CIVIL DISTRICT COURT FOR THE PARISH OF

ORLEANS STATE OF LOUISIANA

NO.: DIVISION " " SECTION

CAJUN CONTI LLC, CAJUN CUISINE 1 LLC, and CAJUN CUISINE LLC d/b/a

OCEANA GRILL

VERSUS

CERTAIN UNDERWRITERS AT LLOYD'S, LONDON and GOVERNOR JOHN B.

EDWARDS IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF

LOUISIANA, and THE STATE OF LOUISIANA

FILED: _____ _____

DEPUTY CLERK

PETITION FOR DECLARATORY JUDGMENT

NOW COMES Cajun Conti, LLC, Cajun Cuisine 1, LLC, and Cajun Cuisine, LLC d/b/a Oceana Grill, plaintiffs, through undersigned counsel, who respectfully represents that:

PARTIES

1. Made plaintiffs herein is Cajun Conti, LLC, Cajun Cuisine 1, LLC, and Cajun Cuisine, LLC d/b/a Oceana Grill (hereinafter "Oceana"), who are Louisiana limited liability companies authorized to do business in the Parish of Orleans, State of Louisiana.

2. Made defendants herein are:

   A) CERTAIN UNDERWRITERS AT LLOYD'S, LONDON (hereinafter "Lloyd's") subscribing to Policy Number AVS011221002 issued to the plaintiffs for the period of June 30, 2019 through June 30, 2020;

   B) GOVERNOR JOHN B. EDWARDS IN HIS OFFICIAL CAPACITY AS GOVERNOR OF LOUISIANA; and

   C) THE STATE OF LOUISIANA.

JURISDICTION AND VENUE

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

4. Personal jurisdiction exists over Lloyd's pursuant to the Louisiana "long-arm" statute, La. R.S. 13:3201.

5. On June 30, 2019, Lloyd's entered into a contract of insurance with the plaintiffs in

Louisiana, whereby the plaintiffs paid a premium to Lloyd's for their promise to compensate the plaintiffs in the event of a covered loss. Lloyd's is transacting the business of insurance in the state of Louisiana and the basis of this suit arises out of such conduct.

6. Venue in this action is proper under La. R.S. 13:5104 as Orleans Parish is the parish in which Plaintiffs' cause of action arises.

FACTUAL BACKGROUND

7. Plaintiffs and Lloyd's entered into a contract of indemnity, whereby plaintiffs agreed to make cash payments to Lloyd's in exchange for Lloyd's promise to indemnify the plaintiffs for losses including, but not limited to, business income losses at 729, 735, 737, and 739 Conti Street, New Orleans, Louisiana, 70130 (hereinafter "insured premises"),

8. The insured premises are the location of Oceana Grill, a well-known New Orleans restaurant in the heart of the French Quarter.

9. The restaurant is open all three hundred and sixty-five days of the year between the hours of 8:00 a.m. till 1:00 a.m. with the capacity to hold approximately five (500) hundred guests.

10. The insured premises are covered under a policy issued by Lloyd's with policy number believed to be AVS011221002 (hereinafter "policy"). (*See* Lloyd's Policy No. AVS011221002 attached as Exhibit 1).

11. The policy is currently in full effect, providing property, business personal property, business income and extra expense, and ordinance or law coverage between the period of June 30, 2019 and June 30, 2020.

12. Plaintiffs faithfully paid policy premiums to Lloyd's to specifically provide all risk coverage, particularly the extension of coverage in the event of the businesses closure by order of Civil Authority.

13. An "all risk policy" is an insurance policy which covers all risks unless clearly and specifically excluded. (*Dawson Farms, L.L.C. v. Millers Mut. Fire Ins. Co.*, 34,801 (La. App. 2 Cir. 8/1/01); 794 So. 2d 949, writ denied, 803 So. 2d 34 (La. 2001)).

14. Oceana's policy is an all risk policy as it's designated as a Special Form providing that covered causes of loss means direct physical loss unless the loss is specifically excluded or limited in the policy.

15. The policy does not provide any exclusion due to losses, business or property, from a virus or global pandemic.

16. The policy has only excluded losses due to biological materials such as pathogens in

connection with terrorism or malicious use, therefore, providing coverage to other viruses or global pandemics.

17. Based on information or belief, Lloyd's has accepted the policy premiums with no intention of providing any coverage due to direct physical loss and/or from a civil authority shutdown due to a global pandemic virus.

18. A declaratory judgment determining that the coverage provided under the policy will prevent the plaintiffs from being left without vital coverage acquired to ensure the survival of their business should operations cease due to a global pandemic virus and civil authorities' response.

19. While some rogue media outlets have called the 2019-2020 Coronavirus an exaggerated mass hysteria that will unlikely create significant physical damage, the scientific community, and those personally affected by the virus, recognize the Coronavirus as a cause of real physical loss and damage.

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

21. The global pandemic is exacerbated by the fact that the deadly virus physically infects and stays on the surface of objects or materials, "fomites," for up to twenty-eight days, particularly in humid areas below eighty-four degrees.

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

23. It is clear that contamination of the insured premises by the Coronavirus would be a direct physical loss needing remediation to clean the surfaces of the establishment.

