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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION**

RW RESTAURANT GROUP LLC;
2401 RESTAURANT CORPORATION T/A
MARCELS; 1101 K ST LLC T/A BRASSERIE
BECK; BECMAR, LLC T/A MUSSEL BAR &
GRILLE BETHESDA; RW-FRIT
WILDWOOD LLC T/A WILDWOOD
KITCHEN; MUSSEL BAR ARLINGTON LLC
T/A MUSSEL BAR ARLINGTON;
POTOMAC FALLS TAVERN LLC D/B/A
LOCK 72; SOCIAL HEIGHTS
RESTAURANT, LLC D/B/A TOMMY JOE'S;
and MUSSEL BAR & GRILLE BALTIMORE,
LLC D/B/A KEYSTONE KORNER ,
1400 Connecticut Avenue, Suite 400
Kensington, MD 20895,

Plaintiff,

v.

THE CHARTER OAK FIRE INSURANCE
COMPANY,
1 Tower Square,
Hartford, CT 06183,

Defendant.

Civil Action No.

COMPLAINT

DEMAND FOR JURY TRIAL

RW Restaurant Group LLC; 2401 Restaurant Corporation T/A Marcells; 1101 K ST LLC T/A Brasserie Beck; BecMar, LLC T/A Mussel Bar & Grille Bethesda; RW-FRIT Wildwood LLC T/A Wildwood Kitchen; Mussel Bar Arlington LLC T/A Mussel Bar Arlington; Potomac Falls Tavern LLC D/B/A Lock 72; Social Heights Restaurant, LLC D/B/A Tommy Joe's; and Mussel Bar & Grille Baltimore, LLC D/B/A Keystone Korner ("RWRG" or "Plaintiff") hereby files suit against The Charter Oak Fire Insurance Company ("Charter Oak" or "Defendant") and alleges the following.

INTRODUCTION

1. Governments around the world have enacted stringent countermeasures in order to combat the COVID-19 pandemic, requiring the closure of many businesses and restricting almost all public activities.

2. Restaurants, in particular, have suffered immediate and precipitous losses. This impact on restaurants will have a devastating impact on the nation's economy and social life. As of 2016, Americans spend more than half of their food budget eating outside the home. According to The Brookings Institution, food preparation and service is the second most common occupation in the United States; waiting tables is the eighth most common. At the start of 2020, there were more than 12 million Americans working at over 600,000 food service and drinking establishments nationwide. *Food & Wine* reports that approximately 8 million restaurant workers have been laid-off or furloughed since mid-March. Before the COVID-19 pandemic materialized, the National Restaurant Association predicted 2020 sales would be \$899 billion. As of June 15, 2020, the Association's research shows that restaurants lost \$120 billion in sales during the first three months of the COVID-19 pandemic. The outlook is dire for the tens of thousands of restaurants that may never reopen.

3. Plaintiff bought full-spectrum, comprehensive insurance to protect all aspects of the insured businesses – not just for damage to insured premises and equipment – but also for interruptions in business operations that result in loss of business income. RWRG believed that it had purchased comprehensive coverage that would apply to business interruptions under circumstances like this, where Plaintiff has done everything right to protect its businesses and the public. Such coverage is important, if not vital, because profit margins in the restaurant industry are slim and, unlike in the insurance industry, reserve funds tend to be low. Hence, business interruptions are a particular concern of this industry.

4. Charter Oak, from whom Plaintiff had purchased such insurance, swiftly denied the claim. Though its reasons are cursory, the denial appears to be based on an unreasonable reading of its policy, which tracks form policies issued by Defendant on a take-it-or-leave-it basis. Defendant denied the claim despite having pocketed significant premiums for the many policies it has issued to RWRG over the years. Plaintiff has been purchasing comprehensive business insurance from Charter Oak Defendant for many years; the provisional premium for this year's policy alone is \$123,936.

5. This arbitrary and wrongful denial of insurance benefits leaves Plaintiff financially insecure and threatens the survival of one or more of the nine restaurants covered under the policy.

6. Plaintiff thus brings this action seeking declaratory relief and damages.

PARTIES

7. Plaintiff RW Restaurant Group LLC (“RWRG”) is a limited liability company formed under the laws of the State of Maryland with its principal place of business in Kensington, Maryland. Under RWRG’s direction, there are eight (8) associated entities that

operate the eight (8) restaurants comprising this claim: 2401 Restaurant Corporation, which operates Marcell's; 1101 K ST LLC, which operates Brasserie Beck; BecMar, LLC, which operates Mussel Bar & Grille Bethesda; RW-FRIT Wildwood LLC, which operates Wildwood Kitchen; Mussel Bar Arlington LLC, which operates Mussel Bar Arlington; Potomac Falls Tavern LLC, which operates Lock 72; Social Heights Restaurant, LLC, which operates Tommy Joe's; and Mussel Bar & Grille Baltimore, which operates Keystone Korner (collectively, "RWRG"). Wildwood Kitchen, Lock 72, Keystone Korner Baltimore, Mussel Bar & Grille Bethesda and Tommy Joe's are in Maryland, Marcell's and Brasserie Beck are in the District of Columbia, and Mussel Bar & Grille Arlington is in Virginia. In addition, RWRG provides licensing and management services to Villain & Saint in Atlantic City, NJ under a license and management agreement.

