

1 **GIBSON, DUNN & CRUTCHER LLP**
 2 THEODORE J. BOUTROUS JR., SBN 132099
 3 tboutrous@gibsondunn.com
 4 RICHARD J. DOREN, SBN 124666
 5 rdoren@gibsondunn.com
 6 DEBORAH L. STEIN, SBN 224570
 7 dstein@gibsondunn.com
 8 333 South Grand Avenue
 9 Los Angeles, CA 90071-3197
 10 Tel.: 213.229.7000
 11 Fac.: 213.229.7520

7 **ROBINSON & COLE LLP**
 8 STEPHEN E. GOLDMAN
 9 sgoldman@rc.com
 10 WYSTAN M. ACKERMAN
 11 wackerman@rc.com

12 *Motions for pro hac vice admission forthcoming*
 13 280 Trumbull Street
 14 Hartford, CT 06103
 15 Tel.: 860.275.8200
 16 Fac.: 860.275.8299

17 Attorneys for Plaintiff Travelers Casualty
 18 Insurance Company of America

19 UNITED STATES DISTRICT COURT
 20 CENTRAL DISTRICT OF CALIFORNIA

21 TRAVELERS CASUALTY
 22 INSURANCE COMPANY OF
 23 AMERICA,

24 Plaintiff,

25 v.

26 GERAGOS & GERAGOS, A
 27 PROFESSIONAL CORPORATION,

28 Defendant.

CASE NO. 2:20-cv-03619

**COMPLAINT FOR DECLARATORY
 JUDGMENT AND DEMAND FOR
 JURY TRIAL**

1 Plaintiff Travelers Casualty Insurance Company of America (“Travelers”)
2 alleges as follows:

3 **Nature of the Action**

4 1. Travelers brings this action for a declaratory judgment under two business
5 owners insurance policies that Travelers issued to Defendant Geragos & Geragos, A
6 Professional Corporation (“G&G”) (the “Policies”). Travelers seeks a declaration that
7 it has no obligation under the Policies for G&G’s claimed losses of business income
8 related to the worldwide pandemic caused by the virus SARS-CoV-2 (the “COVID-19
9 Pandemic”). Certified copies of the Policies are attached as Exhibits A and B hereto.

10 2. Travelers understands that the COVID-19 Pandemic has affected the
11 public and the vast majority of businesses throughout the country (and world) in
12 unprecedented ways. But these challenging and unfortunate circumstances do not
13 create insurance coverage for losses that fall outside the terms of a policyholder’s
14 insurance contract.

15 3. Here, G&G claims that it lost revenues because of stay-at-home orders
16 and court closures. While Travelers is taking many steps to support its customers
17 during this challenging time, G&G did not purchase insurance for the losses that G&G
18 now claims. Even without reference to their exclusions, the Policies require “direct
19 physical loss or damage” to property, and the presence or suspected presence of a virus
20 does not constitute the requisite “direct physical loss or damage.”

21 4. Moreover, the Policies have very specific exclusions stating that losses
22 resulting from a virus or bacteria, including business income losses, are not covered.
23 Specifically, the Policies exclude coverage for “loss or damage caused by or resulting
24 from any virus, bacterium or other microorganism that induces or is capable of
25 inducing physical distress, illness or disease,” and make clear that this exclusion
26 applies to “forms or endorsements that cover business income, extra expense, rental
27 value or action of civil authority.” There can be no doubt that the SARS-CoV-2 virus
28

1 is capable of inducing physical distress, illness or disease. Under the plain terms of the
2 Policies, the COVID-19 Pandemic is not a “covered cause of loss.”

3 5. For these and other reasons, the Policies do not afford coverage for
4 G&G’s claimed loss of income.

5 **Parties**

6 6. Plaintiff Travelers is a corporation incorporated under the laws of
7 Connecticut with its principal place of business in Hartford, Connecticut.

8 7. Defendant G&G is a law firm and professional corporation incorporated
9 under the laws of California with its principal place of business in Los Angeles,
10 California. Its California offices are located at 644 South Figueroa Street, Los
11 Angeles, California 90017, the premises described under one of the Policies. *See*
12 Exhibit A. G&G is registered with the New York State Department of State as a
13 foreign professional corporation, and has offices at West 24th Street, New York, New
14 York, which is the described premises under the second of the Policies. *See* Exhibit B.

