copper, up to 24 hours on  
11 cardboard and up to two to three days on plastic and stainless steel. *See*  
12 [https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-](https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces)  
13 [surfaces](https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces) (last visited April 9, 2020).

14 22. The CDC has issued a guidance that gatherings of more than 10 people  
15 must not occur. People in congregate environments, which are places where people  
16 live, eat, and sleep in close proximity, face increased danger of contracting COVID-  
17 19.

18 23. The global Coronavirus pandemic is exacerbated by the fact that the  
19 deadly virus physically infects and stays on surfaces of objects or materials,  
20 “fomites,” for up to twenty-eight (28) days.

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

24 **III. Civil Authority**

25 25. On March 4, 2020, the State of California declared a State of Emergency  
26 for the entire state of California as a result of COVID-19.

27 26. On March 11, 2020, the State of California set restrictions on large  
28 gatherings.

1           27. On March 16, 2020, the State of California prohibited all gatherings  
2 regardless of size. This order effectively shut down all non-essential businesses.

3           28. On March 17, 2020, the State of California issued a stay at home order  
4 that all non-essential workers must stay at home as a result of COVID-19. This order  
5 has been extended indefinitely.

6           29. On May 29, 2020, Plaintiff’s business was able to begin re-opening.

7           30. Plaintiff’s business was unable to operate due to the stay-at-home orders  
8 for public safety issued by the State of California (the “Orders”). Plaintiff has  
9 submitted a claim to its insurance carriers related to such losses, but Defendants  
10 denied Plaintiff’s claims.

11           31. Further, on April 10, 2020, President Trump seemed to support  
12 insurance coverage for business loss like that suffered by the Plaintiff.

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

21           PRESIDENT TRUMP: Well it’s something that we’ve  
22 already suggested, we’re talking to them. Business  
23 interruption insurance, I’d like to see these insurance  
24 companies—you know you have people that have paid.  
25 *When I was in private I had business interruption.* When  
26 my business was interrupted through a hurricane or  
27 whatever it may be, I’d have business where I had it, I  
28 didn’t always have it, sometimes I had it, sometimes, I  
29 had a lot of different companies. But if I had it I’d expect  
30 to be paid. You have people. I speak mostly to the  
31 restaurateurs, where they have a restaurant, they’ve been  
32 paying for 25, 30, 35 years, business interruption.  
33 They’ve never needed it. All of a sudden they need it.  
34 And I’m very good at reading language. I did very well in  
35 these subjects, OK. And I don’t see the word pandemic  
36 mentioned. Now in some cases it is, it’s an exclusion. But  
37 in a lot of cases I don’t see it. I don’t see it referenced.  
38 And they don’t want to pay up. I would like to see the  
39 insurance companies pay if they need to pay, if it’s fair.  
40 And they know what’s fair, and I know what’s fair, I can  
41 tell you very quickly. But business interruption insurance,  
42 that’s getting a lot money to a lot of people. And they’ve

1           been paying for years, sometimes they just started paying,  
2           but *you have people that have never asked for business*  
3           *interruption insurance, and they've been paying a lot of*  
4           *money for a lot of years for the privilege of having it,*  
          and then when they finally need it, the insurance  
          company says 'we're not going to give it.' We can't let  
          that happen.

5           See [https://youtu.be/\\_cMeG5C9TjU](https://youtu.be/_cMeG5C9TjU) (last visited on April 17, 2020) (emphasis  
6           added).

7  
8           32.    The President is articulating a few core points:

- 9                   a.   Business interruption is a common type of insurance.
- 10                   b.   Businesses pay in premiums for this coverage and should reasonably  
11                   expect they'll receive the benefit of the coverage.
- 12                   c.   This pandemic should be covered unless there is a specific exclusion  
13                   for pandemics.
- 14                   d.   If insurers deny coverage, they would be acting in bad faith.

15           33.    These Orders and proclamations, as they relate to the closure of all “non-  
16           life- sustaining businesses,” evidence an awareness on the part of both state and local  
17           governments that COVID-19 causes damage to property. This is particularly true in  
18           places where business is conducted, such as Plaintiff’s, as the requisite contact and  
19           interaction causes a heightened risk of the property becoming contaminated.