8. Defendant The Charter Oak Fire Insurance Company is a Travelers company and a corporation organized under laws of Connecticut with its principal place of business in Hartford, Connecticut. At all relevant times, Defendant conducted business in Maryland.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332(a)(1) because the parties are diverse from one another and Plaintiff seeks declaratory relief and damages valued in excess of \$75,000.

10. This Court has personal jurisdiction over Charter Oak because Charter Oak conducts business in the judicial District of Maryland, including by contracting to provide insurance coverage for Plaintiff's businesses located in Maryland, the District of Columbia, and Virginia, among other locations.

11. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(b), as a

substantial part of the events or omissions giving rise to the instant action occurred within the judicial District of Maryland.

FACTUAL BACKGROUND

I. The Onset of the COVID-19 Pandemic

12. In January 2020 early media reports documented an outbreak of a novel strain of coronavirus – COVID-19 – in Wuhan, China. By late January, it was generally understood in the scientific and public health communities that COVID-19 was spreading through human-to-human transmission and could be transmitted by asymptomatic carriers.

13. On January 30, 2020, reports of the spread of COVID-19 outside China prompted the World Health Organization to declare the COVID-19 outbreak a “Public Health Emergency of International Concern.”

14. On March 11, the World Health Organization declared COVID-19 a global health pandemic based on existing and projected infection and death rates, as well as concerns about the speed of transmission and ultimate reach of this virus.

15. Public health officials have recognized for decades that non-pharmaceutical interventions (NPIs) can slow and stop the transmission of certain diseases. Among these are screening and testing of potentially infected persons; contact tracing and quarantining infected persons; personal protection and prevention; and social distancing. Social distancing is the maintenance of physical space between people. Social distancing can be limited – e.g., reducing certain types of conduct or activities like hand-shaking – or large-scale – e.g., restricting the movements of the total population.

16. A lack of central planning, shortages of key medical supplies and equipment, and the unfortunate spread of misinformation and disinformation about the risks of COVID-19 has

led to widespread confusion, unrest, and uncertainty regarding the likely trajectory of this pandemic and the appropriate counter-measures necessary to mitigate the damage it could potentially cause.

17. Beginning in late February, public health officials began advising various governments around the world that one of the most disruptive NPIs – population-wide social distancing – was needed to stop the transmission of COVID-19. Suddenly densely occupied spaces, heavily traveled spaces, and frequently visited spaces such as schools, offices, public transit, restaurants, and shops were likely to become hot-spots for local transmission of COVID-19. By mid-March, the public health officials’ advice was being implemented by state and local governments. These governments issued a series of orders (“Public Health Orders”) placing significant limitations on public activities and private gatherings to limit the spread of COVID-19.

II. Public Health Orders Affecting Plaintiffs’ Restaurants

18. RWRG operates restaurants in Maryland, the District of Columbia, and Virginia which are covered locations under the Charter Oak policy. Each of these states has issued a series of Orders that have resulted in the partial or complete closure of all the covered restaurants.

A. Maryland

19. Beginning in March 2020, the State of Maryland, the City of Baltimore, and Montgomery County issued a series of Public Health Orders. In order to comply with the Public Health Orders, many Maryland businesses, including RWRG’s restaurants and the surrounding businesses, were forced to abandon their property and suspend ordinary business activity.

20. On March 5, 2020, Governor Lawrence J. Hogan, Jr. issued a Proclamation declaring a state of emergency and catastrophic health emergency in the State. Proclamations issued on March 12, April 10, May 6, June 3, and July 1 extended the state of emergency and catastrophic health emergency.

21. On March 16, 2020, Governor Hogan issued an Order that closed all restaurants to the general public except for carry-out, drive-through, and delivery service. Violations of the Order were punishable by imprisonment of up to one year, a fine of up to \$5,000, or both. The Order went into effect at 5:00 p.m. on March 16, 2020. Subsequent Orders (Numbers 20-03-19-01 and 20-03-23-01) reiterated these restrictions.

22. On March 30, 2020, Governor Hogan issued Order Number 20-03-30-01 (the “Stay-at-Home Order”). This Stay-at-Home Order required Maryland residents to stay in their homes or places of residence except to conduct or participate in essential activities, to travel to and from those locations, to conduct minimal operations at non-essential businesses, and to deliver goods. The Stay-at-Home Order also prohibited gatherings of more than ten people and continued the requirement that restaurants be closed to the general public, with the exception of carry-out, drive-through, and delivery services. The Stay-at-Home Order went into effect on March 30, 2020 at 8:00 p.m.

23. On May 27, 2020, Governor Hogan issued Order Number 20-05-27-01. This Order allowed restaurants to serve food and beverages in outdoor seating areas in addition to providing carry-out, drive-through, and delivery service. Outdoor service was conditioned on patrons being seated six feet away from each other and limiting groups to six people (except for households seated together), as well as other conditions.

24. On June 10, 2020, Governor Hogan issued Order Number 20-06-10-01. That

Order allowed restaurants to serve food and beverages for indoor consumption and for carry-out and delivery, but limited restaurants to 50% of their maximum occupancy and placed other requirements on them.