15 **Jurisdiction and Venue**

16 8. This Court has subject matter jurisdiction over this action pursuant to 28
17 U.S.C. § 1332 because the parties are citizens of different states and the amount in
18 controversy exceeds \$75,000, exclusive of interest and costs. Travelers is a citizen of
19 Connecticut, and G&G is a citizen of California. Based on information provided by
20 G&G to Travelers in connection with the underwriting of its policies, G&G has annual
21 revenues in excess of \$3 million and is claiming lost business income (and rent from a
22 tenant) for more than 30 days. This Court has personal jurisdiction over G&G because
23 it is incorporated in California, has its principal place of business in Los Angeles, and
24 the losses of business income claimed by G&G include losses arising out of the
25 suspension or limitation of operations of the Los Angeles office of G&G.

26 9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1) and (2)
27 and § 1391(c)(2) and (d) because G&G is deemed to reside in this District, where there
28

1 is personal jurisdiction over G&G, and a substantial part of the events or omissions
2 giving rise to the claim occurred in this District.

3 **Facts**

4 10. Travelers issued the Policies to G&G for the policy period of December
5 16, 2019 to December 16, 2020.

6 11. In or about late 2019, a novel coronavirus was first identified in Wuhan,
7 China. Scientists have named that virus SARS-CoV-2, and have named the disease
8 caused by that virus COVID-19.

9 12. SARS-CoV-2 induces or is capable of inducing physical distress, illness
10 or disease, namely COVID-19.

11 13. On or about April 1, 2020, G&G's insurance broker, Jane Gray, contacted
12 Travelers and reported claims for loss of business income related to the COVID-19
13 Pandemic. The broker advised that G&G closed its business in light of directives
14 issued by government officials in California and New York (the "Governmental
15 Orders"), and was suffering an ongoing loss of business income as a result of closing
16 its law firm's physical offices. At the same time, the broker advised Travelers that
17 Mark Geragos, the chief executive officer of G&G, was "busy on cases" and difficult
18 to reach.

19 14. On or about April 7, 2020, a Travelers claim professional spoke with Mr.
20 Geragos. Mr. Geragos asserted that SARS-CoV-2 purportedly causes physical damage
21 because other countries impacted by the COVID-19 Pandemic have fumigated public
22 spaces, and scientists have found that SARS-CoV-2 is detectable in aerosols and on
23 certain surfaces for particular periods of time. Mr. Geragos further asserted that he
24 was claiming loss of business income due to the Governmental Orders and courts
25 being closed. With respect to the New York office, Mr. Geragos stated that he was
26 claiming loss of rent because G&G also has a tenant in the building. The Travelers
27 claim professional advised Mr. Geragos that a virus is not a covered peril under the
28 Policies.

action must be due to direct physical loss of or damage to property at locations, other than described premises, that are within 100 miles of the described premises, caused by or resulting from a Covered Cause of Loss.

- (2) The coverage for Business Income will begin 24 hours after the time of that action and will apply for a period of three consecutive weeks after coverage begins.

(Ex. A at 91 (underscores added); Ex. B at 291 (same).)

18. The Policies include a Coverage Extension entitled Business Income and Extra Expense From Dependent Property, which provides, in pertinent part, as follows:

d. Business Income and Extra Expense From Dependent Property

- (1) When the Declarations show that you have coverage for Business Income and Extra Expense, you may extend that insurance to apply to the actual loss of Business Income you sustain and reasonable and necessary Extra Expense you incur due to the “suspension” of your “operations” during the “period of restoration”. The “suspension” must be caused by direct physical loss or damage at the premises of a Dependent Property, caused by or resulting from a Covered Cause of Loss.

- (2) Dependent Property means property operated by others whom you depend on to:

- (a) Deliver materials or services (other than “water supply services,” “communication supply services” or “power supply services”) to you, or to others for your account (Contributing Locations);
- (b) Accept your products or services (Recipient Locations);
- (c) Manufacture products for delivery to your customers under contract for sale (Manufacturing Locations); or
- (d) Attract customers to your business (Leader Locations).

