

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIS OF ARIZONA, INC.; and
WILLIS TOWERS WATSON
INSURANCE SERVICES WEST,
INC.,

Appellants,

v.

HAKKASAN USA, INC.,

Respondent.

Supreme Court Case No.: 82829

District Court Case No.: A-20-816145-B

Electronically Filed
May 27 2021 08:35 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appeal from Eighth Judicial District Court, State of Nevada, County of Clark
The Honorable Elizabeth Gonzalez, District Judge

DOCKETING STATEMENT – CIVIL APPEALS

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*Attorneys for Willis of Arizona, Inc. and
Willis Towers Watson Insurance Services West, Inc.*

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

Appellants acknowledge that this statement must be completed fully, accurately and on time pursuant to NRAP 14(c); that the Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate; and that failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement.

Appellants further acknowledge that this Court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools*

v. *Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Appellants have used dividers to separate any attached documents.

1. Judicial District: Eighth Department: XI
County: Clark Judge: Elizabeth Gonzalez
District Ct. Docket No.: A-20-816145-B

2. Attorney(s) filing this docket statement:

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Washington, DC 20005

Client(s):

Hakkasan USA, Inc.

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | X Other disposition (specify): |

The Order re: Willis Defendants' Motion to Strike Jury Demand as to Its Claims Against the Willis Defendants or, in the Alternative, to Compel Arbitration (the "Order") involves a denial of a motion to compel arbitration and is appealable in accordance with NRS 38.247(1)(a).

5. Does this appeal raise issues concerning any of the following: N/A

- ☐ Child custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal: **WILLIS OF ARIZONA, INC.; and WILLIS TOWERS WATSON INSURANCE SERVICES WEST, INC.,**

Petitioners, v. EIGHTH JUDICIAL DISTRICT COURT, Nevada Supreme Court Case Number 82833.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their disposition: **N/A**

8. Nature of the action. Briefly describe the nature of the action and the result below:

This appeal and Case No. 82833 arise out of the same order in the same district court case interpreting the same dispute resolution provision. In the underlying action, Respondent Hakkasan USA, Inc. (“Hakkasan”) alleges that it “contracted with Willis to provide [insurance] brokerage and claims-handling services” and that Petitioners Willis of Arizona, Inc. and Willis Towers Watson Insurance Services West, Inc. (collectively, “Willis”) engaged in conduct that was, among other things, “in breach of contract” by allegedly notifying Hakkasan’s insurer, prematurely, of an impending COVID-19-related insurance claim. Hakkasan has demanded a jury trial as to all claims reviewable by jury in the district court action.

The claims asserted by Hakkasan against Willis are governed by Willis’s “Brokerage Terms, Conditions & Disclosures” (the “T&Cs”), which set forth the terms governing Willis’s relationship with Hakkasan. The T&Cs are referenced in the Proposal’s Table of Contents and the Proposal expressly provides that “This

proposal is presented in conjunction with the Brokerage Terms, Conditions & Disclosures for US Property & Casualty Retail Accounts which is enclosed.” The introductory sentence of the T&Cs, just below the document’s heading, states that *“Your decision to purchase insurance coverages, products, and/or services through Willis Towers Watson is subject to the following terms and conditions.”*

The T&Cs contain a mandatory “Dispute Resolution” provision that provides:

The parties agree to work in good faith to resolve **any disputes arising out of or in connection with the services provided under these Terms, Conditions & Disclosures.** If a dispute cannot be resolved it will be submitted to non-binding mediation to be conducted by Judicial Arbitration and Mediation Services (JAMS) before either party pursues other remedies hereunder. If the mediation does not resolve the dispute and a party or both parties wish to pursue other remedies, the parties agree that their legal dispute will be resolved without a jury trial and agree not to request or demand a jury trial. To the fullest extent permitted by applicable law, **the parties hereby irrevocably waive any right they may have to demand a jury trial.**

The Dispute Resolution further provides:

To the extent the foregoing jury trial waiver is not enforceable under the governing law, . . . any dispute arising out of or in connection with [the T&Cs] which the parties are unable to resolve between themselves or through mediation as provided above, **will be resolved by binding arbitration in the state** . . . , or other mutually agreed location, before a panel of three arbitrators in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Under these circumstances, the arbitration proceeding will be the sole and exclusive means for resolving any dispute between

the parties[.]

As a result, to the extent the jury trial waiver is not enforceable, Willis is nevertheless entitled to have Hakkasan's claims heard in arbitration in Nevada.

On February 11, 2021, Willis filed its Motion To Strike Plaintiff's Jury Demand As To Its Claims Against The Willis Defendants Or, In The Alternative, To Compel Arbitration (the "Motion to Strike"). After briefing was completed, the district court did not hold a hearing and entered a minute order denying the Motion to Strike, stating that "[i]ssues related to the proposal are distinct with those which remain at issue in this matter." Subsequently, the district court executed an Order denying the Motion to Strike holding that "Hakkasan's present claims against Willis for civil conspiracy, constructive fraud, negligence, and intentional interference with contractual relations are outside the scope of the Dispute Resolution clause in Section 1.13 of the T&Cs." For the same reason, the district court refused to compel arbitration between Hakkasan and Willis.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

(1) Whether the lower court erred, as a matter of law, by concluding that Hakkasan's claims against Willis were not governed by the T&Cs after it had previously enforced the same provision against Hakkasan to compel mediation between the parties.

(2) Whether the lower court erred, as a matter of law, by refusing to strike Hakksan's demand for jury trial against Willis.

(3) Whether the lower court erred, as a matter of law, by failing to compel arbitration of all claims asserted against Willis after refusing to strike Hakkansan's demand for jury trial against Willis.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issues raised: **WILLIS OF ARIZONA, INC.; and WILLIS TOWERS WATSON INSURANCE SERVICES WEST, INC., Petitioners, v. EIGHTH JUDICIAL DISTRICT COURT, Nevada Supreme Court Case Number 82833.**

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☐ Yes

☒ No

If not, explain: The appropriate state, state agency, or any officer or employee thereof are parties to this appeal.

12. Other issues. Does this appeal involve any of the following issues?

- ☐ Reversal of well-settled Nevada precedent (on an attachment, identify the case(s))
- ☐ An issue arising under the United States and/or Nevada Constitutions
- ☐ A substantial issue of first-impression
- ☐ An issue of public policy
- ☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
- ☐ A ballot question

If so, explain: **N/A**

13. Assignment to the Court of Appeals or retention in the Supreme Court.

Briefly set forth whether the matter should be presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellants believe that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstances(s) that warrants retaining the case, and include an explanation of their importance or significance:

This case should be retained by the Supreme Court because this matter is a business court case and thus falls into one of the categories of cases to be retained by the Supreme Court pursuant to NRAP 17(a), namely NRAP 17(a)(9).

14. Trial. If this action proceeded to trial, how many days did the trial last? **N/A**

Was it a bench trial or a jury trial? **N/A**

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/her from participation in this appeal? **No.**

If so, which Justice? **N/A**

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from:

The order appealed from was entered on March 26, 2021.

If no written judgment or order was filed in the district court, explain the basis for seeking appellant review: **N/A**

17. Date written notice of entry of judgment or order served: April 14, 2021.

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post judgment motion (NRCP 50(b), 52(b), or 59)

The time for filing the notice of appeal was not tolled by a post judgment motion.

(a) Specify the type of motion, and the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing: **N/A**

☐ NRCP 52(b) Date of filing: **N/A**

☐ NRCP 59 Date of filing: **N/A**

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 125 Nev. Adv. Op. No. 61, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion: N/A

(c) Date of written notice of entry of order resolving tolling motion was served: N/A

Was service by:

☐ Delivery

☐ Mail/electronic/fax

19. Date notice of appeal was filed: April 23, 2021.

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal: N/A

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other. NRAP 4(a)(1) provides that “a notice of appeal must be filed after entry of a written judgment or order, and no later than 30 days after the date that written notice of entry of the judgment or order appealed from is served.”

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

☐ NRAP 3A(b)(1) ☐ N R S 38.205

☐ NRAP 3A(b)(2) ☐ N R S 233B.150

☐ NRAP 3A(b)(3) ☐ N R S 703.376

X Other (specify): NRS 38.247(1)(a)

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRS 38.247(1)(a) allows for an appeal of any order denying a motion to compel arbitration. The Order re: Willis Defendants' Motion to Strike Jury Demand as to Its Claims Against the Willis Defendants or, in the Alternative, to Compel Arbitration involves a denial of a motion to compel arbitration and is appealable in accordance with NRS 38.247(1)(a).

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Plaintiff: Hakkasan USA, Inc.

Defendants: Endurance American Specialty Insurance Company; Sampo International Holdings, LTD.; Willis of Arizona, Inc.; and Willis Towers Watson Insurance Services West, Inc.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other: All the parties from the district court are parties to this appeal. **N/A**

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims, and the date of formal disposition of each claim.

Respondent's Claims: Declaratory Relief against Sampo; Violation of NRS 686A.310 "Nevada Unfair Claims Practices Act" against Sampo; Breach of Contract against Sampo; Contractual Breach of the Implied Covenant of Good Faith and Fair Dealing against Sampo; Tortious Breach of the Implied Covenant of Good Faith

and Fair Dealing against Sompo; Civil Conspiracy against Sompo and Willis; Constructive Fraud against Sompo and Willis; Negligence against Willis; and, Intentional Interference with Contractual Relations against Willis.

Appellants' Counterclaims: None

Counterclaims by other parties: Endurance American Specialty Insurance Company has filed a counterclaim against Hakkasan for Declaratory Relief and Reformation.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☐ Yes

X No

25. If you answered "No" to question 24, complete the following: N/A

(a) Specify the claims remaining pending below: All claims remain pending as no claims have been dismissed.

(b) Specify the parties remaining below: All parties remain as no parties have been dismissed.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

X No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

26. If you answered “No” to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)): **The order is independently appealable under NRS 38.257.**

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims:

See attached **Exhibit 1 - Amended Complaint** and **Exhibit 2 - Endurance American Specialty Insurance Company’s Counter-Claim.**

- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal: **N/A**

- Any other order challenged on appeal: **N/A**

- Notices of entry for each attached order:

Exhibit 3 – *See* Order re: Willis Defendants’ Motion to Strike Jury Demand as to Its Claims Against the Willis Defendants or, in the Alternative, to Compel Arbitration.

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VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Willis of Arizona, Inc. and Willis Towers
Watson Insurance Services West Inc.
Name of Appellant

Patrick J. Reilly, Esq.
Name of counsel of record

May 27, 2021
Date

/s/ Patrick J. Reilly
Signature of counsel of record

State of Nevada; County of Clark
State and county where signed

CERTIFICATE OF SERVICE

Pursuant to Nevada Rule of Appellate Procedure 25(b), I certify that I am an employee of BROWNSTEIN HYATT FARBER SCHRECK, LLP, and that the foregoing **DOCKETING STATEMENT – CIVIL APPEALS** was served by submitting electronically for filing and/or service with Supreme Court of Nevada's EFlex Filing system and serving all parties with an email address on record, as indicated below, pursuant to Rule 8 of the N.E.F.C.R. on the 27th day of May, 2021, to the addresses shown below:

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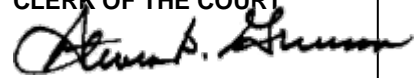
*Attorneys for Sompo International Holdings Ltd. and
Endurance American Specialty Insurance Company*

/s/ Mary Barnes

An employee of Brownstein Hyatt Farber Schreck,
LLP

Exhibit 1

(Amended Complaint)



ACOM

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Attorneys for Plaintiff

HAKKASAN USA, INC.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

HAKKASAN USA INC., a Delaware Corporation,

Plaintiff,

vs.

