

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF LOUISIANA**

**MT. HAWLEY INSURANCE  
COMPANY**

**Plaintiff,**

**v.**

**VCS, LLC**

**Defendant.**

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**CIVIL NO: \_\_\_\_\_  
JURY**

**ORIGINAL COMPLAINT FOR DECLARATORY RELIEF**

Mt. Hawley Insurance Company (“Mt. Hawley”) would respectfully show the Court the following:

**I.  
PARTIES**

1. Plaintiff Mt. Hawley Insurance Company (“Mt. Hawley”) is a corporation organized under the laws of the State of Illinois, with its principal place of business in Peoria, Illinois, and is, therefore, a citizen of Illinois, as defined by 28 U.S.C. §1332. Thus, Mt. Hawley is a citizen of the State of Illinois, and is not a citizen of the State of Louisiana.

2. VCS, LLC (“the Insured”) is a limited liability company organized under the laws of the State of Wyoming. The Insured has one member, Brian Reine, an individual citizen of the State of Louisiana. Thus, the Insured is a citizen of the State of Louisiana and not a citizen of the State of Illinois. Service of process may be accomplished on the Insured by serving this Complaint and Summons on its registered agent for service in the State of Louisiana, Brian Reine at 90 Glen Court, Pearl River, Louisiana 70452. The Insured is subject to this Court’s personal jurisdiction pursuant to 28 U.S.C. § 1391(c)(2), in that it maintains a place of business and conducts regular business activities at 1752 Gause Blvd. E., Slidell, Louisiana 70461.

**II.**  
**JURISDICTION AND VENUE**

3. The Court has jurisdiction over this lawsuit pursuant to 28 U.S.C. §1332(a)(1) because Mt. Hawley and the Insured are citizens of different states, and the amount in controversy exceeds \$75,000.00, excluding interest and costs.

4. The Court also has jurisdiction over this declaratory judgment action pursuant to Fed. R. Civ. P. 57 and 28 U.S.C. §2201. An actual and substantial controversy exists between the parties. By this action, Mt. Hawley seeks a declaration that an insurance policy issued to the Insured does not provide coverage for the insurance claim made by the Insured as described herein. This suit is necessary because the Insured's representative has expressed disagreement regarding Mt. Hawley's coverage position and has, in fact, already sued Mt. Hawley in connection with another COVID-19 based claim involving a separate property and different Mt. Hawley policy.

5. Venue is proper in the Eastern District of Louisiana pursuant to 28 U.S.C. §1391(b)(1) and (2).

**III.**  
**FACTUAL BACKGROUND**

6. Mt. Hawley issued Commercial Property Policy No. MCP0168587 to the Insured effective 11/26/19 to 11/26/20 (hereinafter the "Policy", a certified copy of which is attached hereto as **Exhibit A**). The Policy provides potential coverage for direct physical loss of or damage to the Covered Location, a hotel located at 1752 Gause Blvd. E., Slidell, Louisiana 70461 (the "Property"), as well as business income and extra expense loss, subject to all terms, conditions, limitations, and exclusions therein.

***The Water Claim***

7. On March 3, 2020, the Insured presented a claim to Mt. Hawley under the Policy for damage to the Property allegedly resulting from a leak in the Property's fire sprinkler system (the "Water Claim").

8. On March 9, 2020, Mt. Hawley's independent adjuster, Engle Martin & Associates ("EMA"), inspected the Property with maintenance supervisor Mark Davis.

9. Thereafter, Mt. Hawley paid the Insured \$76,595.43, constituting the entire undisputed actual cash value ("ACV") for building damage and \$7,164.04, constituting the entire undisputed ACV for business personal property damage.

10. The Insured also claimed business income loss resulting from the Water Claim but, despite Mt. Hawley's requests, has not provided Mt. Hawley with documentation substantiating its alleged business income loss.

***The COVID-19 Claim***

11. On April 1, 2020, the Insured presented a claim to Mt. Hawley under the Policy for alleged property damage and loss of business income associated with the Coronavirus ("COVID-19") pandemic (the "COVID-19 Claim").