25. Also, on June 10, 2020, the Maryland Department of Health issued a Directive and Order Regarding Food Service Establishments (No. MDH 2020-06-10-01). The Directive and Order placed limitations on restaurants, including modification of floor plans to ensure that customers are seated six feet from each other (except for households or groups seated together) and that no more than six people are seated at a table, that every other booth be closed in booth-seating arrangements, that bar patrons not of the same household or group be six feet apart, and that restaurants not exceed 50% of their maximum capacity, among other restrictions.

26. In addition to those Public Health Orders issued by the State of Maryland, local governments issued several Public Health Orders to prevent the spread of COVID-19. While Governor Hogan's Order Number 2020-05-13-01 allowed local governments to lift their stay at home orders, many local governments chose not to do so. In particular, the City of Baltimore and the Counties of Ann Arundel, Baltimore, Howard, Montgomery, and Prince George's agreed that their jurisdictions were not ready to reopen according to parameters set by the Johns Hopkins School of Public Health, and they maintained more severe restrictions than required by the State.

27. On May 15, 2020, Baltimore Mayor Bernard C. "Jack" Young issued an Executive Order that extended the terms of Governor Hogan's Stay-at-Home Order (as amended in Order Number 20-05-06-01) until further notice. In particular, all individuals not participating in essential activities or permitted outdoor activities were required to stay in their residences; gatherings of more than ten people were prohibited; and restaurants were required to be closed to the general public, with the exception of carry-out, drive-through, and delivery services. An

Executive Order issued on May 29, 2020 reiterated these restrictions.

28. On June 8, 2020, Mayor Young issued an Executive Order rescinding the stay-at-home provisions of previous Orders but continuing to require that restaurants and certain other businesses remain closed with the exception of carry-out, drive-through, and delivery services. The Order also imposed penalties of up to one year's imprisonment, a fine of up to \$5,000, or both for violations of the Order or Governor Hogan's Order 20-05-27-01.

29. On June 12, 2020, Mayor Young issued an Executive Order relaxing the restrictions on retail establishments but continuing to require that restaurants and certain other businesses remain closed with the exception of carry-out, drive-through, and delivery services. This Order imposed the same penalties for non-compliance as the previous Order.

30. On June 22, 2020, Mayor Young issued an Executive Order allowing restaurants to provide indoor and outdoor service, provided that such establishments do not exceed 50% of maximum capacity and that other conditions are met. On June 29, 2020, Mayor Young issued an Executive Order rescinding the prohibition on gatherings of more than ten people but continuing to require that indoor spaces not exceed 50% of maximum capacity.

31. On July 22, 2020, Mayor Young issued an Executive Order once again prohibiting indoor service in restaurants. The Order allowed restaurants to provide carry-out, drive-through, delivery, and outdoor service only. Outdoor service is permitted only when certain conditions are met, including that patrons are seated at least six feet away from each other, except for households sitting together. The Order was set to take effect at 5:00 p.m. on July 24, 2020.

32. Montgomery County also issued a number of Public Health Orders. On May 15, 2020, Montgomery County Executive Marc Elrich issued Executive Order Number 067-20,

requiring restaurants to be closed to the general public, with the exception of carry-out, drive-through, and delivery services. It also prohibited gatherings of more than ten people. The Order was effective immediately.

33. On May 28, 2020, County Executive Elrich issued Executive Order Number 070-20. The Order allowed restaurants to serve food and beverages in outdoor seating areas in addition to providing carry-out, drive-through, and delivery service. Outdoor service was conditioned on patrons being seated six feet away from each other and limiting groups to six people (except for households seated together), as well as other conditions. The Order took effect on June 1, 2020.

34. On June 16, 2020, County Executive Elrich issued Executive Order Number 082-20. The Order permitted restaurants to serve customers indoors and outdoors, under certain conditions, including compliance with Maryland Department of Health's Directive and Order Regarding Food Service Establishments (No. MDH 2020-06-10-01).

35. RWRG's restaurant Keystone Korner Baltimore is located in Baltimore, Maryland. RWRG's restaurants Mussel Bar & Grille (Bethesda, MD), Tommy Joe's (Bethesda, MD), Wildwood Kitchen (Bethesda, MD), and Lock 72 (Potomac, MD) are located in Montgomery County, Maryland.

B. District of Columbia

36. Beginning in March 2020, the District of Columbia, through the Office of the Mayor Muriel Bowser, issued a series of Public Health Orders. In order to comply with the Public Health Orders, many D. C. businesses, including RWRG's restaurants and the surrounding businesses, were forced to abandon their property and suspend ordinary business activity.

37. On March 11, 2020, the District of Columbia, through the Office of the Mayor Muriel Bowser, issued Orders 2020-045 and 2020-046, which declared a public emergency and a public health emergency in the District of Columbia. These Orders went into effect immediately and were to remain in effect until at least March 26.

38. On March 16, 2020, the District of Columbia, through the Office of the Mayor Muriel Bowser, issued Order 2020-048. The Order prohibited gatherings of more than fifty people. It also prohibited table seating at any restaurant in the District of Columbia beginning at 10:00 pm that night until April 1, 2020 at 6:00 am. Order 2020-048 stated that violators would be subject to criminal, civil, and administrative penalties, including summary suspension of licensure. The Order went into effect immediately and was to remain in effect at least through March 31, 2020.