ENDURANCE AMERICAN SPECIALTY

INSURANCE COMPANY, a Delaware

Corporation;

SOMPO INTERNATIONAL HOLDINGS, LTD., a

Bermuda Corporation;

WILLIS OF ARIZONA, INC., an Arizona

Corporation; and WILLIS TOWERS WATSON

INSURANCE SERVICES WEST, INC., a

California Corporation,

Defendants.

Case No. A-20-816145-B

Dept. No. XI

**AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL**

**Exempt from Arbitration:
Declaratory Relief Sought and
Amount in Controversy Greater
Than \$50,000**

**Business Court Requested – EDCR 1.61 –
Business Tort Claims/Enhanced Case
Management**

1 Plaintiff Hakkasan USA Inc. (“Hakkasan”) complains of Defendants Endurance American
2 Specialty Insurance Company (“Endurance”), and Sompo International Holdings, Ltd.
3 (collectively with Endurance, “Sompo”), Willis of Arizona, Inc. and its successor-in-interest
4 Willis Towers Watson Insurance Services West, Inc. (collectively, “Willis”), and alleges as
5 follows:

6 **NATURE OF THIS ACTION AND RELIEF SOUGHT**

7 1. Plaintiff Hakkasan is associated with Hakkasan Group, a worldwide hospitality
8 company that operates a diverse collection of restaurant, nightlife, and daylife brands, including
9 seven high-end establishments located in Las Vegas, Nevada.

10 2. Defendant Sompo is a sophisticated insurance company, is familiar with and
11 understands the needs and businesses of its corporate insureds, and holds itself out as an insurer
12 that provides expeditious and equitable claims handling. In the words of its website:

13 We deliver:

- 14 • Fair and appropriate outcomes for our insureds
- 15 • Efficient service, timely responses and fast payment of agreed claims
- 16 • Value-added expertise from product and industry specialists
- 17 • We are trusted advisors to our clients, bringing knowledge of the nuances of
- 18 each particular jurisdiction.

19 [<https://www.sompo-intl.com/services/insurance-claims/>]

20 3. Sompo sold Hakkasan a \$350,000,000 per occurrence Commercial Property
21 Surplus Lines insurance policy (the “Policy”). The primary purpose of the Policy was to provide,
22 among other benefits, protection against risk of losses to Hakkasan’s U.S. locations.

23 4. Willis acted as Hakkasan’s insurance broker in respect to negotiating the terms of
24 the Policy, preparing insurance proposals for the Policy and other competing options, procuring
25 the Policy, and facilitating and advising about claims under the Policy.

26 5. The Policy specifically insures against, among other things, losses resulting from
27 “the cancellation of, and/or inability to accept bookings or reservations for accommodation,
28 receive admissions, and/or interference with the business at any insured location” as a result of

1 “contagious or infectious disease (including decontamination and clean up costs),” and/or
2 “outbreak of a contagious and/or infectious disease” within five miles of any insured location.
3 The Policy also covers losses incurred due to the “closing of the whole or part of the premises of
4 the Insured either by the Insured or by order of a Public Authority consequent upon the existence
5 or threat of hazardous conditions either actual or suspected at an insured location . . .”

6 6. Hakkasan’s venues around the country were suffering extensive business income
7 and other losses as early as February 2020 due to COVID-19 and the travel restrictions and health
8 and safety measures that started to take place at that time. Subsequently, the government-
9 mandated closures of all non-essential businesses in all jurisdictions in which Hakkasan’s venues
10 are located resulted in the full cessation of its operations at the venues and significant business
11 income losses expressly covered by the Policy.

12 7. Hakkasan timely and appropriately notified Willis regarding its losses and its intent
13 to submit a claim to Sompo and requested Willis prepare and submit the claim.

14 8. Specifically, Hakkasan requested Sompo cover those losses and the ongoing losses
15 under all available terms of the Policy including its Special Time Element – Cancellation
16 Coverage (the “Claim”).

17 9. But instead of considering the interests of Hakkasan, Sompo conspired with Willis
18 in an attempt to issue a back-dated endorsement¹ to the Policy (the “Endorsement”) *after*
19 Hakkasan’s losses began and after Hakkasan had already notified Willis of its losses and its
20 Claim.

21 10. The backdated endorsement—submitted to Willis without Hakkasan’s knowledge
22 or consent—purported to reduce the limits of insurance for the Claim from the full Policy limits of
23 \$350,000,000 per occurrence to a sublimit of \$1,500,000.

24 11. Sompo and Willis further conspired to fraudulently conceal the circumstances upon
25 which the backdated endorsement was created in order to induce Hakkasan to accept a lower limit
26 and settlement than it would otherwise be entitled to under the Policy.

28 ¹ Hakkasan denies that the Endorsement was validly issued or that it is a part of the Policy.

12. By their actions, Willis and Sompco have sought to deprive Hakkasan of the financial security and protection that were the primary reasons for Hakkasan's purchase of the Policy.

13. Instead of honoring its duties, Sompo has improperly refused to cover and refused to agree to cover Hakkasan for any of its losses over \$1,500,000, even though (a) Sompo acknowledges that the Policy provides coverage for the Claim at issue; (b) the Policy provides “per occurrence” limits; and (c) the applicable Policy limits are \$350,000,000 per occurrence.

14. Willis's and Sompo's conduct is in breach of contract, in violation of applicable insurance statutes and standards of care, is contrary to the duty of good faith and fair dealing owed to Hakkasan, and constitutes a civil conspiracy, fraud, and the intentional interference with contractual relations.

THE PARTIES

15. Plaintiff Hakkasan USA Inc., is a corporation organized under the laws of Delaware, with its principal place of business located at 6385 S. Rainbow Blvd, Las Vegas, Nevada 89118.

16. Plaintiff is informed and believes, and based thereon alleges, that Defendant Endurance American Specialty Insurance Company is incorporated in Delaware with its principal place of business in New York, New York and conducts business in Nevada.

17. Plaintiff is informed and believes, and based thereon alleges, that Defendant Somp International Holdings, Ltd. is a Bermuda-based foreign insurer.

18. Plaintiff is informed and believes, and based thereon alleges, that Sompo International Holdings, Ltd. exerts authority and control over Endurance American Specialty Insurance Company, and that Endurance American Specialty Insurance Company acts as an agent for Sompo International Holdings, Ltd. in selling insurance and handling claims.

1 19. “Sompo” is defined herein to collectively refer to Defendants Endurance American
2 Specialty Insurance Company (“Endurance”), and Sompo International Holdings, Ltd (“SIH”).
3 Claims against “Sompo” include both entities.²

4 20. Plaintiff is informed and believes, and based thereon alleges, that Defendant Willis
5 of Arizona, Inc. was incorporated in Arizona and previously conducted business in Nevada.

6 21. Plaintiff is informed and believes, and based thereon alleges, that in December
7 2019, Defendant Willis Towers Watson Insurance Services West, Inc. merged with and succeeded
8 to the interests of Willis of Arizona, Inc.

9 22. “Willis” is defined herein to collectively refer to Defendants Willis of Arizona,
10 Inc., and Willis Towers Watson Insurance Services West, Inc. Claims against “Willis” include
11 both entities.

12 23. Plaintiff is informed and believes, and based thereon alleges, that Defendant Willis
13 Towers Watson Insurance Services West, Inc. is incorporated and maintains its principal place of
14 business in California and conducts business in Nevada.

15 **JURISDICTION AND VENUE**

16 24. This Court possesses subject matter jurisdiction over this matter in respect to
17 Defendants Endurance and SIH because Clark County, Nevada is the judicial district in which the
18 Policy was issued to a Nevada insured.

19 25. Venue in Clark County is appropriate under NRS 13.010 in respect to Defendants
20 Endurance and SIH because Clark County, Nevada is the judicial district in which the Policy was
21 issued to a Nevada insured.

22 26. This Court possesses subject matter jurisdiction over this matter in respect to
23 Defendant Willis because Clark County, Nevada is the judicial district in which Willis’s brokerage
24 and claims handling services were performed for the benefit of a Nevada-based organization.

25 ² Both Sompo International Holdings, Ltd. and Endurance American Specialty Insurance
26 Company operate under the trade name “Sompo International.” Due to this ambiguity, knowledge
27 regarding which specific entity performed which specific acts alleged herein are within the
28 defendant’s knowledge. The Court has ordered jurisdictional discovery regarding these matters to
take place and this Complaint will be further amended if necessary when Hakkasan is able to
determine the specific role of each entity with greater specificity.

27. Venue in Clark County is appropriate under NRS 13.010 in respect to Defendant Willis because Clark County, Nevada is the judicial district in which Willis's brokerage and claims handling services were contracted to be performed and were performed for the benefit of a Nevada-based organization.

28. Defendants are subject to personal jurisdiction in Nevada under Nev. Rev. Stat. § 14.065 and because Clark County, Nevada is also the location where a substantial part of the events or omissions giving rise to the claims set forth herein occurred and where a substantial part of the losses underlying the Claim occurred.

29. Defendants are also subject to jurisdiction in Nevada because they committed tortious acts within this State aimed at a Nevada-based organization.

THE POLICY

30. In exchange for the payment of a substantial annual premium, Hakkasan purchased insurance coverage from Sompo under a commercial property insurance policy to protect against risk of, among other things, business income losses related to the interference of its business at any or all of its covered locations.

31. Sompō sold to Hakkasan a Commercial Property Surplus Lines Insurance Policy number ARL30001017500, in effect from April 1, 2019 to April 1, 2020 (previously defined as the “Policy”).

32. The Policy provides Hakkasan's U.S. locations with \$350,000,000 per occurrence in coverage subject to various deductibles and sublimits.

33. In exchange for this coverage, Hakkasan paid Sompo \$325,000 in annual premium.

34. A true and correct copy of the Policy is attached hereto as Exhibit 1 and incorporated by reference.

35. Hakkasan USA Inc. is the Named Insured under the Policy, which also insures Hakkasan’s subsidiary organizations and their subsidiaries, additional “Named Insureds,” and “[a]ny other organization coming under the Insured’s control when the Insured assumes its actual management.” Policy, § I.

1 36. The Policy defines “Occurrence” as “any one accident, loss, disaster, casualty,
2 incident, or series of accidents, losses, disasters, casualties, or incidents, including all resultant or
3 concomitant insured losses, not otherwise excluded by this Policy, arises out of a single event or
4 originating cause.” *Id.*, § VI.