12. The Insured claimed a March 11, 2020 date of loss based upon a proclamation pertaining to COVID-19 issued by Louisiana Governor John Bel Edwards on that date. Neither that proclamation, nor any other proclamation, order, or declaration issued by Governor Edwards or the State of Louisiana did or has ever required the suspension or cessation of the Insured's hotel operations or prevented access to the Property. *See* Proclamation Number 25 JBE 2020, a true and correct copy of which is attached hereto as **Exhibit B**; *see also* Proclamation Number JBE 2020-30, a true and correct copy of which is attached hereto as **Exhibit C** ("Hotel restaurants may

continue operations, but only for the service of *registered hotel guests* via room service.”) (emphasis added).

13. Indeed, on March 22, 2020, Governor Edwards issued a “Stay at Home” order, which provided that certain businesses that had been included as critical infrastructure sectors by the U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency (CISA) could remain open during the COVID-19 pandemic. *See* Proclamation Number 33 JBE 2020, SECTION 3:C., a true and correct copy of which is attached hereto as **Exhibit D**.

14. Hotels, such as the Insured’s Property, were identified as consistent with CISA guidance and specifically permitted to remain open during the effective period of Governor Edwards’ “Stay at Home” order. *See* list of business permitted to remain open, issued by the Office of the Governor of Louisiana, a true and correct copy of which is attached hereto as **Exhibit E**.

15. Despite Mt. Hawley’s request, the Insured has not submitted any documentation to Mt. Hawley substantiating any direct physical loss of or damage to Covered Property or any business income loss in connection with the COVID-19 Claim.

16. On June 17, 2020, Mt. Hawley denied the COVID-19 Claim.

17. By email dated July 10, 2020, the Insured notified Mt. Hawley that it disagreed with Mt. Hawley’s claim adjustment and had retained counsel to file suit against Mt. Hawley.

#### **IV.** **THE POLICY**

18. The Water Claim and the COVID-19 Claim were submitted under the Policy, which provides potential coverage for commercial property losses subject to all terms, conditions, limitations, and exclusions therein.

19. The Policy provides, in pertinent part, as follows:

**BUILDING AND PERSONAL PROPERTY COVERAGE FORM**

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**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.

....

**G. Optional Coverages**

If shown as applicable in the Declarations, the following Optional Coverages apply separately to each item:

...

**3. Replacement Cost**

**a.** Replacement Cost (without deduction for depreciation) replaces Actual Cash Value in the Valuation Loss Condition of this Coverage Form.

....

**c.** You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim for the additional coverage this Optional Coverage provides if you notify us of your intent to do so within 180 days after the loss or damage.

**d.** We will not pay on a replacement cost basis for any loss or damage:

**(1)** Until the lost or damaged property is actually repaired or replaced; and

**(2)** Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.

....

**e.** We will not pay more for loss or damage on a replacement cost basis than the least of **(1)**, **(2)** or **(3)**, subject to **f.** below:

- (1) The Limit of Insurance applicable to the lost or damaged property.
  - (2) The cost to replace the lost or damaged property with other property:
    - (a) Of comparable material and quality; and
    - (b) Used for the same purpose; or
  - (3) The amount actually spent that is necessary to repair or replace the lost or damaged property.
- f. The cost of repair or replacement does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

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## **BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM**

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### **A. Coverage**

#### **1. Business Income**

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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. . . .

#### **2. Extra Expense**

- a. Extra Expense Coverage is provided at the premises described in the Declarations only if the Declarations show that Business Income Coverage applies at that premises.
- b. Extra Expense means necessary expenses you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss.

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### **3. Covered Causes of Loss, Exclusions and Limitations**

See applicable Causes of Loss Form as shown in the Declarations.

