

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA**

**COUNTER CULTURE HOSPITALITY, LLC,  
d/b/a COUNTER CULTURE  
a Florida Limited Liability Company,**

**Plaintiff,**

**CASE NO.:  
DIVISION:**

v

**SCOTTSDALE INSURANCE COMPANY,  
an insurance company authorized to do  
business in the State of Florida,**

**Defendant.**

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**COMPLAINT AND DEMAND FOR JURY TRIAL**

COMES NOW, Plaintiff, COUNTER CULTURE HOSPITALITY, LLC, a Florida Limited Liability Company (“Counter Culture”), by and through its undersigned counsel, sues the Defendant, SCOTTSDALE INSURANCE COMPANY, an insurance company authorized to do business in the State of Florida (“Underwriter”).

**PARTIES**

1. At all relevant times, Counter Culture is a limited liability company authorized to do business in the State of Florida, owns, operates, manages and/or controls a restaurant known as Counter Culture Hospitality, LLC d/b/a Counter Culture located at 2909 W. Bay to Bay Blvd., Suite 100, Tampa, FL 33629.

2. At all relevant times, Underwriter is an Ohio corporation authorized to do business in Florida offering insurance policies in the State of Florida.

3. Underwriter issued a policy number CPS3290336 to Counter Culture for the period of November 15, 2019 through November 15, 2020.<sup>1</sup>

**JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction over the matters alleged herein.

5. This is a cause of action for Declaratory Judgment and damages wherein the amount in controversy is currently more than \$30,000.00 inclusive of interest, cost, and attorney's fees.

6. Venue is proper in this Court because the acts and/or omission complained of took place, in whole or in part, within the venue of this Court.

**FACTUAL BACKGROUND**

7. On or about November 15, 2019, Underwriter entered into an insurance contract with Counter Culture whereby Counter Culture agreed to make payments to Underwriter in exchange for Underwriter's promise to indemnify Counter Culture for losses, including, but not limited to, business income loss on its property.

8. Counter Culture is a well-known restaurant in Tampa, Florida. The restaurant is open 361 days a year between hours of 11:30 a.m. to 2:30 p.m., then 5:00 p.m. to 10:00 p.m. on Monday through Friday, and 11:00 a.m. to 2:30 p.m., then 5:00 p.m. to 10:00 p.m. Saturday through Sunday. The restaurant is located at 2909 W. Bay to Bay Blvd., Suite 100, Tampa, FL 33629. This address is listed as an Insured Property under the Policy.

9. The policy is current and in full effect providing property, business personal property, business income and extra expense, and additional coverages.

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<sup>1</sup> The policy which contains over 200 pages is being referred to herein and a copy will be provided to Defendant if they so request.

10. Counter Culture faithfully paid policy premiums to Underwriter specifically to provide additional coverages in the event of business closure by order of Civil Authority. Loss of business property damages, loss of business income and operating expenses is specifically covered under the policy, and governmental suspension as a result of COVID-19 is not specifically excluded.

11. On March 1, 2020, Governor of the State of Florida issued Executive Order 20-51 directing the Florida Department of Health to issue a Public Health Emergency. On March 1, 2020, the State of Florida Surgeon General and State Health Officer declared a Public Health Emergency exists in the State of Florida as a result of COVID-19.

12. On March 6, 2020, President Donald J. Trump and the Center for Disease Control and Prevention (“CDC”) issued the “15 Days to Slow the Spread” guidance advising individuals to adopt far-reaching social distancing measures such as avoiding gatherings of more than 10 people, and in states with evidence of community spread, recommending restrictions to certain establishments conducive to mass gatherings and congregations.

13. On March 9, 2020 the Governor of the State of Florida issued Executive Order Number 20-52, declaring that a state of emergency exists throughout the State of Florida as a result of the spread of the COVID-19 virus and its imminent threat to health and welfare of the citizens of Florida.

14. On March 12, 2020, the Hillsborough County Emergency Policy Group did convene and issue its Executive Order declaring a local state of emergency for all of Hillsborough County, which Order was extended by the Emergency Policy Group on March 19, 2020, and again on March 26, 2020.

15. On March 17, 2020, the policy issued Counter Culture was in effect, Governor Ron DeSantis ordered all bars and restaurants in the State of Florida, including Counter Culture, to close for 30 days in response to the COVID-19 pandemic. This governmental suspension of business had a devastating effect on Counter Culture's business.