5 37. The Policy’s “Specialty Clause Endorsement” extends coverage to include “Special
6 Time Element - Cancellation Coverage,” which Sompo acknowledges is triggered by the Claim.
7 The Special Time Element - Cancellation Coverage provides:

8 Notwithstanding that Time Element loss insured under this Policy must be caused
9 by or result from loss, damage or destruction not otherwise excluded, this Policy is
10 extended to insure the actual loss sustained by the Insured resulting from the
11 cancellation of, and/or inability to accept bookings or reservations for
12 accommodation, receive admissions, and/or interference with the business at any
13 insured location all as a direct result of the “Occurrence” of:

14 ...

15 ii. contagious or infectious disease (including decontamination and clean up costs);

16 ...

17 iv. any of the following that occur within a radius of five (5) miles of an insured
18 location, to the extent such Time Element loss is not otherwise insured elsewhere in
19 this policy;

20 (a) outbreak of a contagious or infectious disease

21 ...

22 v. closing of the whole or part of the premises of the Insured either by the Insured
23 or by order of a Public Authority consequent upon the existence or threat of
24 hazardous conditions either actual or suspected at an insured location;

25

26 Coverage provided under Special Time Element – Cancellation Coverage shall not
27 conflict or reduce coverage provided elsewhere in this policy, most notably
28 Contingent Time Element, Interruption by Civil or Military Authority, or Loss of
Ingress or Egress.

....

The coverages stated above are subject to the sublimits of liability as shown in
Paragraph F. OTHER SUBLIMITS FOR LOSS ARISING OUT OF ONE
OCCURRENCE in the Declarations section of the policy as is subject to the Policy
provisions, including applicable exclusions and deductibles, all as shown in this
section and elsewhere in this Policy.

1 38. Paragraph F of the Declarations Section of the Policy does not identify any sublimit
2 for the Special Time Element – Cancellation Coverage. Therefore, the only applicable identified,
3 disclosed, and agreed-upon limit is the \$350,000,000 per occurrence limit.

4 39. To the extent not waived or otherwise excused, Hakkasan has complied with all
5 terms and conditions precedent, including payment of undisputed premiums and notice, contained
6 in the Policy. Hakkasan therefore is entitled to all benefits of insurance provided by the Policy.

7 **FACTUAL BACKGROUND AND GENERAL ALLEGATIONS**

8 **Hakkasan’s Operations**

9 40. Hakkasan operates world-class restaurants, nightclubs and entertainment venues
10 throughout the United States and abroad. Several of its restaurants have been awarded Michelin
11 stars and its nightclubs are among the top-ranked in the world.

12 41. Hakkasan is based in Las Vegas, Nevada, where it operates numerous restaurants
13 and entertainment venues. Hakkasan is frequently touted by the press and industry experts as “the
14 Las Vegas Strip’s leading nightlife company.”

15 42. Hakkasan’s properties include Hakkasan Nightclub at the MGM Grand Hotel and
16 Casino and OMNIA Nightclub at Caesars Palace in Las Vegas—two of the largest and most
17 technologically-advanced entertainment venues in the world. Hakkasan also operates Wet
18 Republic Pool and Level Up at MGM Grand, Jewel Nightclub and Liquid Pool at Aria Resort and
19 Casino, Searsucker restaurant at Caesar’s Palace, and Hakkasan’s namesake restaurant at the
20 MGM Grand Hotel and Casino.

21 43. Hakkasan operates other venues across the United States and around the world. Its
22 domestic locations include high-end restaurants in New York, California, Florida, and Hawaii.

23 **The COVID-19 Pandemic**

24 44. COVID-19 is an infectious disease caused by a recently discovered novel
25 coronavirus known as SARS-CoV-2 (“COVID-19”).

26 45. COVID-19 was previously unknown to humans and is not traditionally present in
27 the natural environment.

1 46. The first instances of the disease spreading to humans were diagnosed in or around
2 December 2019.

3 47. COVID-19 is spread through contact with viral particles, via on surfaces, through
4 airborne exposure, or other means.

5 48. COVID-19 has unexpectedly and pervasively spread throughout the United States
6 in recent months.

7 49. As the virus has spread, health experts and government officials have recognized
8 that its presence is so pervasive and dangerous to human life that it should be assumed to be
9 present in all spaces open to the public.

10 50. State and health officials have promulgated varying closure and shelter-in-place
11 orders, guidelines, and restrictions per municipality intended to mitigate the spread and resulting
12 damage due to COVID-19. These include major restructuring and limitations of business
13 operations to facilitate public safety and mitigate and remediate viral spread.

14 **Hakkasan Suffers Covered Losses**

15 51. Due to the pervasive COVID-19 outbreaks in the immediate vicinity of its
16 restaurants and venues, and the corresponding governmental responses to the outbreaks in various
17 locations, Hakkasan has suffered damage to property, clean-up costs, cancellations and business
18 interruption expenses, among other losses.

19 52. Hakkasan began sustaining business income losses in February 2020. Since then,
20 Hakkasan has had to close its venues to the public across its entire portfolio and cancel significant
21 banquet events and refund ticket sales. As of the date of filing of the original complaint, none of
22 the venues have reopened to the public and losses continue. Approximately 1,300 of Hakkasan's
23 Nevada employees have lost their employment due to these closures and hundreds more of
24 Hakkasan's employees in other regions of the United States have lost their jobs. Recently,
25 Hakkasan has been forced to permanently close certain of its venues due to the catastrophic losses
26 it suffered at each of these venues in varied geographic locations around the country.

27 53. In addition, the various closures have resulted in property damage, the loss of
28 perishable items, and cleaning costs of venues due to known and suspected COVID-19 virus on

1 the premises. Given the ongoing nature of the government-ordered closures, required health and
2 safety measures and the continued pervasiveness of COVID-19 in the communities and vicinities
3 in which Hakkasan's domestic venues operate, losses are ongoing and cannot be fully determined
4 yet.

5 **Hakkasan Instructs Willis to Tender the Claim**

6 54. Hakkasan contracted with Willis to provide brokerage and claims-handling services
7 in relation to the Policy, among numerous other insurance policies procured by Willis for
8 Hakkasan over the last 5 years, and compensated Willis for these services. As such, Willis acted
9 as Hakkasan's agent in connection with the Policy and maintained a confidential relationship with
10 Hakkasan.

11 55. In February 2020, Hakkasan notified Willis that it expected to suffer covered losses
12 and was preparing to submit a claim under the Policy.

13 56. After receiving its financial results for February 2020, Hakkasan instructed Willis
14 to formally tender the Claim.

15 **Willis Conspires with Sompoto to Issue an Invalid Backdated Endorsement**

16 57. When Hakkasan first began to inquire about its coverage under the Policy and its
17 intent to make the Claim, Willis's attorneys internally analyzed the coverage afforded by the
18 Policy and found that the full \$350,000,000 limits applied to Hakkasan's "Special Time Element
19 Cancellation Coverage."

20 58. Out of concern for the business relationship between Willis and Sompoto, and
21 without notifying Hakkasan or obtaining approval from Hakkasan to violate the duties owed to
22 Hakkasan, Willis contacted Sompoto to inform Sompoto of the impending Claim for which there was
23 no stated sublimit in the Policy.

24 59. Hakkasan had no direct contact with Sompoto at this time, and therefore Sompoto
25 could not have known about Hakkasan's impending Claim, or the timing thereof, without Willis
26 having told Sompoto in advance of the pending Claim.

27 60. In response, and almost one year after the Policy was issued, Sompoto attempted to
28 issue a backdated "General Change Endorsement" purporting to add a "Special Time Element

1 Cancellation Coverage” sublimit of \$1,500,000 to the Policy, effective April 1, 2019. A true and
2 correct copy of the invalid Endorsement is attached as Exhibit 2.

3 61. Neither Sampo nor Willis advised Hakkasan of the intent to issue an endorsement
4 eleven months after the Policy inception, without the consent of Hakkasan or that they arranged for
5 the Endorsement to be issued before the Claim was formally tendered even though both Sampo
6 and Willis were aware of the Claim.

7 62. Sampo sent the Endorsement to Willis on March 9, 2020.

8 63. The terms of the Endorsement state that the Endorsement was intended to amend
9 and change the Policy.

10 64. Indeed, the Endorsement was intended to drastically reduce the available coverage
11 for Hakkasan’s Claim under the Policy.

12 65. Sampo did not inform Hakkasan directly that Sampo was attempting to issue an
13 Endorsement that might operate to limit Hakkasan’s rights under its Policy.

14 66. Willis did not tell Hakkasan about the Endorsement, but proceeded to purport to
15 “accept” the Endorsement on Hakkasan’s behalf without Hakkasan’s knowledge or consent.

16 67. Willis did so knowing that Hakkasan had a pending claim and would never agree to
17 a retroactive modification of the Policy to its detriment.

18 68. Indeed, had Hakkasan been informed, Hakkasan would have never allowed the
19 Endorsement to be issued prior to Hakkasan submitting its claim, and Sampo would not have been
20 able to rely on the Endorsement in denying Hakkasan’s claim.

21 69. Yet Willis, holding itself out to Sampo as Hakkasan’s authorized agent, falsely
22 represented to Sampo that Willis was authorized to accept the Endorsement on Hakkasan’s behalf.

23 70. In fraudulently omitting this information and failing to disclose the Endorsement to
24 Hakkasan prior to its issuance, Sampo and Willis were acting without Hakkasan’s authority,
25 knowledge, or consent, and in direct contravention of Hakkasan’s interests.

26 71. On March 16, 2020, Willis submitted the Claim to Sampo.

27 72. Despite having received an endorsement to the Policy that, if effective, would have
28 changed the applicable Policy limits from \$350,000,000 per occurrence to \$1.5 million and

1 knowing that a Claim had already been made that would have been affected by the Endorsement,
2 Willis did not provide the Endorsement or any notice of the Endorsement to Hakkasan until May
3 26, 2020—only after Hakkasan became aware of its possible existence and demanded the
4 document from Willis.

5 **Willis and Sampo Engage in Further Delay and Misrepresentation**

6 73. On March 16, 2020, Sampo acknowledged receipt of the Claim.

7 74. Despite having all of the information necessary to do so, Sampo did not provide
8 Hakkasan with a coverage position.

9 75. Instead, and in an attempt to delay issuance of a coverage position and payment on
10 the Claim, Sampo sent several evolving requests for detail regarding the loss.

11 76. Hakkasan promptly responded to Sampo's information requests to the best of its
12 ability, as its losses were ongoing.

13 77. In the meantime, Willis reached out to Hakkasan and suggested that Willis could
14 facilitate a settlement of Hakkasan's outstanding Special Time Element – Cancellation Coverage
15 Claim with Sampo for \$1,500,000, the purported "limit" of coverage under the Endorsement in
16 Willis' possession, but was unknown to Hakkasan at the time.

17 78. Willis still made no mention of the Endorsement when attempting to solicit a
18 settlement from Hakkasan.

19 79. This settlement request coming from Hakkasan's broker was highly unusual and
20 Hakkasan already had reviewed the Policy and confirmed that the Special Time Element –
21 Cancellation Coverage had no limit other than the \$350,000,000 per occurrence limit.