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### **5. Additional Coverages**

#### **a. Civil Authority (As Amended By Endorsement)**

We will pay for the actual business income loss and necessary extra expense you incur due to the actual impairment of your Operations, directly caused by prohibition of access to your insured premises by a civil authority provided that both of the following apply:

1. The actual impairment of your operations results from an order of a civil authority that specifically prohibits access to the insured premises; and
2. The prohibition of access by a civil authority must be the direct result of physical loss or damage by a peril insured by this policy to property away from your insured premises or your dependent business, provided such property is within 1 mile from your insured premises or your dependent business.

Civil authority coverage will begin for business income 72 hours after, and for extra expense immediately after, the time of the first action of civil authority that prohibits access to the insured premises and will apply as follows:

- A. Until access to the insured premises is regained, or
- B. Until exhaustion of any applicable sublimits, or
- C. For a period of up to 30 consecutive days from the date on which such coverage began, whichever occurs first.

This coverage period is part of and not in addition to any period of liability applying to any coverage provided for Business Income and/or Extra Expense elsewhere in this policy.

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### **F. Definitions**

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2. "Operations" means:
  - a. Your business activities occurring at the described premises; and

**b.** The tenantability of the described premises, if coverage for Business Income Including "Rental Value" or "Rental Value" applies.

**3.** "Period of restoration" means the period of time that:

**a.** Begins:

**(1)** 72 hours after the time of direct physical loss or damage for Business Income Coverage; or

**(2)** Immediately after the time of direct physical loss or damage for Extra Expense Coverage; caused by or resulting from any Covered Cause of Loss at the described premises; and

**b.** Ends on the earlier of:

**(1)** The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or

**(2)** The date when business is resumed at a new permanent location. "Period of restoration" does not include any increased period required due to the enforcement of any ordinance or law that:

**(1)** Regulates the construction, use or repair, or requires the tearing down, of any property; or

**(2)** Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

The expiration date of this policy will not cut short the "period of restoration".

...

**6.** "Suspension" means:

**a.** The slowdown or cessation of your business activities; or

**b.** That a part or all of the described premises is rendered untenable, if coverage for Business Income Including "Rental Value" or "Rental Value" applies.

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## CAUSES OF LOSS - SPECIAL FORM

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### A. Covered Causes Of Loss

When Special is shown in the Declarations, Covered Causes of Loss means Risks Of Direct Physical Loss unless the loss is:

1. Excluded in Section **B.**, Exclusions; or
2. Limited in Section **C.**, Limitations;

that follow.

....

### B. Exclusions

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

#### a. Ordinance Or Law

The enforcement of any ordinance or law:

- (1) Regulating the construction, use or repair of any property; or
- (2) Requiring the tearing down of any property, including the cost of removing its debris.

This exclusion, Ordinance Or Law, applies whether the loss results from:

- (a) An ordinance or law that is enforced even if the property has not been damaged; . . . .

2. We will not pay for loss or damage caused by or resulting from any of the following:

**b.** Delay, loss of use or loss of market.

3. We will not pay for loss or damage caused by or resulting from any of the following, **3.a.** through **3.c.** But if an excluded cause of loss that is listed in **3.a.** through **3.c.** results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

**b.** Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

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### **INGRESS OR EGRESS**

When a Covered Cause of Loss, first commencing during the Policy Period, causes damage to property other than property at a location described in the Declarations, we will pay for the actual loss of Business Income and necessary Extra Expense you incur which is caused by a physical impairment that prevents physical ingress or egress to your location, subject to the terms, exclusions, limits, and conditions of the policy to which this endorsement is attached and to the provisions contained in this endorsement. The physical impairment must be located within one (1) mile of the location(s) described in the Declarations.

Ingress or Egress coverage will begin for business income 72 hours following the time of direct physical loss or damage or immediately after the time of direct physical loss or damage for Extra Expense. This coverage ends at the earlier of:

1. Until access to insured premises is regained; or
2. For a period of up to thirty (30) consecutive days from the date on which such coverage began; or
3. Until exhaustion of any applicable sublimits, whichever occurs first.

In no event will this extension cover any loss which is otherwise covered under any additional coverage provided by this policy for Civil Authority.