39. On March 20, 2020, the District of Columbia, through the Office of the Mayor Muriel Bowser, issued Order 2020-051, which extended the specific prohibition of gatherings of more than fifty persons and table seating at restaurants and, in addition, specifically prohibited service to standing customers. Order 2020-051 stated that violators would be subject to criminal, civil, and administrative penalties, including summary suspension of licensure. This Order went into effect immediately and was to remain in effect at least through April 24, 2020.

40. On March 24, 2020, the District of Columbia, through the Office of the Mayor Muriel Bowser, issued Order 2020-053, which prohibited large gatherings of ten or more people, mandated closure of all on-site operations of non-essential businesses, and specifically limited restaurants to delivery, carry out, and “grab and go” service only. Order 2020-053 stated that violators would be subject to criminal, civil, and administrative penalties, including summary

suspension or revocation of licensure. This Order went into effect at 10:00 p.m. on March 25, 2020 and was set to remain in effect at least through April 24, 2020.

41. On March 30, 2020, the District of Columbia, through the Office of the Mayor Muriel Bowser, issued Order 2020-054, a Stay-At-Home Order, ordering all individuals living in Washington, DC, to stay at their place of residence, except to obtain food and essential household goods or to engage in Essential Business Activities. The Stay-At-Home Order stated that violators would be subject to criminal, civil, and administrative penalties, including summary suspension or revocation of licensure. This Order went into effect at 12:01 a.m. on April 1, 2020 and was set to remain in effect through at least April 24, 2020.

42. On April 8, 2020, the District of Columbia, through the Office of the Mayor Muriel Bowser, issued Order 2020-058, which mandated that all restaurants mark six foot distances outside and within their location to manage lines of customers and adopt social distancing requirements similar to those imposed on grocery stores and other retail food sellers, such as maintaining a minimum distance of six feet from each person who is not part of the same household. This Order went into effect at 12:01 a.m. on April 9, 2020 and was set to remain in effect at least through April 24, 2020.

43. On April 15, 2020, the District of Columbia, through the Office of the Mayor Muriel Bowser, issued Order 2020-063, which extended Order 2020-053 and the Stay-At-Home Order (Order 2020-054) until May 15, 2020. Order 2020-063 also extended the public emergency and public health emergency in the District of Columbia until May 15, 2020. Order 2020-063 stated that violators would be subject to criminal, civil, and administrative penalties, including summary suspension or revocation of licensure, and specified that individuals “should call 311 to report any suspected violations of this or other Mayor’s Orders related to the COVID-

19 public health emergency.” This Order went into effect at 12:01 a.m. on April 17, 2020 and was set to remain in effect at least through May 15, 2020.

44. On May 13, 2020, the District of Columbia, through the Office of the Mayor Muriel Bowser, issued Order 2020-066, which extended the public emergency and public health emergency (declared by Orders 2020-045 and 2020-046, respectively) and all previous COVID-19-related orders through June 8, 2020. This Order also required masks to be worn by employees, independent contractors, customers, and visitors of essential businesses and others, and it continued to prohibit large gatherings of more than ten individuals. Order 2020-066 stated that violators would be subject to criminal, civil, and administrative penalties, including summary suspension or revocation of licensure, and instructed individuals to call 311 to report violations. This Order went into effect at 12:01 a.m. on May 16, 2020 and was set to remain in effect at least through June 8, 2020.

45. On May 27, 2020, the District of Columbia, through the Office of the Mayor Muriel Bowser, issued Order 2020-067, which declared the District to be in Phase One of reopening and lifted the Stay-At-Home Order (Order 2020-054). The Order continued to require mask wearing and social distancing and to prohibit large gatherings of more than ten individuals. It allowed restaurants and other licensed food establishments to open for outdoor dining, subject to conditions including that tables seat no more than six individuals and that tables be at least six feet apart. Order 2020-067 extended the public emergency and public health emergency (declared by Orders 2020-045 and 2020-046, respectively) through July 24, 2020, and extended all previous COVID-19-related orders unless otherwise modified or superseded. The Order stated that violators would be subject to criminal, civil, and administrative penalties, including

summary suspension or revocation of licensure, and instructed individuals to call 311 to report violations. This Order went into effect at 12:01 a.m. on May 29, 2020.

46. On June 19, 2020, the District of Columbia, through the Office of the Mayor Muriel Bowser, issued Order 2020-075, which declared the District to be in Phase Two of reopening. The Order continued to require mask wearing and social distancing. It replaced the prohibition on large gatherings of more than ten individuals with a prohibition on large gatherings of more than fifty individuals. The Order permitted licensed food establishments to open for indoor dining, subject to conditions including that the establishment remain at or below 50% of occupancy, that tables seat no more than six individuals or allow for six feet between groups, that tables be at least six feet apart, that bar seating be prohibited if a bartender is working there, that indoor queuing is not allowed, and that patrons queuing outdoors be separated by at least six feet. Order 2020-075 stated that violators would be subject to criminal, civil, and administrative penalties, including summary suspension or revocation of licensure, and instructed individuals to call 311 to report violations. This Order went into effect at 12:01 a.m. on June 22, 2020 and remains effective for the duration of public health emergency.