16. On March 17, 2020 the Governor of the State of Florida issued Executive Order Number 20-68, placing restrictions on certain businesses and public gathering locations throughout the State of Florida as a result of the spread of the COVID-19 virus and its imminent threat to health and welfare of the citizens of Florida.

17. On March 20, 2020, Administrator Order Number 20-05 entitled Hillsborough County Administrator Order Updating COVID-19 Limitations for Establishments and Gatherings was issued and remains effective, incorporating by reference the Governor's Executive Orders 20-68 and 20-71, specifies all public or private gatherings, including community, civic, public leisure, faith-based events, sporting events, concerts and any similar events that bring together more than 10 people in a single room, single space, or any venue, at the same time are prohibited.

18. On March 26, 2020, the Emergency Policy Group did convene and issue an Executive Order Of The Hillsborough County Emergency Policy Group Safer-At-Home Order In Response To A County Wide Threat From The COVID-19 Virus.

19. On March 27, 2020, the Executive Order of The Hillsborough County Emergency Policy Group Safer-At-Home Order In Response To A County Wide Threat From The COVID-19 Virus was entered ("Administrative Order").

20. On March 29, 2020 the President extended such guidance to be in effect until April 30, 2020.

21. On March 30, 2020, the Emergency Policy Group did convene and agree to amend Section 9 of its Safer-At-Home Order to include drivers of commercial trucks and agriculture-related workers.

22. On March 31, 2020, the President updated the guidance resuming its “30 Days to Slow the Spread”, and along with the White House Coronavirus Task Force urging Americans to continue to adhere to the guidelines and expand community mitigation efforts.

23. The above referred to Orders by the President of the United States, the State of Florida and local government authority jointly and severally referred herein as to “Government Orders”. The Government Orders found that in part provided whereas, there is reason to believe that COVID-19 is spread amongst the population by various means of exposure, including the propensity to spread person to person and the propensity to attach to surfaces for prolonged periods of time thereby creating a dangerous physical condition spreading from surface to person and causing increased infections to persons, and also **creating property or business income loss and damage in certain circumstances.** [Emphasis added.]

24. The Government Orders was issued because of the propensity of COVID-19 to spread from person to person causing widespread infection and loss of life, and also because COVID-19 is causing property damage and business income loss due to its proclivity to attach to surfaces for prolonged periods of time and thereby creating a dangerous physical condition.

25. As a governmental civil authority action, it is necessary to impose the regulations and restrictions set forth herein in response to the dangerous physical conditions that currently exists and to stop the COVID-19 virus from spreading.

26. The March 27, 2020 Administrative Order was amended by Executive Order of the Hillsborough County Emergency Policy Group Safer-At-Home Order In Response To A

County Wide Threat From The COVID-19 Virus on April 1, 2020 (“April 1 Administrative Order”).

27. The April 1 Administrative Order provides in part:

“**WHEREAS**, Hillsborough County must continue to take emergency action to lessen the spread of COVID-19; and

**WHEREAS**, there is reason to believe that COVID-19 is spread amongst the population by various means of exposure, including the propensity to spread person to person and the propensity to attach to surfaces for prolonged periods of time thereby creating a dangerous physical condition spreading from surface to person and causing increased infections to persons, and also creating property or business income loss and damage in certain circumstances; and

**WHEREAS**, this Executive Order is being issued because of the propensity of COVID-19 to spread from person to person causing widespread infection and loss of life, and also because **COVID-19 is causing property damage and business income loss due to its proclivity to attach to surfaces for prolonged periods of time and thereby creating a dangerous physical condition; and** (Emphasis added)

**WHEREAS**, as a governmental civil authority action, it is **necessary to impose the regulations and restrictions set forth herein in response to the dangerous physical conditions that currently exists and to stop the COVID-19 virus from spreading; and**” (Emphasis added.)

28. On or about March 20, 2020, Counter Culture notified Underwriter of the loss, provided all details surrounding the loss, and permitted Underwriter with the opportunity to investigate and adjust the loss. Counter Culture further requested that Underwriter pay all benefits owed under the policy for the COVID-19 governmental suspension of business.