20           **IV.   Impact on Plaintiff**

21           34.    As a result of the Orders referenced herein, Plaintiff shut its doors to its  
22           restaurant.

23           35.    Plaintiff’s business loss occurred when the State of California issues its  
24           order on March 16, 2020 banning any gatherings at an establishment.

25           36.    Prior to March 16, 2020, Plaintiff’s business was open. Plaintiff’s  
26           Insured Property is not a closed environment, and because people – staff, customers,  
27           community members, and others – constantly cycle in and out, there is an ever-  
28

1 present risk that the Insured Property is contaminated and would continue to be  
2 contaminated.

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

7 38. Plaintiff's Insured Property is also highly susceptible to rapid person-to-  
8 property transmission of the virus, and vice-versa, because the service nature of the  
9 business places staff and customers in close proximity to the property and to one  
10 another and because the nature of the business exposes people to high levels of  
11 respiratory droplets and fomites being released into the air of the property.

12 39. The virus is physically impacting Plaintiff. Any effort by Defendants to  
13 deny the reality that the virus causes physical loss and damage would constitute a  
14 false and potentially fraudulent misrepresentation that could endanger Plaintiff and  
15 the public.

16 40. A declaratory judgment determining that the coverage provided under  
17 the Policy exists and is necessary so as to prevent Plaintiff from being left without  
18 vital coverage acquired to ensure the survival of the business due to the shutdown  
19 caused by the civil authorities' response. As a result of these Orders, Plaintiff has  
20 incurred, and continues to incur, among other things, a substantial loss of business  
21 income and additional expenses covered under the Policy.

22 **CAUSE OF ACTION**

23 **DECLARATORY RELIEF**

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

27 42. The Declaratory Judgment Act, 28 U.S.C. § 2201(a), provides that in "a  
28 case of actual controversy within its jurisdiction . . . any court of the United States



1 . . . may declare the rights and other legal relations of any interested party seeking  
2 such declaration, whether or not further relief is or could be sought.” 28 U.S.C. §  
3 2201(a).

4 43. An actual controversy has arisen between Plaintiff and Defendants as to  
5 the rights, duties, responsibilities and obligations of the parties under the Policy in  
6 that Plaintiff contends and, on information and belief, Defendants dispute and deny  
7 that:

- 8 a. The Orders constitute a prohibition of access to Plaintiff’s Insured  
9 Property;
- 10 b. The prohibition of access by the Orders has specifically prohibited  
11 access as defined in the Policy;
- 12 c. The Policy’s Exclusion of Loss Due to Virus or Bacteria does not  
13 apply to the business losses incurred by Plaintiff here. These  
14 exclusions do not apply to the pandemic;
- 15 d. The Orders trigger coverage;
- 16 e. The Policy provides coverage to Plaintiff for any current and future  
17 civil authority closures of business in California due to physical  
18 loss/or damage directly or indirectly from the Coronavirus under the  
19 Civil Authority coverage parameters. The Policy does not exclude  
20 coverage for the pandemic;
- 21 f. The Policy provides business income coverage in the event that  
22 Coronavirus has directly or indirectly caused a loss or damage at the  
23 Insured Property or immediate area of the Insured Property; and
- 24 g. Resolution of the duties, responsibilities and obligations of the  
25 parties is necessary as no adequate remedy at law exists and a  
26 declaration of the Court is needed to resolve the dispute and  
27 controversy.

28 44. Plaintiff seeks a Declaratory Judgment to determine whether the Orders  
constitute a prohibition of access to Plaintiff’s Insured Property as Civil Authority as  
defined in the Policy.

1 45. Plaintiff further seeks a Declaratory Judgment to affirm that the Orders  
2 trigger coverage.