22 80. Willis did not inform Hakkasan of the Endorsement it facilitated and had received
23 on March 9, 2020, when it later suggested that Hakkasan settle the Claim at \$1,500,000, despite
24 Hakkasan's growing losses and the available policy limits of \$350,000,000 per occurrence.

25 81. On April 17, 2020, Hakkasan's General Counsel wrote to Sampo providing further
26 detail regarding the Claim and asking for Sampo to provide its coverage position. Sampo did not
27 respond to the request for its coverage position.

1 82. On May 1, 2020, Hakkasan's General Counsel again wrote to Sampo to request a
2 coverage position. Sampo again failed to respond to the request for its coverage position.

3 83. On May 20, 2020, Hakkasan's outside counsel wrote to Sampo demanding a
4 coverage position by May 22, 2020.

5 84. Sampo finally responded in a letter dated May 22, 2020. A true and correct copy
6 of this letter is attached hereto as Exhibit 3.

7 85. In its May 22, 2020 letter, Sampo issued further requests for detailed answers to
8 dozens of questions regarding Hakkasan's losses (which, due to the ongoing nature of the losses,
9 cannot be fully quantified to date).

10 86. Sampo's letter suggested it was only willing to provide Hakkasan with Sampo's
11 "limited" "views regarding coverage" pending this information even though the Claim was made
12 more than two months earlier.

13 87. Sampo's letter then listed out what Sampo characterized as the "potentially
14 applicable" policy provisions.

15 88. These included "General Change Endorsement No. 1", the backdated Endorsement
16 that fraudulently purported to add to the Policy a \$1,500,000 sublimit for Special Time Element –
17 Cancellation Coverage.

18 89. In its letter, Sampo contended that this Endorsement was effective as of the Policy
19 effective date of April 1, 2019, but notably did not inform Hakkasan that the Endorsement was
20 actually issued on March 9, 2020.

21 90. In its May 22, 2020 letter, Sampo acknowledged that the Special Time Element –
22 Cancellation Coverage "appears to have been triggered by [Hakkasan's] claim" but
23 misrepresented that the coverage was subject to the \$1,500,000 sublimit provided in General
24 Change Endorsement No. 1.

25 91. In its letter, Sampo reserved all rights, including its right to modify its coverage
26 position.

1 92. Willis did not disclose the backdated Endorsement to Hakkasan, until May 26,
2 2020 when Hakkasan forwarded Sompō's letter to Willis and demanded information and the
3 purported Endorsement it had never seen or been made aware of.

4 93. After being pressed for information regarding the Endorsement, Willis
5 acknowledged that one of its representatives had coordinated the purported issuance of the
6 backdated Endorsement without Hakkasan's knowledge or consent.

7 94. Willis suggested that its representative may have been "trying to protect Sompō"
8 and conceded that Willis should not have contacted Sompō about Hakkasan's impending Claim
9 because Willis is supposed to "work for Hakkasan".

10 95. To date, Sompō has refused to pay Hakkasan's claims over \$1.5 million, and
11 continues to rely on the invalid and fraudulent Endorsement to avoid its coverage obligations.

12 96. Instead, Sompō continues to engage in a pattern of delay and obfuscation in order
13 to deprive Hakkasan of the benefits of its Policy during a time of great crisis, unemployment, and
14 financial distress for the company.

15 97. As a result of Willis and Sompō's acts and omissions, Hakkasan has been forced to
16 file suit and incur significant legal expenses to recover what it is owed under the policy.

17 **FIRST CLAIM FOR RELIEF**

18 **Declaratory Relief**
19 **(Against Sompō)**

20 98. Hakkasan realleges and incorporates by reference the above paragraphs as though
21 fully stated herein.

22 99. Sompō has contended and/or suggested that Hakkasan's Claim, although covered
23 by the Policy, is subject to inapplicable sublimits and exclusions.

24 100. Sompō also contends that detailed information is required before it is obligated to
25 even provide a coverage position and fully reimburse Hakkasan for its indisputably covered losses
26 well documented in the public record and supported by Hakkasan's submissions to date.

27 101. Hakkasan contends that Sompō must honor its representations and promises in the
28 Policy and has no legal right to refuse to make payments related to the Claim and that Sompō may
not avoid coverage.

102. Hakkasan is informed and believes, and based thereon alleges, that Sompo disputes Hakkasan's contentions.

103. An actual, ripe, and justiciable controversy therefore exists between Hakkasan and Sompso concerning the matters alleged herein.

104. Hakkasan seeks a judicial declaration confirming that Sompo's contentions are wrong and that Hakkasan's contentions are correct and that Sompo must honor all duties under the Policy, including its duty to pay up to its full \$350,000,000 per occurrence policy limit to reimburse Hakkasan for the losses it has incurred in connection with its Special Time Element – Cancellation Coverage Claim, and its duty to reimburse other covered losses under the Policy.

105. As a direct and proximate result of Sompo's acts, Hakkasan has been damaged as of the date of this Complaint in an estimated amount in excess of \$50,000,000. The actual amount of damages has not yet been precisely ascertained, but includes the fees and expenses that Hakkasan has incurred and will incur in connection with its Claim, and other damages and special damages (including, but not limited to, attorneys' fees incurred in connection with pursuit of this claim) not yet known or determined, plus interest. Hakkasan will seek leave to amend this Complaint when the precise amount of its damages is known.

106. A declaration is necessary at this time in order that the parties' dispute may be resolved and that the parties be aware of their respective duties and rights.

SECOND CLAIM FOR RELIEF
Violation of NRS 686A.310 “Nevada Unfair Claims Practices Act”
(Against Sompco)

107. Hakkasan realleges and incorporates by reference the above and below paragraphs as though fully stated herein.

108. It is an improper and unfair claims practice for an insurer transacting business in Nevada to engage in certain activities in violation of NRS 686A.310, also known as the Nevada Unfair Claims Practices Act (the “Act”).

109. Sompot violated the Act by, among other things, misrepresenting to its insured pertinent facts and insurance policy limits applicable to coverage.

1 110. Sompo violated the Act by, among other things, attempting to settle claims on the
2 basis of an application and/or policy which was altered without notice to, or knowledge or consent
3 of, the insured.

4 111. Sompo violated the Act by, among other things, failing to effectuate prompt, fair,
5 and equitable settlements of claims in which its liability has become reasonably clear.

6 112. Sompo violated the Act by, among other things, failing to comply with various
7 provisions of NRS 686A.660 by misrepresenting and failing to disclose all pertinent benefits,
8 coverages, and other provisions of the insurance policy.

9 113. Sompo violated the Act by, among other things, failing to comply with various
10 provisions of NRS 687B.310 to 687B.390, including but not limited to NRS 687B.350, which
11 provides that advance notice is required to give effect to policy changes and renewals.

12 **THIRD CLAIM FOR RELIEF**

13 **Breach of Contract**
14 **(Against Sompo)**

15 114. Hakkasan realleges and incorporates by reference the above and below paragraphs
16 as though fully stated herein.

17 115. The Policy, other than the fraudulent Endorsement, is a valid contract between
18 Sompo and Hakkasan and represents the sole expression of the contractual terms between Sompo
19 and Hakkasan.

20 116. Sompo breached this agreement by the actions referenced above, including but not
21 limited to, failing to pay for Hakkasan's covered Claim.

22 117. Hakkasan has performed all applicable terms and conditions of the Policy, or
23 otherwise has been excused from such performance.

24 118. Implied in the Policy is a covenant that Sompo will act in good faith and deal fairly
25 with Hakkasan, that it would do nothing to interfere with its rights to receive the benefits due
26 under the Policy, and that it would give at least the same level of consideration to Hakkasan's
27 interests as it gives to its own interests.

28 119. Instead of complying with its express and implied duties under its Policy, Sompo
has, among other things, (a) refused to confirm coverage under the Policy; (b) refused to confirm it

1 will pay for any of the covered losses over \$1.5 million; (c) refused to confirm it will pay for the
2 covered losses up to \$350,000,000 per occurrence; and (d) attempted to amend the Policy limits
3 directly applicable to the Claim after notice of the Claim and eleven months after the Policy was
4 issued. Hakkasan is informed and believes, and based thereon alleges, that Sompso engaged in
5 such conduct in order to coerce Hakkasan into accepting something less than the full policy
6 benefits to which it is otherwise entitled.

7 120. As a direct and proximate result of Sompso's breach of its contract, Hakkasan has
8 been damaged as of the date of this Complaint in an amount in excess of \$50,000,000.

9 121. The actual amount of damages has not yet been precisely ascertained, but includes
10 in addition to its covered losses, the fees and expenses covered under the Policy that Hakkasan has
11 incurred and will incur in connection with its Claim, and other damages not yet known or
12 determined, plus interest. This also includes attorneys' fees and other special damages incurred as
13 a natural consequence of Sompso's non-payment of Hakkasan's Claim and other breaches.
14 Hakkasan will seek leave to amend this Complaint when the precise amount of its damages is
15 known.

16 **FOURTH CLAIM FOR RELIEF**
17 **Contractual Breach of the Implied Covenant of Good Faith and Fair Dealing**
(Against Sompso)

18 122. Hakkasan realleges and incorporates by reference the above and below paragraphs
19 as though fully stated herein.

20 123. The Policy, other than the fraudulent Endorsement, is a valid contract between
21 Sompso and Hakkasan and represents the sole expression of the contractual terms between Sompso
22 and Hakkasan.

23 124. Under Nevada law, every contract imposes upon the contracting parties the duty of
24 good faith and fair dealing, which requires that one party refrain from conduct that would prevent
25 the other party from achieving its benefit of the bargain.

26 125. In breach of the implied covenant of good faith and fair dealing, Sompso committed
27 the acts alleged above for the purpose of consciously withholding from Hakkasan the rights and
28 benefits to which it is entitled under the Policy and without consideration of the interests of

1 Hakkasan at least to the same extent as it considered its own interests. In doing so, Sompo
2 breached the spirit of the contract between it and Hakkasan.

3 126. Sompo has contractually breached the implied covenant of good faith and fair
4 dealing by, among other things, (a) refusing to confirm coverage under the Policy; (b) refusing to
5 confirm it will pay for any of the covered losses over \$1.5 million; (c) refusing to confirm it will
6 pay for the covered losses up to \$350,000,000 per occurrence; and (d) attempting to amend the
7 Policy limits directly applicable to the Claim without the insured's consent, after notice of the
8 Claim, and eleven months after the Policy was issued.

9 127. As a direct and proximate result of Sompo's actions, Hakkasan has been damaged
10 as of the date of this Complaint in an amount in excess of \$50,000,000.

11 128. The actual amount of damages has not yet been precisely ascertained, but includes
12 in addition to its covered losses, the fees and expenses covered under the Policy that Hakkasan has
13 incurred and will incur in connection with its Claim and other damages not yet known or
14 determined, plus interest. This also includes attorneys' fees and other special damages incurred as
15 a natural consequence of Sompo's non-payment of Hakkasan's Claim and other breaches.
16 Hakkasan will seek leave to amend this Complaint when the precise amount of its damages is
17 known.