29. On April 2, 2020, Governor DeSantis further ordered a state-wide “stay at home” order for the entire State of Florida in response to the COVID-19 pandemic for an additional 30 days, which further harmed Counter Culture’s business.

30. On April 13, 2020, Underwriter denied Counter Culture’s claim and refused to pay benefits under the policy of insurance. A true and correct copy of the claim denial letter is attached as **Exhibit “1.”**

31. The policy is an all-risk policy as it provides that covered causes of loss under the policy means physical loss or direct physical damage unless the loss is specifically excluded or limited in the policy.

32. The Government Order does not specifically exempt restaurants and has caused a shutdown of Counter Culture's business operations. As a direct and proximate result of this Order, access to the Insured Properties has been specifically prohibited.

33. As a further direct and proximate result of the Government Orders, Counter Culture has been forced to furlough all of its employees.

34. The virus is physically impacting public and private property, and physical spaces in cities around the world and the United States. Any effort by Underwriter to deny the reality that the virus causes physical loss and damage would constitute a false and potentially fraudulent misrepresentation that could endanger policyholders and the public.

35. Counter Culture has a bona fide, actual and present need for a declaration and construction of the policy of insurance, its status, rights, and privileges, and Underwriter's obligation to provide coverage to Counter Culture under the policy of insurance, including its primary coverage and all coverage extensions, including the applicable coverage triggers under the policy "including but not limited to property damage and loss of income damages".

36. Counter Culture has substantial property damages, business income, and extra expense losses caused by the above mentioned actions by civil authority.

37. The Underwriter has failed to pay Counter Culture's claims. Underwriter has material breached the terms and conditions of its policy.

38. A bona fide, actual, and present dispute exists as to Counter Culture's rights and Underwriter's obligations under the policy of insurance and this suit is not just a request for legal advice.

39. Counter Culture has become obligated to retain counsel to represent it in this insurance dispute and Underwriter is required to pay Counter Culture's reasonable attorney's fees pursuant to F.S. §627.428.

**COUNT I – DECLARATORY JUDGMENT**

40. Counter Culture re-alleges and incorporates paragraphs 1 through 39 fully set forth herein and every allegation set forth in each and every paragraph of this Complaint.

41. An actual controversy has arisen between Counter Culture and Underwriter as to the rights, duties, responsibilities and obligations of the parties in that Counter Culture contends and, on information and belief, Underwriter's dispute and deny, that: (1) the Government Orders constitutes a prohibition of access to Counter Culture's Insured Premises; (2) the prohibition of access by the Government Orders is specifically prohibited access as defined in the Policy; (3) the Government Orders triggers coverage because the policy does not include an exclusion for a viral pandemic and actually extends coverage for loss or damage due to virus; and (4) the policy provides coverage to Counter Culture for any current and future civil authority closures of restaurants in Hillsborough County due to physical loss or damage from the Coronavirus under the civil authority coverage parameters and the policy provides business income coverage in the event that Coronavirus has caused a loss or damage at the insured premises or immediate area of the insured premises. Resolution of the duties, responsibilities and obligation of the parties is necessary as no adequate remedy at law exists and a declaration of the Court is needed to resolve the dispute and controversy.



42. Counter Culture seeks a Declaratory Judgement to determine whether the Government Orders constitutes a prohibition of access to Counter Culture's Insured Premises by a Civil Authority as defined in the Policy.

43. Counter Culture further seeks a Declaratory Judgement to affirm that the Government Orders triggers coverage because the policy does not include an exclusion for a "Viral Pandemic" and actually extends coverage for loss or damage due to virus.

44. Counter Culture further seeks a Declaratory Judgment to affirm that the policy provides coverage to Counter Culture for any current and future civil authority closures of restaurants in Hillsborough County due to physical loss "including or not limited to loss of income" or damage from the Coronavirus and the policy provides business income coverage in the event that Coronavirus has caused a loss or damage at the insured premises.