C. Virginia

47. Beginning in March 2020, the Commonwealth of Virginia issued a series of Public Health Orders. In order to comply with the Public Health Orders, many Virginia businesses, including RWRG's Arlington, Virginia restaurant and the surrounding businesses, were forced to abandon their property and suspend ordinary business activity. On March 12, 2020, Governor Ralph S. Northam issued Executive Order Number 51, declaring a state of emergency until June 10, 2020. On May 26, 2020, Governor Northam issued Executive Order Amended Number 51, extending the state of emergency indefinitely.

48. On March 17, 2020, Governor Northam and State Health Commissioner M. Norman Oliver issued an Order declaring a public health emergency. The Order also restricted restaurants to ten or fewer patrons. Violations are punishable as a misdemeanor and can result in suspension of operation permits.

49. On March 23, 2020, Governor Northam issued Executive Order Number 53. The Order prohibited all gatherings of ten or more people, effective at 11:59 p.m. on March 24, 2020. It further required closure of all restaurants effective at the same time. Violations of the relevant portions of the Order constitutes a Class 1 misdemeanor. This Order was extended twice. The second time extended the ten-person-gathering restriction until June 10, 2020 and the restaurant-closure provision until May 14, 2020.

50. On March 30, 2020, Governor Northam issued Executive Order Number 55, a “Temporary Stay at Home Order Due to Novel Coronavirus (COVID-19).” The Order prohibited individuals from leaving their place of residence except for a set of enumerated activities, which did not include patronizing restaurants. The Order was set to remain in effect until June 10, 2020.

51. On May 8, 2020, Governor Northam issued Executive Order Number 61, which promulgated rules for Phase One reopening. The Order allowed restaurants to operate carry-out, delivery, and outdoor services only, provided that the restaurant not exceed 50% occupancy in the outdoor space, that no more than 10 patrons are seated as a party, that tables are at least six feet apart, and that other conditions are met. The Order became effective on May 15, 2020.

52. On May 12, 2020, Governor Northam issued Executive Order Number 62. The Order exempted Arlington and Fairfax Counties and the Town of Vienna (the “Northern Virginia Region”) from Executive Order No. 61 and kept them at Phase Zero. Staying in Phase Zero

meant all restaurants stayed closed (except for carry-out and delivery services) and individuals were still required to remain at their place of residence except to engage in enumerated activities.

53. On June 2, 2020, Governor Northam issued Executive Order Number 65, announcing further eased restrictions consistent with Phase Two. For regions moving to Phase Two, restaurants may operate carry-out, delivery, indoor, and outdoor services, provided that the restaurant's occupancy not exceed 50% what is allowed in the certificate of occupancy, that no more than 50 patrons are seated as a party, that tables are at least six feet apart, and that other conditions are met. This Order explicitly exempted the Northern Virginia Region.

54. On June 5, 2020, Governor Northam issued Executive Order Third Amended Number 61, which moved Northern Virginia to Phase One. Executive Order Amended Number 65, issued on June 9, 2020, stated that the Northern Virginia Region would remain in Phase One while much of the rest of the Commonwealth moved to Phase Two.

55. On June 30, 2020, Governor Northam issued Executive Order Number 67, implementing Phase Three of reopening throughout the Commonwealth. The Order allowed restaurants to operate carry-out, delivery, indoor, and outdoor services, provided that parties are separated by six feet, including in the bar area.

56. RWRG's Virginia restaurant is located in Arlington, VA; the Northern Virginia Region.

III. Plaintiff's Experience

57. Eight of the restaurants RWRG operates through separately organized entities are in the mid-Atlantic region; five are located in Maryland, two in the District of Columbia, and one in Virginia, each of which are covered under the Charter Oak policy: (1) Wildwood Kitchen (Bethesda, MD), (2) Lock 72 (Potomac, MD), (3) Keystone Korner Baltimore (Baltimore, MD),

(4) Mussel Bar & Grille (Bethesda, MD), (5) Tommy Joe's (Bethesda, MD), (6) Brasserie Beck (Washington, DC), (7) Marcel's (Washington, DC) and (8) Mussel Bar & Grille (Arlington, VA).

58. Robert Wiedmaier, the managing member and majority owner of RWRG, is an accomplished chef who has opened a number of renowned restaurants in the mid-Atlantic United States. He has been recognized as Chef of the Year by the Restaurant Association Metropolitan Washington (RAMMY Awards) and has earned a Michelin Star.

59. RWRG has experienced much success and recognition. Esquire Magazine called Brasserie Beck one of the Best New Restaurants in America in 2007. Marcel's was named Formal Fine Dining Restaurant of the Year at the 2016 RAMMY Awards. Siren, a restaurant formerly operated by RWRG, received a Michelin Star in 2019.

60. RWRG's restaurants were subject to the Public Health Orders reproduced above, and RWRG has complied with all of the Public Health Orders. As a result of these Public Health Orders, all of RWRG's restaurants were forced to either close or seriously curtail their operations.