18 **FIFTH CLAIM FOR RELIEF**
19 **Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing**
20 **(Against Sompo)**

21 129. Hakkasan realleges and incorporates by reference the above and below paragraphs
22 as though fully stated herein.

23 130. The Policy, other than the fraudulent Endorsement, is a valid contract between
24 Sompo and Hakkasan and represents the sole expression of the contractual terms between Sompo
25 and Hakkasan.

26 131. Under Nevada law, every contract imposes upon the contracting parties the duty of
27 good faith and fair dealing, which requires that one party refrain from conduct that would prevent
28 the other party from achieving its benefit of the bargain.

1 132. Under Nevada law, the relationship of an insured to an insurer is one of special
2 confidence, and thus an insurer assumes the duty to negotiate with its insureds in good faith and to
3 deal with them fairly. In breach of the implied covenant of good faith and fair dealing, Sompo
4 committed the acts alleged above for the purpose of consciously withholding from Hakkasan the
5 rights and benefits to which it is entitled under the Policy and without consideration of the
6 interests of Hakkasan at least to the same extent as it considered its own interests.

7 133. In doing so, Sompo has acted unreasonably, in breach of its duties to its insured,
8 and with knowledge that there is no reasonable basis for its conduct.

9 134. Sompo's acts are inconsistent with the reasonable expectations of its insured and
10 are contrary to established claims practices and legal requirements and constitute bad faith.
11 Hakkasan is entitled to recover all attorneys' fees that it reasonably has incurred, and is incurring,
12 in its effort to obtain the Policy benefits that Sompo has withheld in bad faith, plus interest. The
13 amount of these attorneys' fees and expenses and other special damages, which are a natural and
14 proximate consequence of Sompo's injurious conduct, currently is unknown, and is continuing.
15 Hakkasan will seek leave to amend this Complaint to allege the precise amount of these fees and
16 costs when that amount is known.

17 135. Sompo's conduct is despicable, was undertaken with a conscious disregard of the
18 rights of Hakkasan, and constitutes oppression, fraud, and/or malice within the meaning of NRS
19 42.005. Specifically, Sompo, by acting as alleged above, consciously and outrageously
20 disregarded the rights of Hakkasan in bad faith during a time of crisis where Hakkasan sustained
21 substantial financial losses. Hakkasan is therefore entitled to recover punitive damages from
22 Sompo in an amount sufficient to punish and to make an example of Sompo in order to deter
23 similar conduct.

SIXTH CLAIM FOR RELIEF
Civil Conspiracy³
(Against Somp and Willis)

136. Hakkasan realleges and incorporates by reference the above and below paragraphs as though fully stated herein.

137. As its insurer, Somp has a confidential relationship with Hakkasan. As its insurance broker, Willis also has a confidential relationship with Hakkasan. Due to these confidential relationships, Somp and Hakkasan were required to disclose and not conceal material information regarding the Policy and the Claim.

138. Instead of honoring their confidential relationship with Hakkasan, Somp and Willis knowingly conspired to covertly and fraudulently change the terms of the Policy after both parties became aware of Hakkasan's losses and the impending Claim.

139. Somp and Willis worked together to knowingly violate the Nevada Unfair Claims Practices Act in their attempt to mislead Hakkasan as to the nature of the coverage afforded by the Policy, to fraudulently misrepresent the limit of coverage that applies to the Special Time Element – Cancellation Coverage, to fraudulently omit to disclose to Hakkasan that they worked together to issue an Endorsement after notice of a Claim and eleven months after the Policy inception in a joint attempt to significantly reduce the available limits, and to coerce Hakkasan to accept a lower settlement on its Claim than what it would otherwise be entitled to receive under the Policy.

140. Somp urged Willis to act in contravention to its obligations to its client Hakkasan, by providing Willis with the backdated Endorsement and requesting that Willis accept the backdated Endorsement on behalf of Hakkasan without informing Hakkasan.

141. Willis urged Somp to act in contravention to its obligations to its insured Hakkasan, by providing Somp with advance notice of the Claim and facilitating the purported issuance of the backdated Endorsement without Hakkasan's knowledge.

³ The civil conspiracy claim alleged herein is not limited to a conspiracy to commit fraud claim.

1 142. Willis aided Somp in various unlawful and tortious acts, including Somp's
2 breach of contract, tortious breach of duty of good faith to its insured, and violations of the
3 Nevada Unfair Claims Practices Act.

4 143. Somp aided Willis in various unlawful and tortious acts, including Willis's fraud
5 and breach of its duties towards Hakkasan.

6 144. Willis and Somp worked together to conceal the issuance of the Endorsement
7 from Hakkasan, depriving Hakkasan of its ability to timely object before that same Endorsement
8 was subsequently wrongfully used as a justification to deny Hakkasan's claim.

9 145. Somp and Willis concertedly engaged in these unlawful actions without
10 Hakkasan's knowledge and in conscious disregard of Hakkasan's rights under the Policy.

11 146. Somp's and Willis's actions have damaged Hakkasan as a result, by, among other
12 things, providing Somp with an illegitimate justification for its wrongful refusal to pay
13 Hakkasan's Claim up to the full \$350,000,000 per occurrence limits, by improperly withholding
14 payment under the Policy, and by requiring Hakkasan to initiate this lawsuit to obtain relief.

15 147. Somp's and Willis's conduct is despicable, was undertaken with a conscious
16 disregard of the rights of Hakkasan, and constitutes oppression, fraud, and/or malice within the
17 meaning of NRS 42.005. Specifically, Somp and Willis, by acting as alleged above, consciously
18 and outrageously disregarded the rights of Hakkasan during a time of crisis where Hakkasan
19 sustained substantial financial losses. Hakkasan is therefore entitled to recover punitive damages
20 from Somp and Willis in an amount sufficient to punish and to make an example of Somp and
21 Willis in order to deter similar conduct.

22 **SEVENTH CLAIM FOR RELIEF**

23 **Constructive Fraud**
24 **(Against Somp and Willis)**

25 148. Hakkasan realleges and incorporates by reference the above and below paragraphs
26 as though fully stated herein.

27 149. Under Nevada law, the relationship of an insured to an insurer is one of special
28 confidence, and thus Somp had a special relationship with Hakkasan, its insured.

1 150. Under Nevada law, an insurance broker owes a duty to its client to perform with
2 reasonable care, diligence, and judgment.

3 151. Brokers also owe a special duty of reasonable care in communicating an insurance
4 policy's terms or extent of coverage and insurance brokers also have a relationship of confidence
5 with their policyholder clients.

6 152. Sompco purported to issue the back-dated Endorsement to severely restrict the
7 applicable limits of the Claim after it was already on notice of the Claim and without the consent
8 of its insured.

9 153. Sompco and Willis concealed the discussions about, and the issuance of the back-
10 dated Endorsement, breaching their respective confidential relationships with Hakkasan.

11 154. Sompco and Willis deprived Hakkasan of its ability to contemporaneously object to
12 the illicit conduct of Sompco and Willis in their attempt to modify the Policy after notice had been
13 provided concerning a covered claim.

14 155. Sompco and Willis misrepresented the timing of the issuance of the Endorsement
15 and the circumstances under which it was issued, to induce Hakkasan's reliance on the
16 Endorsement in accepting less than what it was owed under the policy and to provide Sompco with
17 an illegitimate justification to refuse to pay Hakkasan's claim up to the \$350 million per
18 occurrence limits of the Policy.

19 156. Willis knew and/or should have known that it had no authority to accept the
20 backdated Endorsement.

21 157. Had Hakkasan been asked by Willis if it had authorization to accept the back-dated
22 Endorsement, it would have objected prior to its issuance.

23 158. Had Hakkasan known about Sompco and Willis' actions it would have immediately
24 objected and submitted its claim, and Sompco would not have subsequently been able to rely on the
25 Endorsement to deny Hakkasan's claim and Sompco would have thus paid Hakkasan's claim.

26 159. Hakkasan relied to its detriment that its confidential relationship would be honored
27 by Sompco and Willis such that neither of them would fail to disclose information about its Claim
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1 or the Policy and that they would provide truthful affirmative representations in connection with
2 the underwriting of the policy, issuance of policy documents, and in handling Hakkasan's claims.

3 160. Hakkasan relied on both Sompō and Willis to fulfill their duties to Hakkasan and
4 act in Hakkasan's interests and was harmed when they failed to do so.

5 161. Hakkasan relied on Sompō and Willis's misrepresentations and omissions
6 regarding the Policy terms and Endorsement and was harmed as a result.

7 162. Sompō breached its duties as part of its confidential relationship with Hakkasan by
8 failing to disclose its intent to issue an endorsement to the Policy, while knowing a Claim was
9 pending that would directly and significantly impact the limits of coverage available for the Claim.

10 163. Willis breached its duties pursuant to its confidential relationship with Hakkasan
11 when it failed to disclose to Hakkasan that it (a) intended to disclose the Claim to Sompō before it
12 was formally tendered without Hakkasan's consent; (b) orally misrepresented the limits of the
13 disease coverage under the Policy to Hakkasan; (c) improperly gave Sompō advance notice of
14 Hakkasan's impending claim and alerted Sompō that the Policy contained no sublimit regarding
15 disease; (d) conspired with Sompō to accept an endorsement to the Policy it knew was detrimental
16 to Hakkasan's interests and (if valid) would severely limit coverage under the Policy; (e)
17 purported to accept the Endorsement while concealing it from Hakkasan and thus depriving
18 Hakkasan of its ability to refuse the Endorsement before Sompō denied the claim; and (f) after
19 misrepresenting to Hakkasan that the \$1.5 million limit applied, suggesting that Hakkasan should
20 settle the Claim for that amount.

21 164. Hakkasan detrimentally relied on Willis's representations that Willis was its broker
22 and acting on Hakkasan's behalf and would not do anything to prejudice Hakkasan in the
23 submission of the Claim. Had Hakkasan known that Willis would act otherwise and actively
24 attempt to thwart Hakkasan's right to coverage, Hakkasan would have not advised Willis of the
25 impending Claim before asking that it be formally tendered, would have engaged another broker
26 or counsel to facilitate the Claim with Sompō, and Sompō would not have been able to take
27 advantage of the fraudulent Endorsement in its denial and continuing denial of the Claim above
28 \$1.5 million.

1 165. Hakkasan also detrimentally relied on Sompō's representations that, as its insurer,
2 it would not do anything to prejudice Hakkasan in its attempt to obtain the benefits of the Policy
3 and that it would consider Hakkasan's interests at least as much as it considers its own.

4 166. Willis and Sompō breached their duties and obligations to Hakkasan when Sompō
5 issued, and Willis facilitated the issuance of, the Endorsement in a manner knowingly calculated
6 to deceive and mislead Hakkasan and in contravention of their obligations in their respective
7 confidential relationships with Hakkasan.

8 167. Sompō and Willis each had pecuniary interests in misleading Hakkasan into
9 thinking the Endorsement validly limited Hakkasan's coverage under the Policy.

10 168. Sompō and Willis misrepresented the Endorsement as a duly-issued part of the
11 original Policy in an attempt to induce Hakkasan to accept Sompō's fraudulent representation and
12 a settlement for the Claim for less than it was otherwise entitled under the Policy.