24. Similar to the Coronavirus, Louisiana Courts have interpreted that the intrusion of lead or gaseous fumes constitute a direct physical loss under insurance policies that would need to be remediated. (*Widder v. Louisiana Citizens Prop. Ins. Corp.*, 2011-0196 (La. App. 4 Cir. 8/10/11); 82 So. 3d 294, 296, writ denied, 2011-2336 (La. 12/2/11)).

25. In response to the pandemic, Governor John B. Edwards in his official capacity as Governor of Louisiana, has issued a statewide Civil Authority Order, Proclamation Number JBE 2020-27 (hereinafter "the Order"), on March 13, 2020, banning gatherings of 250 or more people in a single space at the same time where individuals will be in close proximity to each other.

26. The Order provides specific exceptions for locations "like" airports, medical facilities,

shopping centers or malls, office buildings, factories or manufacturing facilities, or grocery or department stores.

27. The Order does not specifically exempt restaurants and it is unclear if Oceana's restaurant is exempt under the Order.

28. As a Louisiana business, Oceana must comply with the Order and if they must limit the number of guests allowed in their establishment, modifications to the daily operations of the restaurant must be made to further prevent loss, which will affect the businesses performance.

29. The Mayor of New Orleans, LaToya Cantrell, issued restrictions on all full-service restaurants with seating to cease operations at 9 p.m. daily and limit their seating capacity to limit/reduce seating for up to 50% beginning on March 15, 2020.

30. It is unclear how the Governor's order and Mayor's restrictions interact and apply to Oceana, whose capacity at 50% is 250 which is the limit on the Governor's Order.

31. Even if the Order does not apply to restaurants, plaintiffs expects that more restrictive orders may occur within the next 30 days as they have occurred in other cities around the world, including New York City, New York, where restaurants have been ordered to close and are limited to takeout and food delivery only.

DECLARATORY JUDGMENT

32. Each section below containing a cause of action fully incorporates all facts and allegations set forth in each section previously set forth herein.

33. Under La. Code of Civ. Pro. §1871 the court may declare rights, status, and other legal relations whether or not further relief is or could be claimed.

34. Plaintiffs seek a Declaratory Judgment on whether the Governor's March 13, 2020 Civil Authority Order applies to restaurants whose capacity exceeds 250 people.

35. Plaintiffs also seek a Declaratory Judgment to determine whether the Governor's March 13, 2020 Order and the Mayor's March 15, 2020 restrictions trigger the civil authority provision of the policy issued to the plaintiffs.

36. Plaintiffs ask the Court to affirm that because the policy provided by Lloyd's does not contain an exclusion for a viral pandemic, the policy provides coverage to plaintiffs for any future civil authority shutdowns of restaurants in the New Orleans area due to physical loss from Coronavirus contamination and that the policy provides business income coverage in the event that the coronavirus has contaminated the insured premises.

37. Plaintiffs do not seek any determination of whether the Coronavirus is physically in the insured premises, amount of damages, or any other remedy besides the declaratory relief.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs herein, Cajun Conti LLC, Cajun Cuisine 1 LLC, and Cajun Cuisine LLC d/b/a Oceana Grill, prays that this petition be filed into the record, that defendants, Certain Underwriters at Lloyd's, London, Governor John B. Edwards in his official capacity as the Governor of the State of Louisiana, and the State of Louisiana, be cited to appear and answer same, and after due proceedings are had, there be judgment rendered in favor of plaintiffs Cajun Conti LLC, Cajun Cuisine 1 LLC, and Cajun Cuisine LLC d/b/a Oceana Grill and against defendant, Certain Underwriters at Lloyd's, London, declaring that the policy of insurance extends coverage from direct physical loss and/or from a civil authority shut-down due to a global pandemic virus, and whether defendants, Governor John B. Edwards in his official capacity as the Governor of the State of Louisiana, and the State of Louisiana, March 13, 2020 Order applies to restaurants in the State of Louisiana with patronage of over 250 guests.

Respectfully Submitted,

GAUTHIER MURPHY & HOUGHTALING LLC

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PLEASE SERVE THE ORIGINAL
PETITION FOR DECLARATORY JUDGEMENT
ON THE FOLLOWING DEFENDANTS:

CERTAIN UNDERWRITERS AT LLOYD'S, LONDON (hereinafter "Lloyd's") Subscribing to Policy Number AVS011221002
Through their agent for service of process
Louisiana Secretary of State
8585 Archives Avenue
Baton Rouge, LA 70809

Please add further instructions to the Louisiana Secretary of State:
Per the policy, the insurer designated Sarah Mims, General Counsel, 505 Eagleview Blvd, Ste. 100, Exton, PA 19341-1120, as it's agent in Louisiana to whom such process shall be forwarded by the Secretary of State.

THE STATE OF LOUISIANA
through
The Louisiana Attorney General
Jeff Landry
1885 N. Third Street
Baton Rouge, Louisiana 70802

GOVERNOR JOHN B. EDWARDS
Through
Executive Office of the State of Louisiana, Executive Department
1001 N. 23rd Street, Ste. 268
Baton Rouge, Louisiana 70802

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