...

- (6) The most we will pay for Business Income and Extra Expense under this Coverage Extension in any one occurrence is \$10,000, regardless of the number of described premises or number of Dependent Properties involved.

(Ex. A at 89-90 (underscore added); Ex. B at 289-90 (same).)

19. The Policies provide as follows with respect to Covered Causes of Loss:

4. Covered Causes of Loss

RISKS OF DIRECT PHYSICAL LOSS unless the loss is:

- a. Limited in Paragraph **A.5.**, Limitations; or
- b. Excluded in Paragraph **B.**, Exclusions.

(Ex. A at 79-80; Ex. B at 279-80.)

20. The Policies contain an endorsement entitled “EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA,” which provides, in pertinent part, as follows:

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART

...

- A.** The exclusion set forth in Paragraph **B.** applies to all coverage under all forms and endorsements that comprise this Coverage Part or Policy, including but not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense, rental value or action of civil authority.
- B.** We will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.

(Ex. A at 195 (underscores added); Ex. B at 396 (materially same).)

21. The Policies contain the following exclusion:

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. These exclusions apply whether or not the loss event results in widespread damage or affects a substantial area.

a. Ordinance or Law

- (1) The enforcement of any ordinance or law:
 - (a) Regulating the construction, use or repair of any property; or
 - (b) Requiring the tearing down of any property, including the cost of removing the debris.
- (2) 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;

(Ex. A at 98 (underscores added); Ex. B at 298 (same).)

1 22. The Policies contain the following exclusions:

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

4 ...

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

6 ...

7 **d.**

8 ...

(8) Contamination by other than “pollutants”.

9 3. We will not pay for loss or damage caused by or resulting from any
10 of the following under Paragraphs **a.** through **c.** But if an excluded
11 cause of loss that is listed in Paragraphs **a.** and **b.** below results in a
12 Covered Cause of Loss, we will pay for the resulting loss or damage
13 caused by that Covered Cause of Loss.

14 ...

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

17 (Ex. A at 100-02; Ex. B at 300-02.)

18 **Application of the Policies to G&G’s Claims:**
19 **The Claims Do Not Fall Within the Policies’ Grants of Coverage**

20 23. There is no coverage for G&G’s claimed losses of business income under
21 the Business Income provision quoted in Paragraph 16 above because any suspension
22 of G&G’s operations was not “caused by direct physical loss of or damage to property
23 at the described premises.” (Ex. A at 78-79; Ex. B at 278-79.) In addition, the
24 presence of SARS-CoV-2 on a surface would not cause physical damage to that
25 surface.

26 24. Moreover, there can be no coverage for G&G’s claimed losses of business
27 income under the Business Income provision because the COVID-19 Pandemic is not
28 a Covered Cause of Loss.

 25. There is no coverage for G&G’s claimed losses of business income under
 the Civil Authority provision quoted in Paragraph 17 above because the Governmental

1 Orders were not “due to direct physical loss of or damage to property at locations,
2 other than described premises, that are within 100 miles of the described premises.”
3 (Ex. A at 91; Ex. B at 291.) The presence of SARS-CoV-2 on a surface would not
4 cause physical damage to that surface. And, again, the COVID-19 Pandemic is not a
5 Covered Cause of Loss, vitiating any possible coverage. Moreover, the Government
6 Orders do not prohibit all access to G&G’s premises.

7 26. There is no coverage for G&G’s claimed losses of business income under
8 the Business Income and Extra Expense From Dependent Property provision quoted in
9 Paragraph 18 above because any suspension of G&G’s operations was not “caused by
10 direct physical loss or damage at the premises of a Dependent Property” within the
11 meaning of the Policies. Any temporary closure or limitation of operations of courts in
12 which G&G conducts litigation was the result of governmental actions taken to slow
13 the spread of the COVID-19 Pandemic, not the result of direct physical loss or damage
14 at the premises of a Dependent Property. In addition, the presence of SARS-CoV-2 on
15 a surface would not cause physical damage to that surface. Moreover, the COVID-19
16 Pandemic is not a Covered Cause of Loss.