13 169. Sompō's and Willis's actions caused damage to Hakkasan by, among other things,
14 providing Sompō with an illegitimate justification for its wrongful refusal to pay the Claim, by
15 improperly withholding payment under the Policy, and by requiring Hakkasan to expend funds to
16 initiate this lawsuit to obtain relief.

17 170. Sompō continues to misrepresent the validity of the Endorsement to Hakkasan's
18 detriment, as Sompō continues to use it as a justification to avoid paying Hakkasan's Claim.

19 171. Hakkasan is entitled to recover all attorneys' fees that it reasonably has incurred,
20 and is incurring, in its effort to obtain the Policy benefits that Sompō has fraudulently withheld,
21 plus interest. The amount of these attorneys' fees and expenses and other special damages, which
22 are a natural and proximate consequence of Willis's and Sompō's fraudulent and injurious
23 conduct, currently is unknown, and is continuing. Hakkasan will seek leave to amend this
24 Complaint to allege the precise amount of these fees and costs when that amount is known.

25 172. Sompō's and Willis's conduct is despicable, was undertaken with a conscious
26 disregard of the rights of Hakkasan, and constitutes oppression, fraud, and/or malice within the
27 meaning of NRS 42.005. Specifically, Sompō and Willis, by acting as alleged above, consciously
28 and outrageously disregarded the rights of Hakkasan during a time of crisis where Hakkasan

1 sustained substantial financial losses. Hakkasan is therefore entitled to recover punitive damages
2 from Sompō and Willis in an amount sufficient to punish and to make an example of Sompō and
3 Willis in order to deter similar conduct.

4 **EIGHTH CLAIM FOR RELIEF**
5 **Negligence**
6 **(Against Willis)**

7 173. Hakkasan realleges and incorporates by reference the above and below paragraphs
8 as though fully stated herein.

9 174. Under Nevada law, an insurance broker owes a duty to its client to perform with
10 reasonable care, diligence, and judgment.

11 175. Brokers also owe a special duty of reasonable care in communicating an insurance
12 policy's terms or extent of coverage.

13 176. Willis breached its duty to Hakkasan by, among other things, (a) misrepresenting
14 the terms of coverage that would be afforded under the Policy in its marketing materials;
15 (b) misrepresenting the coverage available under the Policy; (c) having inappropriate
16 communications with Sompō after knowing about Hakkasan's losses and the Claim;
17 (d) facilitating the creation and receipt of the invalid Endorsement; (e) omitting material facts
18 regarding the issuance of the Endorsement and discussions with Sompō; and (f) otherwise
19 negligently handling the procurement and issuance of the Policy and the claims process.

20 177. Sompō knowingly assisted Willis in Willis's breach of its duty to Hakkasan.

21 178. Willis's actions and omissions caused damage to Hakkasan by, among other things,
22 preventing Hakkasan from being able to object and prevent the issuance of the fraudulent
23 Endorsement before Hakkasan's claim was submitted, providing Sompō with an illegitimate
24 justification for its wrongful refusal to pay Hakkasan's Claim, and causing Hakkasan to initiate
25 this lawsuit to obtain relief.

26 179. Hakkasan is entitled to recover all attorneys' fees that it reasonably has incurred,
27 and is incurring, in its effort to obtain the Policy benefits that Sompō has fraudulently withheld,
28 plus interest. The amount of these attorneys' fees and expenses and other special damages, which
are a natural and proximate consequence of Willis's negligent conduct, currently is unknown, and

1 is continuing. Hakkasan will seek leave to amend this Complaint to allege the precise amount of
2 these fees and costs when that amount is known.

3 **NINTH CLAIM FOR RELIEF**
4 **Intentional Interference with Contractual Relations**
5 **(Against Willis)**

6 180. Hakkasan realleges and incorporates by reference the above and below paragraphs
7 as though fully stated herein.

8 181. The Policy, other than the fraudulent Endorsement, is a valid contract between
9 Sompso and Hakkasan and represents the sole expression of the contractual terms between Sompso
10 and Hakkasan.

11 182. Willis was aware of the contract between Sompso and Hakkasan and acted
12 intentionally in a manner aimed at disrupting that contract.

13 183. Willis intentionally interfered with the contractual relationship between Sompso and
14 Hakkasan by inducing Sompso to breach its agreement with Hakkasan and by facilitating that
15 breach.

16 184. In doing so, Willis acted with the intent to injure Hakkasan by depriving it of the
17 benefits of its contract with Sompso.

18 185. Sompso breached this agreement by the actions referenced above, including but not
19 limited to, issuing the fraudulent Endorsement and refusing to cover the Claim.

20 186. Willis's actions caused damage to Hakkasan by, among other things, providing
21 Sompso with an illegitimate justification for its wrongful refusal to pay the Claim and by requiring
22 Hakkasan to initiate this lawsuit to obtain relief.

23 187. Hakkasan is entitled to recover all attorneys' fees that it reasonably has incurred,
24 and is incurring, in its effort to obtain the Policy benefits that Sompso has fraudulently withheld,
25 plus interest. The amount of these attorneys' fees and expenses and other special damages, which
26 are a natural and proximate consequence of Willis's tortious conduct, currently is unknown, and is
27 continuing. Hakkasan will seek leave to amend this Complaint to allege the precise amount of
28 these fees and costs when that amount is known.

1 188. Willis's conduct is despicable, was undertaken with a conscious disregard of the
2 rights of Hakkasan, and constitutes oppression, fraud, and/or malice within the meaning of NRS
3 42.005. Specifically, Willis, by acting as alleged above, consciously and outrageously disregarded
4 the rights of Hakkasan during a time of crisis where Hakkasan sustained substantial financial
5 losses. Hakkasan is therefore entitled to recover punitive damages from Willis in an amount
6 sufficient to punish and to make an example of Willis in order to deter similar conduct.

7 WHEREFORE, Hakkasan prays for judgment as follows:

8 **ON THE FIRST CLAIM FOR RELIEF**

- 9 1. For a declaration in accord with Hakkasan's contentions stated above;
10 2. For reasonable attorneys' fees and expenses incurred in obtaining the benefits due
11 under the policy;

12 **ON THE SECOND CLAIM FOR RELIEF**

- 13 3. For damages in excess of \$15,000, plus interest, according to proof at the time of
14 trial;

15 **ON THE THIRD CLAIM FOR RELIEF**

- 16 4. For damages in excess of \$15,000, plus interest, according to proof at the time of
17 trial;
18 5. For reasonable attorneys' fees and expenses incurred in obtaining the benefits due
19 under the policy;

20 **ON THE FOURTH CLAIM FOR RELIEF**

- 21 6. For damages in excess of \$15,000, plus interest, according to proof at the time of
22 trial;
23 7. For reasonable attorneys' fees and expenses incurred in obtaining the benefits due
24 under the policy;

25 **ON THE FIFTH CLAIM FOR RELIEF**

- 26 8. For damages in excess of excess of \$15,000, plus interest, according to proof at the
27 time of trial;

1 9. For reasonable attorneys' fees and expenses incurred in obtaining the benefits due
2 under the policy;

3 10. For punitive damages in an amount to be determined at the time of trial;

4 **ON THE SIXTH CLAIM FOR RELIEF**

5 11. For damages in excess of \$15,000, plus interest, according to proof at the time of
6 trial;

7 12. For reasonable attorneys' fees and expenses incurred in obtaining the benefits due
8 under the policy;

9 13. For punitive damages in an amount to be determined at the time of trial;

10 **ON THE SEVENTH CLAIM FOR RELIEF**

11 14. For damages in excess of \$15,000, plus interest, according to proof at the time of
12 trial;

13 15. For reasonable attorneys' fees and expenses incurred in obtaining the benefits due
14 under the policy;

15 16. For punitive damages in an amount to be determined at the time of trial;

16 **ON THE EIGHTH CLAIM FOR RELIEF**

17 17. For damages in excess of \$15,000, plus interest, according to proof at the time of
18 trial;

19 18. For reasonable attorneys' fees and expenses incurred as a proximate cause of
20 negligent conduct;

21 **ON THE NINTH CLAIM FOR RELIEF**

22 19. For damages in excess of \$15,000, plus interest, according to proof at the time of
23 trial;

24 20. For reasonable attorneys' fees and expenses incurred in obtaining the benefits due
25 under the policy;

26 21. For punitive damages in an amount to be determined at the time of trial;

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22. For costs of suit incurred herein;
23. For interest as allowed by law; and
24. For such other further, and/or different relief as may be just and appropriate.

Respectfully submitted,

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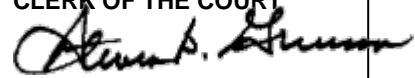
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Exhibit 2

**(Endurance America Specialty Insurance
Company's Counter-Claim)**



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*Attorneys for Endurance American Specialty
Insurance Company*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

HAKKASAN USA, INC., a Delaware
Corporation;

Plaintiffs,

v.

ENDURANCE AMERICAN SPECIALTY
INSURANCE COMPANY, a Delaware
Corporation; SOMPO INTERNATIONAL
HOLDINGS, LTD., a Bermuda Corporation;
WILLIS OF ARIZONA, INC., an Arizona
Corporation; and WILLIS TOWERS WATSON
INSURANCE SERVICES WEST, INC., a
California Corporation;

Defendants.

Case No.: A-20-816145-B

Dept. No.: 11

**DEFENDANT ENDURANCE
AMERICAN SPECIALTY
INSURANCE COMPANY'S
ANSWER TO PLAINTIFF'S
AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL; AND
COUNTER-CLAIMS**

(Business Court)

Defendant Endurance American Specialty Insurance Company ("Endurance"), by and
through its attorneys, hereby answers Plaintiff's Amended Complaint and Demand for Jury Trial
(the "Complaint") as follows:

1 The introductory paragraph of Plaintiff's Complaint is a statement of Plaintiff's intent and
2 thus Endurance is not obligated to respond. To the extent Endurance is obligated to respond,
3 Endurance denies each and every allegation contained in the introductory paragraph. Endurance
4 responds as follows to the individually-numbered paragraphs of the Complaint. For ease of
5 reference and the convenience of the reader only, Endurance utilizes the same headings used by
6 Plaintiff in the Complaint, although in a number of instances the headings are factually and legally
7 incorrect and Endurance does not adopt them as its own.

8 **RESPONSE TO: NATURE OF THIS ACTION AND RELIEF SOUGHT**

9 1. Endurance is without sufficient knowledge or information to form a belief
10 concerning the allegations of paragraph 1 of the Complaint and therefore denies those allegations
11 and places upon Plaintiff strict proof thereof.

12 2. Responding to the allegations set forth in paragraph 2 of the Complaint, Endurance
13 admits that it is an insurance company and the contents of the quoted website speak for themselves.
14 Endurance is without sufficient knowledge or information to form a belief concerning the
15 allegations of paragraph 2 of the Complaint as those allegations relate to Sompo International
16 Holdings, Ltd. For the remainder of this Answer, Endurance will respond to the allegations in the
17 Complaint regarding "Sompo" on its own behalf only. Endurance does not purport to answer any
18 allegations or assertions on behalf of Sompo International Holdings, Ltd.