61. These business interruptions have caused direct loss of RWRG's insured property in that the restaurants and their equipment, furnishings, and other business personal property have been made unavailable, inoperable, useless and uninhabitable, and their functionality has been severely reduced if not eliminated. The impact of the Public Health Orders is felt not simply in their direct application to RWRG's operations, but also in their application to the businesses and properties surrounding RWRG's restaurants in each of the jurisdictions subject to the Public Health Orders. As a result of these losses, RWRG's business income has also plummeted.

62. Just before the Public Health Orders caused the restaurants to close, RWRG employed around 425 employees who live in Maryland, D.C. and Virginia. They have had to lay off around 80% of their staff because of the closures, and currently are only able to conduct enough business to support 55 employees. The business income coverage RWRG purchased from Charter Oak covers regular payroll expenses.

63. Even as some jurisdictions have begun to rescind or revise their Public Health Orders to allow for more business to be conducted, Plaintiff is likely to experience ongoing restrictions and residual effects, given that the pandemic spread still remains uncontrolled and densely occupied public spaces remain unsafe as places where the risk of transmission remains high.

64. RWRG purchased a comprehensive commercial liability and property insurance policy (the “Policy”) from Charter Oak – with a policy period of March 1, 2020 to March 1, 2021– to protect itself against all risks that it might face, including those risks that might cause interruptions to the covered restaurant businesses and result in lost business income.

65. RWRG is comprised of food and beverage professionals who excel at operating restaurants; they are not risk assessment professionals aware of every possible catastrophe that might occur which could cause its restaurants to close; what they cared about was being covered by insurance no matter what caused their restaurants to close. In its dealings with Charter Oak, RWRG was a consumer, and what it cared about was being covered by insurance under any circumstances that might cause its restaurants to close. Charter Oak, on the other hand, is in the business of predicting catastrophes and has been aware of the potential for a COVID-19-type pandemic for at least a decade, if not longer.

66. There are many extensions of coverage in the Policy, including coverage for loss of business income with extra expense and coverage for business income from dependent property. Once triggered, the Policy pays actual losses sustained for the business income and extra expense coverage up to a per occurrence limit of \$10,150,000. The Policy also provides “civil authority” coverage and “ingress or egress” coverage if all qualifying conditions are met.

67. The Policy was not individually negotiated. The Policy’s substantive terms were set unilaterally by Charter Oak, were not subject to individual negotiation by RWRG, and were presented to RWRG on a “take it or leave it” basis, despite the hefty premiums charged. Subsequent amendments to the original terms – called endorsements – were also unilaterally imposed.

68. RWRG was never informed by Charter Oak that for the business income and extra expense coverage to apply, there would need to be visible physical damage to property. The Policy also does not say this anywhere, nor does it define the terms “loss” or “damage”.

69. To date, RWRG has paid all of the premiums required by Defendant to keep the Policy in full force, and has met all applicable conditions precedent in order to receive payment under the Policy and to recover the lost business income and extra expenses that have resulted from the Public Health Orders closing and/or severely restricting RWRG’s restaurants.

70. Shortly after its restaurants were forced to close, RWRG reported a loss of business income as of March 20, 2020, for all eight of the restaurants insured under the Policy and named in Paragraph 63.

71. On April 8, 2020, Charter Oak denied RWRG’s claim for coverage for all eight restaurants; five in Maryland, two in the District of Columbia and one in Virginia. In a cursory denial letter, Charter Oak took the position that “[b]ecause there was no direct physical loss or

damage at all scheduled locations . . . this Business Income and Extra Expense coverage does not apply to your loss.” Charter Oak also denied coverage under the Civil Authority provision and the Ingress or Egress coverage extension and invoked several policy exclusions. None of the specific restaurant locations were addressed on an individual basis; the denial letter was a blanket denial.

72. Charter Oak’s denial letter appears to be a form letter sent in response to business interruption claims arising from Public Health Orders.

73. The denial letter does not define “direct,” “physical,” “loss,” or “damage,” and the Policy does not either.

74. Charter Oak’s denial is contrary to the terms and conditions of the policy and applicable law, which give effect to plain language, construe ambiguity in favor of coverage, and narrowly construe exclusions, the applicability of which insurers have the burden of proving.

75. RWRG’s restaurants were ordered to suspend or severely curtail business due to the various Public Health Orders, which are covered causes of loss as defined in the Policy. As a result of the suspensions, RWRG has suffered the physical loss of its insured real and personal property. As such, the Policy’s coverage for losses to business income and extra expenses are triggered. The Policy’s coverages for business income from dependent property, civil authority, contract penalties, and ingress or egress are also likely triggered.

76. RWRG has suffered and will continue to suffer damages due to Charter Oak’s wrongful denial of insurance coverage, which RWRG acquired to sustain its business and protect the continued viability of the restaurants in circumstances such as these.

Causes of Action

Count I: Declaratory Judgment

77. RWRG re-alleges and incorporates by reference herein all the allegations contained in paragraphs 1 through 76.

78. RWRG purchased the Policy which provides comprehensive business insurance from Charter Oak.

79. RWRG met all or substantially all of its contractual obligations, including by paying all the premiums required by Charter Oak.