17 **Application of the Policies to G&G’s Claims: Several Exclusions Bar Coverage**

18 27. Moreover, even if there were the requisite “direct physical loss of or
19 damage to property at the described premises,” “direct physical loss of or damage to
20 property at locations, other than described premises, that are within 100 miles of the
21 described premises” or “direct physical loss or damage at the premises of a Dependent
22 Property,” any such direct physical loss or damage would not be caused by a Covered
23 Cause of Loss, based on the “EXCLUSION OF LOSS DUE TO VIRUS OR
24 BACTERIA” quoted in Paragraph 20 above. This provision excludes “loss or damage
25 caused by or resulting from any virus, bacterium or other microorganism that induces
26 or is capable of inducing physical distress, illness or disease.” SARS-CoV-2 is a virus
27 that induces or is capable of inducing physical distress, illness or disease.

28

1 28. G&G's claimed losses of business income are also excluded, to the extent
2 applicable, by the exclusions referenced in Paragraphs 21 and 22 above.

3 **COUNT ONE**

4 **(Declaratory Judgment Pursuant to 28 U.S.C. § 2201)**

5 29. Travelers repeats and re-alleges the allegations contained in Paragraphs 1
6 through 28 above, as if fully set forth herein.

7 30. G&G has made claims for and requested that Travelers provide coverage
8 under the Policies for claimed business income losses related to the COVID-19
9 Pandemic.

10 31. Travelers has denied coverage for the claims made by G&G.

11 32. An actual controversy has arisen as to whether, under the terms,
12 conditions, exclusions and limitations of the Policies, Travelers has an obligation to
13 provide coverage for the losses claimed by G&G.

14 33. Pursuant to 28 U.S.C. § 2201, Travelers is entitled to a declaration that,
15 under the Policies, it has no obligation to provide coverage for the losses claimed by
16 G&G.

17 **REQUESTS FOR RELIEF**

18 WHEREFORE, Travelers respectfully requests that the Court grant it the
19 following relief:

- 20 A. Enter a declaratory judgment that the Policies do not provide coverage for
21 the losses claimed by G&G; and
22 B. Grant such other relief as this Court deems just and appropriate.

23 Dated: April 20, 2020

GIBSON, DUNN & CRUTCHER LLP

24 By: /s/ Theodore J. Boutrous, Jr.

Theodore J. Boutrous Jr., SBN 132099

tboutrous@gibsondunn.com

25 Richard J. Doren, SBN 124666

rdoren@gibsondunn.com

26 Deborah L. Stein, SBN 224570

dstein@gibsondunn.com
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

333 South Grand Avenue
Los Angeles, CA 90071-3197
Tel.: 213.229.7000
Fac.: 213.229.7520

ROBINSON & COLE LLP
Stephen E. Goldman (*pro hac vice* forthcoming)
sgoldman@rc.com
Wystan M. Ackerman (*pro hac vice* forthcoming)
wackerman@rc.com

280 Trumbull Street
Hartford, CT 06103
Tel.: 860.275.8200
Fac.: 860.275.8299

*Attorneys for Plaintiff Travelers Casualty
Insurance Company of America*

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury on all issues so triable.

Dated: April 20, 2020

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Theodore J. Boutrous, Jr.

Theodore J. Boutrous Jr., SBN 132099

tboutrous@gibsondunn.com

Richard J. Doren, SBN 124666

rdoren@gibsondunn.com

Deborah L. Stein, SBN 224570

dstein@gibsondunn.com

333 South Grand Avenue

Los Angeles, CA 90071-3197

Tel.: 213.229.7000

Fac.: 213.229.7520

ROBINSON & COLE LLP

Stephen E. Goldman (*pro hac vice* forthcoming)

sgoldman@rc.com

Wystan M. Ackerman (*pro hac vice* forthcoming)

wackerman@rc.com

280 Trumbull Street

Hartford, CT 06103

Tel.: 860.275.8200

Fac.: 860.275.8299

Attorneys for Plaintiff Travelers Casualty

Insurance Company of America