19 3. Endurance admits that it issued Policy No. ARL300001017500 to Hakkasan USA,
20 Inc. as the Named Insured. Endurance denies the remaining allegations in paragraph 3 to the extent
21 those allegations are inconsistent with the terms and conditions of the Policy, which speak for
22 themselves.

23 4. Upon information and belief, Endurance admits the allegations set forth in
24 paragraph 4 of the Complaint.

25 5. Responding to the allegations set forth in paragraph 5 of the Complaint, Endurance
26 admits that the quoted language is contained in the Policy, but denies that the quoted language is a
27 complete and accurate representation of the Policy's terms and conditions, which speak for
28

1 themselves. Endurance denies the allegations set forth in paragraph 5 to the extent those allegations
2 are inconsistent with or contradict the Policy's terms and conditions.

3 6. Endurance is without sufficient knowledge or information to form a belief
4 concerning the allegations of paragraph 6 of the Complaint and therefore denies those allegations
5 and places upon Plaintiff strict proof thereof.

6 7. Endurance is without sufficient knowledge or information to form a belief
7 concerning the allegations of paragraph 7 of the Complaint and therefore denies those allegations
8 and places upon Plaintiff strict proof thereof.

9 8. Endurance admits that Plaintiff submitted a claim for coverage under the Policy, but
10 denies any remaining allegations set forth in paragraph 8 of the Complaint.

11 9. Denied.

12 10. Endurance admits that a duly issued endorsement to the Policy created a Sublimit
13 of \$1,500,000 for Special Time Element Cancellation Coverage, subject to the Policy's terms and
14 conditions. Endurance denies the remaining allegations set forth in paragraph 10 of the Complaint.

15 11. Denied.

16 12. Denied.

17 13. Denied.

18 14. Denied.

19 **RESPONSE TO: THE PARTIES**

20 15. Upon information and belief, Endurance admits the allegations contained in
21 paragraph 15 of the Complaint.

22 16. Endurance admits that it is incorporated in Delaware and its principal place of
23 business is in New York, New York. Endurance denies all remaining allegations set forth in
24 paragraph 16 of the Complaint.

25 17. The allegations of paragraph 17 of the Complaint are directed to another defendant
26 and therefore no response is required.

27 18. Denied.

1 19. The allegations set forth in paragraph 19 of the Complaint are a statement of
2 Plaintiff's intent to define certain terms, to which no response is required. To the extent a response
3 is required, Endurance denies that Sompo International Holdings, Ltd. and Endurance are properly
4 referred to jointly as "Sompo." As such, Endurance will respond to the remaining allegations in the
5 Complaint against "Sompo" on its own behalf. No response herein shall be construed to be on
6 behalf of or binding on Sompo International Holdings Ltd.¹

7 20. Endurance is without sufficient knowledge or information to form a belief
8 concerning the allegations of paragraph 20 of the Complaint and therefore denies those allegations
9 and places upon Plaintiff strict proof thereof.

10 21. Endurance is without sufficient knowledge or information to form a belief
11 concerning the allegations of paragraph 21 of the Complaint and therefore denies those allegations
12 and places upon Plaintiff strict proof thereof.

13 22. The allegations set forth in paragraph 22 of the Complaint are a statement of
14 Plaintiff's intent to define certain terms, to which no response is required.

15 23. Endurance is without sufficient knowledge or information to form a belief
16 concerning the allegations of paragraph 23 of the Complaint and therefore denies those allegations
17 and places upon Plaintiff strict proof thereof.

18 **RESPONSE TO: JURISDICTION AND VENUE**

19 24. Endurance admits only that this Court possesses subject matter jurisdiction with
20 respect to Endurance. Endurance denies all remaining allegations set forth in paragraph 24 of the
21 Complaint.

22 25. Endurance admits only that this Court possesses subject matter jurisdiction with
23 respect to Endurance. Endurance denies all remaining allegations set forth in paragraph 25 of the
24 Complaint.

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¹ Responding to the allegations contained in footnote 2 of the Complaint, Endurance admits that it
28 uses the trade name "Sompo International" and that the Court has permitted a period for
jurisdictional discovery. Endurance denies all remaining allegations contained in footnote 2.

1 26. Endurance is without sufficient knowledge or information to form a belief
2 concerning the allegations of paragraph 26 of the Complaint and therefore denies those allegations
3 and places upon Plaintiff strict proof thereof.

4 27. Endurance is without sufficient knowledge or information to form a belief
5 concerning the allegations of paragraph 27 of the Complaint and therefore denies those allegations
6 and places upon Plaintiff strict proof thereof.

7 28. Endurance admits the allegations set forth in paragraph 28 of the Complaint as those
8 allegations relate to Endurance only. Endurance is without sufficient knowledge or information to
9 form a belief concerning the remaining allegations of paragraph 28 of the Complaint and therefore
10 denies those allegations and places upon Plaintiff strict proof thereof.

11 29. Endurance denies the allegations set forth in paragraph 29 of the Complaint as those
12 allegations relate to Endurance only. Endurance is without sufficient knowledge or information to
13 form a belief concerning the remaining allegations of paragraph 29 of the Complaint and therefore
14 denies those allegations and places upon Plaintiff strict proof thereof.

15 **RESPONSE TO: THE POLICY**

16 30. Endurance admits that Plaintiff paid a premium and Endurance issued a commercial
17 property insurance policy, the terms and conditions of which speak for themselves. The allegations
18 set forth in paragraph 30 of the Complaint are denied to the extent those allegations are inconsistent
19 with or contradict the terms and conditions of the Policy. Endurance denies any remaining
20 allegations set forth in this paragraph.

21 31. Admitted.

22 32. Responding to the allegations set forth in paragraph 32 of the Complaint, Endurance
23 admits that the Policy's maximum limit of liability per occurrence is \$350,000,000, subject to the
24 Policy's terms, conditions, and sublimits. Endurance denies the allegations set forth in paragraph
25 32 to the extent those allegations are inconsistent with or contradict the terms and conditions of the
26 Policy, which speak for themselves.

27 33. Admitted.

28 34. Denied.

1 35. Responding to the allegations set forth in paragraph 35 of the Complaint, Endurance
2 states that the terms and conditions of the Policy speak for themselves. Endurance denies the
3 allegations set forth in paragraph 35 to the extent those allegations are inconsistent with or
4 contradict the terms and conditions of the Policy.

5 36. Responding to the allegations set forth in paragraph 36 of the Complaint, Endurance
6 states that the terms and conditions of the Policy speak for themselves. Endurance denies the
7 allegations set forth in paragraph 36 to the extent those allegations are inconsistent with or
8 contradict the terms and conditions of the Policy.

9 37. Responding to the allegations set forth in paragraph 37 of the Complaint, Endurance
10 states that the terms and conditions of the Policy speak for themselves. Endurance denies the
11 allegations set forth in paragraph 37 to the extent those allegations are inconsistent with or
12 contradict the terms and conditions of the Policy.

13 38. Denied. Endurance states that the terms and conditions of the Policy speak for
14 themselves.

15 39. Responding to the allegations set forth in paragraph 39 of the Complaint, Endurance
16 admits that Plaintiff paid the premium for the Policy, but denies all remaining allegations.

17 **RESPONSE TO: FACTUAL BACKGKROUND AND GENERAL ALLEGATIONS**

18 **Hakkasan's Operations**

19 40. Endurance is without sufficient knowledge or information to form a belief
20 concerning the allegations of paragraph 40 of the Complaint and therefore denies those allegations
21 and places upon Plaintiff strict proof thereof.

22 41. Endurance is without sufficient knowledge or information to form a belief
23 concerning the allegations of paragraph 41 of the Complaint and therefore denies those allegations
24 and places upon Plaintiff strict proof thereof.

25 42. Endurance is without sufficient knowledge or information to form a belief
26 concerning the allegations of paragraph 42 of the Complaint and therefore denies those allegations
27 and places upon Plaintiff strict proof thereof.

28

43. Endurance is without sufficient knowledge or information to form a belief concerning the allegations of paragraph 43 of the Complaint and therefore denies those allegations and places upon Plaintiff strict proof thereof.

The COVID-19 Pandemic

44. Admitted.

45. Endurance is without sufficient knowledge or information to form a belief concerning the allegations of paragraph 45 of the Complaint and therefore denies those allegations and places upon Plaintiff strict proof thereof.

46. Endurance is without sufficient knowledge or information to form a belief concerning the allegations of paragraph 46 of the Complaint and therefore denies those allegations and places upon Plaintiff strict proof thereof.

47. Endurance is without sufficient knowledge or information to form a belief concerning the allegations of paragraph 47 of the Complaint and therefore denies those allegations and places upon Plaintiff strict proof thereof.

48. Endurance is without sufficient knowledge or information to form a belief concerning the allegations of paragraph 48 of the Complaint and therefore denies those allegations and places upon Plaintiff strict proof thereof.

49. Endurance is without sufficient knowledge or information to form a belief concerning the allegations of paragraph 49 of the Complaint and therefore denies those allegations and places upon Plaintiff strict proof thereof.

50. Endurance admits that government state officials have promulgated closure and shelter-in-place orders, but Endurance is without sufficient knowledge or information to form a belief concerning the remaining allegations of paragraph 50 of the Complaint and therefore denies those allegations and places upon Plaintiff strict proof thereof.

Hakkasan Suffers Covered Losses

51. Endurance is without sufficient knowledge or information to form a belief concerning the allegations of paragraph 51 of the Complaint and therefore denies those allegations and places upon Plaintiff strict proof thereof.

1 52. Endurance is without sufficient knowledge or information to form a belief
2 concerning the allegations of paragraph 52 of the Complaint and therefore denies those allegations
3 and places upon Plaintiff strict proof thereof.

4 53. Endurance is without sufficient knowledge or information to form a belief
5 concerning the allegations of paragraph 53 of the Complaint and therefore denies those allegations
6 and places upon Plaintiff strict proof thereof.

7 **Hakkasan Instructs Willis to Tender the Claim**

8 54. Upon information and belief, Endurance admits that Willis was Plaintiff's broker
9 with respect to the Policy, but Endurance is without sufficient knowledge or information to form a
10 belief concerning the remaining allegations of paragraph 54 of the Complaint and therefore denies
11 those allegations and places upon Plaintiff strict proof thereof.

12 55. Endurance is without sufficient knowledge or information to form a belief
13 concerning the allegations of paragraph 55 of the Complaint and therefore denies those allegations
14 and places upon Plaintiff strict proof thereof.

15 56. Endurance is without sufficient knowledge or information to form a belief
16 concerning the allegations of paragraph 56 of the Complaint and therefore denies those allegations
17 and places upon Plaintiff strict proof thereof.

18 **Willis Conspires with Sompco to Issue an Invalid Backdated Endorsement**

19 57. Endurance is without sufficient knowledge or information to form a belief
20 concerning the allegations of paragraph 57 of the Complaint and therefore denies those allegations
21 and places upon Plaintiff strict proof thereof.

22 58. Endurance is without sufficient knowledge or information to form a belief
23 concerning the allegations of paragraph 58 of the Complaint and therefore denies those allegations
24 and places upon Plaintiff strict proof thereof.