The following exclusions apply to the coverage provided for Ingress or Egress:

1. Loss resulting from lack of incoming or outgoing service consisting of electric, fuel, gas, water, steam, refrigerant, sewerage, voice, data, video, or internet connectivity.
2. Loss resulting from picketing or other action by strikers except for physical damage not otherwise excluded by this policy.

This coverage period is part of and not in addition to any period of liability applying to any coverage provided for Business Income and/or Extra Expense elsewhere in this policy.

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### **ABSOLUTE POLLUTION EXCLUSION**

This endorsement replaces any existing terms and/or exclusions regarding pollution liability within this policy.

We will not pay for loss, damage, cost or expense caused directly or indirectly by any of the following. Such loss, damage, cost or expense is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss:

A. Property damage arising out of the actual, alleged or threatened discharge, dispersal, release or escape of "pollutants," or contaminants;

1. At or from premises owned, leased, rented or occupied by you,
2. At or from any site or location used by or for you or others for the handling, storage, disposal, processing or treatment of waste,
3. Which are at any time transported, handled, stored, treated, disposed of or processed as waste by or for you or any person or organization for whom you may be legally responsible, or,
4. At or from any site or location on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations;
  - a. If the "pollutants" are brought on or to the site or location in connection with such operations, or
  - b. If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize the "pollutants."

B. Any loss, damage, cost or expense arising out of any governmental direction or request that you test for, monitor, clean up, treat, remove, detoxify or neutralize "pollutants" or in any way respond to or assess the effects of "pollutants."

This includes loss or damage caused by or resulting from contributing to or made worse by actual, alleged or threatened release, discharge, escape or dispersal of contaminants and/or pollutants, all of which direct or indirect, proximate or remote, or in whole or in part, caused by, contributed to, or aggravated by any damage insured by the policy.

**"Pollutants"** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. In addition to "pollutants" to be disposed of, waste also includes materials to be recycled, reconditioned or reclaimed. It also includes any material which after its release, dispersal or discharge, can cause or threaten damage to human health and/or human welfare, or causes or threatens damage, deteriorations, loss of value, marketability and/or loss of use, to insured property; including, but not limited to bacteria, fungi, virus, or hazardous substances as listed in the Federal Pollution Control Act, Clean Air Act, Resource Conservation and Recovery Act of 1976 and/or Toxic Substances Control Act or as designated by the U.S. Environmental Protection Agency.

V.  
**DECLARATORY JUDGMENT**  
**Count I – COVID-19 Claim**

20. Mt. Hawley incorporates by reference the allegations in the paragraphs stated above.

21. The circumstances of the COVID-19 Claim and the provisions of the Policy conclusively establish that there simply is no coverage under the Policy for the COVID-19 Claim because the Insured has not sustained direct physical loss of or damage to Covered Property from any Covered Cause of Loss.

22. The Business Income coverage provided by the Policy applies to the actual loss of Business Income sustained due to the necessary suspension of the Insured’s “operations” during the “period of restoration.” The “suspension” must be caused by direct physical loss of or damage to property at the described premises as a result of a Covered Cause of Loss. Here, there was no direct physical loss of or damage to property at the premises. Rather, the Insured decided to suspend operations based upon orders issued by the State of Louisiana and certain business considerations. Accordingly, the Insured has not sustained direct physical loss of or damage to any property that would trigger its Business Income coverage.

23. The Civil Authority coverage does not apply because the Insured has not been prevented access to its premises by an order of a civil authority specifically prohibiting such access. In addition, the orders from civil authorities were not the direct result of physical loss or damage by a peril insured by the Policy to property away from the Insured’s premises and within one mile from same. The orders were implemented as a preventative measure to minimize the spread of COVID-19. Accordingly, there is no coverage for the COVID-19 Claim under the Civil Authority coverage.

24. The coverage for Ingress or Egress applies only when a Covered Cause of Loss causes damage to property other than at the Insured's premises, which causes a physical impairment and prevents physical ingress or egress to the Insured's premises. These circumstances are not presented here, and therefore, there is no coverage under the Ingress or Egress Endorsement.