#### **PRAYER FOR RELIEF**

WHEREFORE, Counter Culture requests that the court declare and construe the policy of insurance and enter its declaratory judgment as follows:

a. declare that the policy issued by Underwriter to Counter Culture provides coverage for the losses stemming from the COVID-19 governmental suspension of business operations for business income, property damages, extra expense, and all other coverage extensions up to the limits of the policy;

b. grant further and supplementary relief based on the declaratory judgment and after adjudication of the rights of the parties, when necessary and proper, and, after notice to Underwriter, require Underwriter to show cause why further relief should not be granted forthwith;

c. enter final declaratory judgment in Counter Culture's favor and against Underwriter for all declaratory and supplemental relief within the declaratory jurisdiction of this court, including taxing costs of suit, prejudgment interest, and a reasonable attorney's fee as part of that declaratory judgment.

**COUNT II**

45. This is an action for damages herein the amount in controversy is currently more than \$30,000.00 inclusive in interest, cost and attorney's fees.

46. Counter Culture re-alleges and incorporates paragraphs 1 through 39 fully set forth herein and every allegation set forth in each and every paragraph of this Complaint.

47. Underwriter's breached its contract with Counter Culture by its failure to honor Counter Culture's demand for payment. Underwriter's breach of its insurance contract has caused damages to Counter Culture. Counter Culture has complied with all conditions preceding.

WHEREFORE, Counter Culture demands judgement against Underwriter for damages, taxable interest, taxable costs of suit, pre-judgment interest, any reasonable attorney fees, and award such other relief as this court considers just.

**JURY TRIAL DEMAND**

Pursuant to Article I, §22, Florida Constitution, Plaintiff, Counter Culture, hereby demands a trial by jury on all causes of action to which the Plaintiff is so entitled.

Dated this 12th day of May, 2020.

**CURRY LAW GROUP, P.A.**

**BY:**

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April 13, 2020

Jeanette Pierola  
Corner Couture Hospitality, LLC  
2909 W. Bay to Bay #100  
Tampa, FL 33629

RE: Claim No.: 1951712  
Insured: Corner Couture Hospitality, LLC  
Underwriting Co.: Scottsdale Insurance Company  
Policy No.: CPS3290336  
Date of Loss: 3/20/20  
Loss Location: Tampa, FL  
Type of Loss: Business Income

Dear Ms. Pierola:

We understand your business has sustained a suspension of your operations due to the Coronavirus outbreak. You confirmed no damage to property at your insured premises or at a nearby premises caused the suspension of your operations.

**As we discussed, the policy only provides coverage for loss of business income when the suspension of your operations is the result of direct physical loss of or damage to property at the insured premises from a covered cause of loss, or is the result of a prohibition on access to the insured premises due to damage from a covered cause of loss to other property, and the prohibition on access is taken in response to dangerous physical conditions or to enable the government to have unimpeded access to the damaged property. The policy also excludes from coverage any loss due to a virus.**

Please refer to your policy, form CP 00 10 (10-12) BUILDING AND PERSONAL PROPERTY COVERAGE FORM, which states as follows:

**A. Coverage**

**We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.**

Please refer to the policy, form CP 00 30 (10/12) BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM, which reads as follows:



April 13, 2020  
Page 2

**A. Coverage**

**1. Business Income**

**Business Income means the:**

- a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and**
- b. Continuing normal operating expenses incurred, including payroll.**

**Coverage is provided as described and limited below for one or more of the following options for which a Limit Of Insurance is shown in the Declarations:**

- (1) Business Income Including "Rental Value".**
- (2) Business Income Other Than "Rental Value".**
- (3) "Rental Value".**

**If option (1) above is selected, the term Business Income will include "Rental Value". If option (3) above is selected, the term Business Income will mean "Rental Value" only.**

**If Limits of Insurance are shown under more than one of the above options, the provisions of this Coverage Part apply separately to each.**

**We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to property at premises which are described in the Declarations and for which a Business Income Limit Of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described**

April 13, 2020  
Page 3

premises include the area within 100 feet of such premises

**5. Additional Coverages**

**a. Civil Authority**

In this Additional Coverage, Civil Authority, the described premises are premises to which this Coverage Form applies, as shown in the Declarations. When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

(1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and

(2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Civil Authority Coverage for Business Income will begin 72 hours after the time of the first action of civil authority that prohibits access to the described premises and will apply for a period of up to four consecutive weeks from the date on which such coverage began.