3 46. Plaintiff further seeks a Declaratory Judgment to affirm that the Policy  
4 provides coverage to Plaintiff for any current and future Civil Authority closures of  
5 businesses in the State of California due to physical loss or damage from the  
6 Coronavirus and that the Policy provides business income coverage in the event that  
7 Coronavirus has caused a loss or damage at the Insured Property.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff prays for a judgment against Defendants as follows:

- 10 a. For a declaration that the Orders constitute a prohibition of access to
- 11 Plaintiff’s Insured Property.
- 12 b. For a declaration that the prohibition of access by the Orders is
- 13 specifically prohibited access as defined in the Policy.
- 14 c. For a declaration that the Orders trigger coverage under the Policy.
- 15 d. For a declaration that Policy provides coverage to Plaintiff for any
- 16 current, future and continued civil authority closures of businesses in
- 17 California due to physical loss or damage directly or indirectly from
- 18 the Coronavirus under the Civil Authority coverage parameters.
- 19 e. For a declaration that the Policy provides business income coverage
- 20 in the event that Coronavirus has directly or indirectly caused a loss
- 21 or damage at Plaintiff’s Insured Property or the immediate area of
- 22 Plaintiff’s Insured Property.
- 23 f. For such other relief as the Court may deem proper.

23 **JURY TRIAL DEMANDED**

24 Plaintiff hereby demands trial by jury.

25 Dated: June 10, 2020

Respectfully submitted,

27 /s/ David M. Birka-White

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David M. Birka-White (State Bar No. 85721)  
dbw@birka-white.com

**BIRKA-WHITE LAW OFFICES**

178 E. Prospect Avenue  
Danville, CA 94526  
Telephone: (925) 362-9999  
Facsimile: (925) 362-9970

Arnold Levin, Esq. (Pa. Bar No. 02280)  
Laurence Berman, Esq. (Pa. Bar No. 26965)  
Frederick Longer, Esq. (Pa. Bar No. 46653)  
Daniel Levin, Esq. (Pa. Bar No. 80013)

**LEVIN SEDRAN & BERMAN LLP**

510 Walnut Street, Suite 500  
Philadelphia, PA 19106-3697  
Telephone: (215) 592-1500  
Facsimile: (215) 592-4663  
alevin@lfsblaw.com  
flonger@lfsblaw.com  
dlevin@lfsblaw.com

Richard M. Golomb, Esq. (PA Bar No: 42845)  
Kenneth J. Grunfeld, Esq. (PA Bar No: 84121)

**GOLOMB & HONIK, P.C.**

1835 Market Street, Suite 2900  
Philadelphia, PA 19103  
Telephone: (215) 985-9177  
Facsimile: (215) 985-4169  
rgolomb@golombhonik.com  
kgrunfeld@golombhonik.com

Aaron Rihn, Esq. (PA Bar No: 85752)  
**ROBERT PEIRCE & ASSOCIATES**

707 Grant Street, Suite 125  
Pittsburgh, PA 15219  
Telephone: (412) 281-7229  
Facsimile: (412) 281-4229  
arihn@peircelaw.com

W. Daniel "Dee" Miles, III  
(Ala. Bar ID:7656M75W)

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Rachel N. Boyd (Ala. Bar ID: 6320342)  
Paul W. Evans (AL Bar ID: 9270Z18F)  
**BEASLEY, ALLEN, CROW, METHVIN,  
PORTIS & MILES, P.C.**  
P.O. Box 4160  
Montgomery, AL 36103  
Telephone: (334) 269-2343  
Facsimile: (334) 954-7555  
dee.miles@beasleyallen.com

*Counsel for Plaintiff*

# EXHIBIT 1



One Tower Square, Hartford, Connecticut 06183

**RENEWAL CERTIFICATE**

**COMMON POLICY DECLARATIONS**  
 RESTAURANT PAC  
 BUSINESS: FAST FOOD - ALL

**POLICY NO.:** 680-9J94085A-20-42  
**ISSUE DATE:** 03/05/2020

**INSURING COMPANY:**  
 TRAVELERS CASUALTY INSURANCE COMPANY OF AMERICA

**1. NAMED INSURED AND MAILING ADDRESS:**

G & P HOSPITALITY  
 AND AS PER IL T8 00  
 2164 HARMONY WAY  
 COSTA MESA CA 92627

**2. POLICY PERIOD:** From 05/01/2020 to 05/01/2021 12:01 A.M. Standard Time at your mailing address.

**3. LOCATIONS:**

PREM. NO.	BLDG. NO.	OCCUPANCY	ADDRESS (same as Mailing Address unless specified otherwise)
001	001	FAST FOOD - ALL	661 W ARROW HWY  SAN DIMAS CA 91773