25. Additionally, the Absolute Pollution Exclusion Endorsement specifically excludes coverage for loss or damage caused directly or indirectly by the actual, alleged, or threatened discharge, dispersal, release or escape of pollutants or contaminants, including virus, and such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. Accordingly, coverage for the COVID-19 Claim is excluded under the Absolute Pollution Exclusion Endorsement.

26. Additionally, the Policy specifically provides that Mt. Hawley will not pay for loss or damage caused directly or indirectly by the enforcement of any ordinance or law regulating the use of any property, and such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. Accordingly, there is no coverage for the COVID-19 Claim under the Policy.

27. Additionally, the Policy specifically provides that Mt. Hawley will not pay for loss or damage caused by or resulting from any delay, loss of use and loss of market. Accordingly, there is no coverage for the COVID-19 Claim under the Policy.

28. Additionally, the Policy specifically provides that Mt. Hawley will not pay for loss or damage caused by the acts or decisions of any person, group, organization or governmental body. Accordingly, there is no coverage for the COVID-19 Claim under the Policy.

29. Accordingly, Mt. Hawley requests that this Court declare the rights of the parties regarding the actual controversies existing between them as set forth herein and enter judgment finding and declaring that there is no coverage under the Policy for the Insured's COVID-19 Claim and that Mt. Hawley does not owe the Insured any sums under the Policy in connection with the COVID-19 Claim.

**Count II – Water Claim**

30. Mt. Hawley incorporates by reference the allegations in the paragraphs stated above.

31. The circumstances of the Water Claim and the provisions of the Policy conclusively establish that Mt. Hawley has paid the Insured all amounts owed under the Policy at this time. In particular, Mt. Hawley paid the Insured the entire undisputed ACV of its claimed building damage and business personal property damage allegedly resulting from the fire sprinkler system leak. While the Insured claims it is entitled to replacement costs ("RCV"), the Replacement Cost provision of the Policy makes clear that the Insured is not entitled to recover RCV unless and until it actually repairs or replaces damaged property, and such repairs or replacement occur as soon as reasonably possible after the loss. Mt. Hawley has not received any documentation to date establishing entitlement to RCV.

32. Accordingly, Mt. Hawley requests that this Court declare the rights of the parties regarding the actual controversies existing between them as set forth herein and enter judgment finding and declaring that Mt. Hawley has paid all amounts owed under the Policy at this time in connection with the Water Claim and does not owe the Insured any additional amounts for property damage or business income and extra expense allegedly resulting from the Water Claim.

**V.**  
**JURY DEMAND**

33. Mt. Hawley hereby requests that this civil action be tried before a jury.

WHEREFORE, Plaintiff Mt. Hawley Insurance Company prays that this Court enter judgment finding and declaring: (1) that there is no coverage under the Policy for the Insured's COVID-19 Claim; (2) that Mt. Hawley Insurance Company does not owe the Insured any sums under the Policy in connection with the COVID-19 Claim; (3) that Mt. Hawley has paid all amounts owed under the Policy at this time in connection with the Water Claim; (4) that at this time Mt. Hawley does not owe the Insured any additional amounts under the Policy in connection with the Water Claim; and (5) for such other and further relief as it deems just and fit under the circumstances.

Respectfully submitted,

  
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**RICHARD E. KING (#25128)**  
**OLIVIA Y. TRUONG (#34990)**  
**MELCHIODE MARKS KING LLC**  
639 Loyola Avenue, Suite 2550  
New Orleans, Louisiana 70113  
Telephone: (504) 336-2880  
Facsimile: (504) 336-2342  
Email: [rking@mmkfirm.com](mailto:rking@mmkfirm.com)  
[otruong@mmkfirm.com](mailto:otruong@mmkfirm.com)  
**ATTORNEYS FOR PLAINTIFF**  
**MT. HAWLEY INSURANCE**  
**COMPANY**