80. The Policy includes provisions that provide coverage for the direct physical loss of use of its premises and equipment as well as actual loss of business income and extra expenses sustained during the suspension of operations as a result of the loss of use and risk of physical loss.

81. Beginning in March 2020, state and local governments issued a series of Public Health Orders that severely restricted access to RWRG's business premises.

82. As a result of these Public Health Orders, RWRG lost the use of its business property and lost substantial business income as a result of the loss of the use of its business property.

83. These losses are insured losses under several provisions of RWRG's Policy, including provisions covering direct loss of property, loss of business income, extended loss of business income, and business income from dependent properties.

84. There are no applicable, enforceable exclusions or definitions in the Policy that preclude coverage for these losses.

85. Wherefore, Plaintiff seeks a declaration that its business income losses are covered and not precluded by exclusions or other limitations in the Policy.

Count II: Breach of Contract

86. RWRG re-alleges and incorporates by reference herein all the allegations contained in paragraphs 1 through 76.

87. RWRG purchased the Policy from Charter Oak to ensure against all risks (unless specifically excluded) its businesses might face. The Policy is a binding contract that is supposed to provide RWRG with comprehensive business insurance under its terms and conditions.

88. RWRG met all or substantially all of its contractual obligations, including by paying all the premiums required by Charter Oak.

89. Beginning in March 2020, state and local governments issued a series of Public Health Orders that severely restricted access to RWRG's business premises.

90. As a result of these Public Health Orders, RWRG lost the use of its business property and lost substantial business income as a result of the loss of the use of its business property.

91. These losses are insured losses under several provisions of RWRG's Policy, including provisions covering direct loss of property, loss of business income, extended loss of business income, and business income from dependent properties.

92. There are no applicable, enforceable exclusions in the Policy that preclude coverage.

93. Charter Oak breached the contract by denying comprehensive business insurance coverage to Plaintiff.

94. As a direct and proximate result of Charter Oak's denial of comprehensive business insurance coverage under the Policy, RWRG has suffered damages.

95. Wherefore, RWRG seeks a judgment that Charter Oak has breached its contract with RWRG and corresponding damages for that breach.

**Count III: Breach of the Implied Covenant
of Good Faith and Fair Dealing**

96. RWRG re-alleges and incorporates by reference herein all the allegations contained in paragraphs 1 through 76.

97. RWRG contracted with Charter Oak to provide it with a Policy containing comprehensive business insurance to ensure against all risks (unless specifically excluded) a business might face.

98. The contract was subject to implied covenants of good faith and fair dealing that all parties would act in good faith and with reasonable efforts to perform their contractual duties – both explicit and fairly implied – and not to impair the rights of other parties to receive the rights, benefits, and reasonable expectations under the contract. These included the covenants that Charter Oak would act fairly and in good faith in carrying out its contractual obligations to provide RWRG with comprehensive business insurance.

99. Charter Oak breached the implied covenant of good faith and fair dealing by:
- a. Selling an insurance policy that appears to provide liberal coverage for loss of property and lost business income, knowing that it would interpret poorly defined terms, undefined terms, and ambiguously written exclusions to deny coverage under circumstances foreseen by Charter Oak but not Plaintiff;
 - b. denying coverage for loss of property and lost business income by invoking undefined, ambiguous, and contradictory terms that are inconsistent with the plain terms and purpose of the Policy;
 - c. denying RWRG's claims without adequate investigation or inquiry, arbitrarily and capriciously, and/or with knowledge that the denial was

unreasonable under the Policy.

100. RWRG met all or substantially all of its contractual obligations, including by paying all the premiums required by Charter Oak.

101. Charter Oak's failure to act in good faith in providing comprehensive business insurance coverage to RWRG denied RWRG the full benefit of its bargain.

102. Accordingly, RWRG has been injured as a result of Charter Oak's breach of the covenant of good faith and fair dealing and is entitled to damages in an amount to be proven at trial.

103. Wherefore, RWRG seeks a judgment that Charter Oak has breached its covenant of good faith and fair dealing implied in its contract with Charter Oak and corresponding damages for that breach.

Prayer for Relief

Wherefore, Plaintiff RW Restaurant Group LLC seeks the following relief:

- a. A declaration that Plaintiff's losses are covered under the policy;
- b. Damages;
- c. Attorneys' fees and costs; and
- d. Such other relief as this Court deems just and proper.

Jury Trial Demand

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands trial by jury in this action of all issues so triable.

July 24, 2020

Respectfully submitted,

/s/ Andrew N. Friedman

Andrew N. Friedman (Bar No. 14421)

Victoria S. Nugent (Bar No. 15039)

Julie Selesnick (*pro hac vice* forthcoming)

Geoffrey Graber (*pro hac vice* forthcoming)

Eric Kafka (*pro hac vice* forthcoming)

Karina G. Puttieva (*pro hac vice* forthcoming)

Paul Stephan (*pro hac vice* forthcoming)

**COHEN MILSTEIN SELLERS & TOLL
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Attorneys for Plaintiff

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

RW Restaurant Group LLC.; 2401 Restaurant Corporation T/A Marcells; 1101 K ST LLC T/A Brasserie Beck; BecMar, LLC Mussel Bar & Grille Bethesda; RW-FRIT Wildwood Kitchen T/A Wildwood Kitchen; et al.