**4. COVERAGE PARTS AND SUPPLEMENTS FORMING PART OF THIS POLICY AND INSURING COMPANIES**

COVERAGE PARTS AND SUPPLEMENTS Businessowners Coverage Part	INSURING COMPANY ACJ
--	-------------------------

**5.** The COMPLETE POLICY consists of this declarations and all other declarations, and the forms and endorsements for which symbol numbers are attached on a separate listing.

**6. SUPPLEMENTAL POLICIES:** Each of the following is a separate policy containing its complete provisions.

POLICY	POLICY NUMBER	INSURING COMPANY
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DIRECT BILL

**7. PREMIUM SUMMARY:**

SUBJECT TO AUDIT

Provisional Premium	\$	7,657.00
Due at Inception	\$	
Due at Each	\$	

NAME AND ADDRESS OF AGENT OR BROKER

COUNTERSIGNED BY:

AMORELLI ROSEMAN&ASSOC  
 3110 E GUASTI STE 500

XL034

ONTARIO

CA 91761

\_\_\_\_\_  
 Authorized Representative

DATE: 03/05/2020  
 \_\_\_\_\_



One Tower Square, Hartford, Connecticut 06183

**BUSINESSOWNERS COVERAGE PART DECLARATIONS**

RESTAURANT PAC

POLICY NO.: 680-9J94085A-20-42

ISSUE DATE: 03/05/2020

INSURING COMPANY:

TRAVELERS CASUALTY INSURANCE COMPANY OF AMERICA

POLICY PERIOD:

From 05-01-20 to 05-01-21 12:01 A.M. Standard Time at your mailing address

FORM OF BUSINESS: LIMITED LIAB CORP

COVERAGES AND LIMITS OF INSURANCE: Insurance applies only to an item for which a "limit" or the word "included" is shown.

**COMMERCIAL GENERAL LIABILITY COVERAGE**

OCCURRENCE FORM	LIMITS OF INSURANCE
General Aggregate (except Products-Completed Operations Limit)	\$ 2,000,000
Products-completed Operations Aggregate Limit	\$ 2,000,000
Personal and Advertising Injury Limit	\$ 1,000,000
Each Occurrence Limit	\$ 1,000,000
Damage to Premises Rented to You	\$ 300,000
Medical Payments Limit (any one person)	\$ 5,000

**BUSINESSOWNERS PROPERTY COVERAGE**

DEDUCTIBLE AMOUNT: Businessowners Property Coverage: \$ 1,000 per occurrence.  
 Building Glass: \$ 1,000 per occurrence.

BUSINESS INCOME/EXTRA EXPENSE LIMIT: Actual loss for 12 consecutive months

Period of Restoration-Time Period: Immediately

ADDITIONAL COVERAGE:

Fine Arts: \$ 25,000

Other additional coverages apply and may be changed by an endorsement. Please read the policy.

SPECIAL PROVISIONS:

**COMMERCIAL GENERAL LIABILITY COVERAGE  
IS SUBJECT TO A GENERAL AGGREGATE LIMIT**

BUSINESSOWNERS PROPERTY COVERAGE

PREMISES LOCATION NO.: 001                    BUILDING NO. : 001

COVERAGE		LIMIT OF INSURANCE	VALUATION	COINSURANCE	INFLATION GUARD
BUSINESS PERSONAL PROPERTY	\$	108,160	RC*	90%	0.0%
*Replacement Cost					

COVERAGE EXTENSIONS:

Accounts Receivable	\$	25,000
Valuable Papers	\$	25,000

Other coverage extensions apply and may be changed by an endorsement. Please read the policy.