Civil Authority Coverage for Extra Expense will begin immediately after the time of the first action of civil authority that prohibits access to the described premises and will end:

(1) Four consecutive weeks after the date of that action; or

April 13, 2020  
Page 4

**(2) When your Civil Authority Coverage for Business Income ends;**

**whichever is later.**

We now call your attention to the Causes of Loss Form, Form No. CP 10 30 (09-17) CAUSES OF LOSS – SPECIAL FORM, which states:

**A. Covered Causes Of Loss**

**When Special is shown in the Declarations, Covered Causes of Loss means direct physical loss unless the loss is excluded or limited in this policy.**

The policy contains the following endorsement CFS-68s-FL (01/12) that reads in part as follows:

**CHANGES—FLORIDA**

**This endorsement modifies insurance provided under the following:**

**COMMERCIAL PROPERTY COVERAGE PART**

**F. The following applies to the Additional Coverage—Civil Authority under the Business Income (And Extra Expense) Coverage Form, Business Income (Without Extra Expense) Coverage Form and Extra Expense Coverage Form:**

- 1. The Additional Coverage—Civil Authority includes a requirement that the described premises are not more than one mile from the damaged property. With respect to described premises located in Florida, such one-mile radius does not apply.**
- 2. The Additional Coverage—Civil Authority is limited to a coverage period of up to four weeks. With respect to described premises located in Florida, such four week period is replaced by a three-week period.**
- 3. Civil Authority coverage is subject to all other provisions of that Additional Coverage.**

The policy also contains the following endorsement CP 01 40 (07/06) that reads as follows:

**EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA**

**This endorsement modifies insurance provided under the following:**

April 13, 2020  
Page 5

**COMMERCIAL PROPERTY COVERAGE PART  
STANDARD PROPERTY POLICY**

- A. The exclusion set forth in Paragraph B. applies to all coverage under all forms and endorsements that comprise this Coverage Part or Policy, including but not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense or action of civil authority.**
- B. We will not pay for loss or damage caused by or resulting from any virus, bacterium or other micro-organism that induces or is capable of inducing physical distress, illness or disease.**
- However, this exclusion does not apply to loss or damage caused by or resulting from "fungus", wet rot or dry rot. Such loss or damage is addressed in a separate exclusion in this Coverage Part or Policy.**
- C. With respect to any loss or damage subject to the exclusion in Paragraph B., such exclusion supersedes any exclusion relating to "pollutants".**
- D. The following provisions in this Coverage Part or Policy are hereby amended to remove reference to bacteria:**
- 1. Exclusion of "Fungus", Wet Rot, Dry Rot And Bacteria; and**
  - 2. Additional Coverage – Limited Coverage for "Fungus", Wet Rot, Dry Rot And Bacteria, including any endorsement increasing the scope or amount of coverage.**
- E. The terms of the exclusion in Paragraph B., or the inapplicability of this exclusion to a particular loss, do not serve to create coverage for any loss that would otherwise be excluded under this Coverage Part or Policy.**

Business income and extra expense coverage applies when a suspension of your operations is caused by physical damage to property at your insured premises from a covered cause of loss. You confirmed no damage to property at your insured premises caused the suspension of your operations. Therefore, the business income and extra expense coverage is not applicable. Similarly, the additional coverage



April 13, 2020  
Page 6

for business income loss that results from a prohibition on access to your premises because of action of civil authority requires damage to other property from a covered cause of loss, and the prohibition on access is taken in response to dangerous physical conditions or to enable the government to have unimpeded access to the damaged property, which also did not occur. Finally, the policy also excludes from coverage any loss caused by a virus.

Therefore, no coverage is provided for any loss of income sustained due to the suspension of your operations as a result of the outbreak of the COVID-19 coronavirus. Unfortunately, we will not be able to make any payment.

Scottsdale Insurance Company reserves the right to review any additional claims or amendments to this claim and to make a separate determination as to whether a new claim or amendment to this claim is covered by the policy. Any decision we make regarding coverage is based on the facts as presented to us prior to our coverage determination and should not be construed as applicable to a new claim or an amendment to this claim. Our right to have notice of either situation is reserved, as are the notice conditions of the policy.

The state of Florida requires we advise of the following: Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.

If you believe there is additional information that should be considered or some other reason the policy should provide coverage, please provide that information in writing as soon as possible upon receipt of this letter.

Sincerely,

Debbie David  
Nationwide E&S/Specialty

P.O. Box 4120  
Scottsdale, AZ 85261-4120  
1-800-423-7675

cc: Agent 09019