(b) County of Residence of First Listed Plaintiff Kensington, MD (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Andrew N. Friedman; Cohen Milstein Sellers & Toll PLLC 1100 New York Ave., Fifth Floor, Washington, DC 20005; 202-408-4600 [additional attorneys listed in complaint]

DEFENDANTS

The Charter Oak Fire Insurance Company

County of Residence of First Listed Defendant Hartford, CT (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 US Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 US Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State PTF 1 DEF 1
Citizen of Another State PTF 2 DEF 2
Citizen or Subject of a Foreign Country PTF 3 DEF 3
Incorporated or Principal Place of Business In This State PTF 4 DEF 4
Incorporated and Principal Place of Business In Another State PTF 5 DEF 5
Foreign Nation PTF 6 DEF 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. 1332

Brief description of cause: wrongful denial of insurance claim

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: X Yes O No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 07/24/2020 SIGNATURE OF ATTORNEY OF RECORD /s/ Andrew N. Friedman

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG JUDGE

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Maryland

RW Restaurant Group LLC, et al.

Plaintiff(s)

v.

The Charter Oak Fire Insurance Company

Defendant(s)

Civil Action No. 8:20-cv-2161

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) The Charter Oak Fire Insurance Company
1 Tower Square,
Hartford, CT 06183

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Andrew N. Friedman
1100 New York Ave. NW, Fifth Floor
Washington, DC 20005

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 8:20-cv-2161

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

RW Restaurant Group, LLC

*

Plaintiff,

*

v.

Case No. 8:20-cv-2161

*

The Charter Oak Fire Ins. Co.

*

Defendant.

DISCLOSURE OF CORPORATE INTEREST

Check all that apply:

I certify, as party/counsel in this case that _____
(name of party)

is not an affiliate or parent of any corporation, and no corporation, unincorporated association, partnership or other business entity, not a party to the case, has a financial interest in the outcome of this litigation as defined in Local Rule 103.3 (D. Md.).

The following corporate affiliations exist with Social Heights Restaurant, LLC D/B/A Tommy Joe's :
(name of party)

Matthew James & Associates, Inc. (member)
(names of affiliates)

The following corporations, unincorporated associations, partnerships or other business entities which are not parties may have a financial interest in the outcome of this litigation:

(names of entities with possible financial interests)

Disclosure of Corporate Interest

In a case based on diversity jurisdiction, the following is a list of all members of **Plaintiffs** _____ and their states of citizenship:

(name of LLC party)

(see attached)

(name of member)

(state of citizenship)

Note: If there are additional LLC members, please provide their names and states of citizenship on a separate sheet of paper.

7/24/2020

Date

/s/ Andrew N. Friedman

Signature

Andrew N. Friedman (Bar No. 14421)

Printed name and bar number

1100 New York Ave. NW, Fifth Floor, Washington, DC 20005

Address

afriedman@cohenmilstein.com

Email address

202-408-4600

Telephone number

202-408-4699

Fax number

RW Restaurant Group LLC

Name of Member	State of Citizenship
Robert Wiedmaier	Maryland
Vincent Browning	District of Columbia
Brian McBride	Virginia
Joseph Lively	Maryland
John Warring	Maryland

2401 Restaurant Corporation T/A Marcells

Name of Member	State of Citizenship
Robert Wiedmaier	Maryland

1101 K ST LLC T/A Brasserie Beck

Name of Member	State of Citizenship
Robert Wiedmaier	Maryland

BecMar, LLC T/A Mussel Bar & Grille Bethesda

Name of Member	State of Citizenship
Robert Wiedmaier	Maryland
Vincent Browning	District of Columbia
Tom Burke	Maryland
Brian McBride	Virginia
Joseph Lively	Maryland
John Warring	Maryland

RW-FRIT Wildwood LLC T/A Wildwood Kitchen

Name of Member	State of Citizenship
Robert Wiedmaier	Maryland

Mussel Bar Arlington LLC T/A Mussel Bar Arlington

Name of Member	State of Citizenship
Robert Wiedmaier	Maryland
Vincent Browning	District of Columbia
Brian McBride	Virginia
Joseph Lively	Maryland
John Warring	Maryland

Potomac Falls Tavern LLC D/B/A Lock 72

Name of Member	State of Citizenship
Robert Wiedmaier	Maryland
Vincent Browning	District of Columbia
Tom Burke	Maryland
Brian McBride	Virginia
Joseph Lively	Maryland
John Warring	Maryland

Social Heights Restaurant, LLC D/B/A Tommy Joe's

Name of Member	State of Citizenship
Robert Wiedmaier	Maryland
Vincent Browning	District of Columbia
Matthew James & Associates, Inc.	Maryland
Brian McBride	Virginia
Joseph Lively	Maryland
Alan Pohoryles	Maryland
John Warring	Maryland

Mussel Bar & Grille Baltimore, LLC D/B/A Keystone Korner

Name of Member	State of Citizenship
Robert Wiedmaier	Maryland
Vincent Browning	District of Columbia
Tom Burke	Maryland
Brian McBride	Virginia
Joseph Lively	Maryland
John Warring	Maryland