25 59. Endurance admits that it had no direct contact with Plaintiff, but denies the
26 remaining allegations in paragraph 59 of the Complaint.

27 60. Responding to the allegations set forth in paragraph 60 of the Complaint, Endurance
28 admits that it duly issued the General Change Endorsement, the terms of which speak for

1 themselves. The allegations in paragraph 60 are denied to the extent those allegations are
2 inconsistent with or contradict the terms and conditions of the Endorsement. Endurance denies all
3 remaining allegations therein.

4 61. Responding to the allegations set forth in paragraph 61, Endurance admits that it did
5 not advise Hakkasan regarding the endorsement because it did not have direct contact with
6 Hakkasan. Endurance is without sufficient knowledge or information to form a belief concerning
7 the remaining allegations of paragraph 61 of the Complaint and therefore denies those allegations
8 and places upon Plaintiff strict proof thereof

9 62. Admitted.

10 63. Responding to the allegations set forth in paragraph 63 of the Complaint, Endurance
11 states that the terms and conditions of the Endorsement speak for themselves. Endurance denies the
12 allegations in paragraph 63 to the extent those allegations are inconsistent with or contradict the
13 terms and conditions of the Endorsement.

14 64. Responding to the allegations set forth in paragraph 64 of the Complaint, Endurance
15 states that the terms and conditions of the Endorsement speak for themselves. Endurance denies the
16 allegations in paragraph 64 to the extent those allegations are inconsistent with or contradict the
17 terms and conditions of the Endorsement.

18 65. Denied as stated.

19 66. Endurance is without sufficient knowledge or information to form a belief
20 concerning the allegations of paragraph 66 of the Complaint and therefore denies those allegations
21 and places upon Plaintiff strict proof thereof.

22 67. Endurance is without sufficient knowledge or information to form a belief
23 concerning the allegations of paragraph 67 of the Complaint and therefore denies those allegations
24 and places upon Plaintiff strict proof thereof.

25 68. Denied as stated.

26 69. Denied as stated.

27 70. Denied.

1 71. Endurance admits that on the date alleged Willis submitted the Claim to Endurance
2 on behalf of Plaintiff.

3 72. Endurance is without sufficient knowledge or information to form a belief
4 concerning the allegations of paragraph 72 of the Complaint and therefore denies those allegations
5 and places upon Plaintiff strict proof thereof.

6 **Willis and Sompso Engage in Further Delay and Misrepresentation**

7 73. Admitted.

8 74. Denied as stated.

9 75. Responding to the allegations set forth in paragraph 75 of the Complaint, Endurance
10 admits that it sent requests for information regarding the loss, but denies the remaining allegations
11 set forth in this paragraph.

12 76. Denied.

13 77. Endurance is without sufficient knowledge or information to form a belief
14 concerning the allegations of paragraph 77 of the Complaint and therefore denies those allegations
15 and places upon Plaintiff strict proof thereof.

16 78. Endurance is without sufficient knowledge or information to form a belief
17 concerning the allegations of paragraph 78 of the Complaint and therefore denies those allegations
18 and places upon Plaintiff strict proof thereof.

19 79. Responding to the allegations set forth in paragraph 79, Endurance denies the
20 allegations to the extent those allegations are inconsistent with or contradict the terms and
21 conditions of the Policy. Endurance is without sufficient knowledge or information to form a belief
22 concerning the remaining allegations of paragraph 79 of the Complaint and therefore denies those
23 allegations and places upon Plaintiff strict proof thereof.

24 80. Endurance is without sufficient knowledge or information to form a belief
25 concerning the allegations of paragraph 80 of the Complaint and therefore denies those allegations
26 and places upon Plaintiff strict proof thereof.

27 81. Endurance admits that it received a letter dated April 17, 2020 from Plaintiff's
28 General Counsel, the contents of which speak for themselves. Endurance denies the allegations set

1 forth in paragraph 81 of the Complaint to the extent those allegations are inconsistent with or
2 contradict the contents of the letter. All remaining allegations in paragraph 81 are denied.

3 82. Endurance admits that it received a letter dated May 1, 2020 from Plaintiff's General
4 Counsel, the contents of which speak for themselves. Endurance denies the allegations set forth in
5 paragraph 82 of the Complaint to the extent those allegations are inconsistent with or contradict the
6 contents of the letter. All remaining allegations in paragraph 82 are denied.

7 83. Endurance admits that it received an email dated May 20, 2020 from Plaintiff's
8 counsel, the contents of which speak for themselves. The allegations set forth in paragraph 83 of
9 the Complaint are denied to the extent those allegations are inconsistent with or contradict the
10 contents of the email. All remaining allegations in paragraph 83 are denied.

11 84. Endurance admits that it sent a letter dated May 22, 2020 to Plaintiff's General
12 Counsel and that a true and correct copy of that letter is attached to the Complaint as Exhibit 3.
13 Endurance denies all remaining allegations set forth in paragraph 84 of the Complaint.

14 85. Endurance admits that it sent a letter dated May 22, 2020 to Plaintiff's General
15 Counsel, the contents of which speak for themselves. Endurance denies the allegations set forth in
16 paragraph 85 of the Complaint to the extent those allegations are inconsistent with or contradict the
17 contents of the letter. Endurance denies all remaining allegations contained in paragraph 85 of the
18 Complaint.

19 86. Endurance admits that it sent a letter dated May 22, 2020 to Plaintiff's General
20 Counsel, the contents of which speak for themselves. Endurance denies the allegations set forth in
21 paragraph 86 of the Complaint to the extent those allegations are inconsistent with or contradict the
22 contents of the letter. Endurance denies all remaining allegations contained in paragraph 86 of the
23 Complaint.

24 87. Endurance admits that it sent a letter dated May 22, 2020 to Plaintiff's General
25 Counsel, the contents of which speak for themselves. Endurance denies the allegations set forth in
26 paragraph 87 of the Complaint to the extent those allegations are inconsistent with or contradict the
27 contents of the letter. Endurance denies all remaining allegations contained in paragraph 87 of the
28 Complaint.

1 88. Endurance admits that it sent a letter dated May 22, 2020 to Plaintiff's General
2 Counsel, the contents of which speak for themselves. Endurance denies the allegations set forth in
3 paragraph 88 of the Complaint to the extent those allegations are inconsistent with or contradict the
4 contents of the letter. Endurance denies all remaining allegations contained in paragraph 88 of the
5 Complaint.

6 89. Endurance admits that it sent a letter dated May 22, 2020 to Plaintiff's General
7 Counsel, the contents of which speak for themselves. Endurance denies the allegations set forth in
8 paragraph 89 of the Complaint to the extent those allegations are inconsistent with or contradict the
9 contents of the letter. Endurance denies all remaining allegations contained in paragraph 89 of the
10 Complaint.

11 90. Endurance admits that it sent a letter dated May 22, 2020 to Plaintiff's General
12 Counsel, the contents of which speak for themselves. Endurance denies the allegations set forth in
13 paragraph 90 of the Complaint to the extent those allegations are inconsistent with or contradict the
14 contents of the letter. Endurance denies all remaining allegations contained in paragraph 90 of the
15 Complaint.

16 91. Endurance admits that it sent a letter dated May 22, 2020 to Plaintiff's General
17 Counsel, the contents of which speak for themselves. The allegations set forth in paragraph 91 of
18 the Complaint are denied to the extent those allegations are inconsistent with or contradict the
19 contents of the letter. Endurance denies all remaining allegations contained in paragraph 91.

20 92. Endurance is without sufficient knowledge or information to form a belief
21 concerning the allegations of paragraph 92 of the Complaint and therefore denies those allegations
22 and places upon Plaintiff strict proof thereof.

23 93. Endurance is without sufficient knowledge or information to form a belief
24 concerning the allegations of paragraph 93 of the Complaint and therefore denies those allegations
25 and places upon Plaintiff strict proof thereof.

26 94. Endurance is without sufficient knowledge or information to form a belief
27 concerning the allegations of paragraph 94 of the Complaint and therefore denies those allegations
28 and places upon Plaintiff strict proof thereof.

1 95. Endurance admits that it has paid \$1.5 million to Plaintiff in accordance with the
2 terms and conditions of the Policy. Endurance denies the remaining allegations set forth in
3 paragraph 95 of the Complaint.

4 96. Denied.

5 97. Denied.

6 **RESPONSE TO: FIRST CLAIM FOR RELIEF**

7 **Declaratory Relief**
8 **(Against Sompò)**

9 98. Endurance hereby repeats and incorporates its answers and defenses to all previous
10 allegations and averments to all other paragraphs of the Complaint, as if set forth verbatim herein.

11 99. Endurance admits that it has paid \$1.5 million to Plaintiff in accordance with the
12 terms and conditions of the Policy. Endurance denies the remaining allegations set forth in
13 paragraph 99 of the Complaint.

14 100. Responding to the allegations set forth in paragraph 100 of the Complaint,
15 Endurance admits that it has requested information from Plaintiff in order to evaluate the Claim,
16 pursuant to the terms and conditions of the Policy. Endurance denies all remaining allegations set
17 forth in paragraph 100.

18 101. The allegations set forth in paragraph 101 of the Complaint are a statement of
19 Plaintiff's contentions, to which no response is required. To the extent a response is required,
20 Endurance states that its representations and obligations with respect to the Claim are set forth in
21 the terms and conditions of the Policy, which speak for themselves. Endurance denies the
22 allegations set forth in this paragraph to the extent those allegations are inconsistent with or
23 contradict the terms and conditions of the Policy. Endurance denies all remaining allegations set
24 forth in paragraph 101.

25 102. Responding to the allegations contained in paragraph 102 of the Complaint,
26 Endurance admits that there is no coverage available in excess of the \$1,500,000 sublimit, as set
27 forth by the explicit terms of the Policy, and Plaintiff disagrees with Endurance's position.
28

103. Admitted that an actual, ripe, and justiciable controversy exists between Endurance and Hakkasan. Endurance denies all remaining allegations set forth in paragraph 103.

104. Endurance denies that Plaintiff is entitled to the relief sought as well as all other allegations set forth in paragraph 104 of the Complaint.

105. Endurance denies that Plaintiff is entitled to the relief sought as well as all other allegations set forth in paragraph 105 of the Complaint.

106. Endurance denies that Plaintiff is entitled to the relief sought as well as all other allegations set forth in paragraph 106 of the Complaint.

RESPONSE TO: SECOND CLAIM FOR RELIEF
Violation of NRS 686A.310 “Nevada Unfair Claims Practice Act”
(Against Sompot)

107. Endurance hereby repeats and incorporates its answers and defenses to all previous allegations and averments to all other paragraphs of the Complaint, as if set forth verbatim herein.

108. The allegations set forth in paragraph 108 of the Complaint purport to be a statement of law to which no response is required. To the extent a response is required, Endurance denies the allegations as stated.

109. Denied.

110. Denied.

111. Denied.

112. Denied.

113. Denied.

RESPONSE TO: THIRD CLAIM FOR RELIEF
Breach of Contract
(Against Sompot)

114. Endurance hereby repeats and incorporates its answers and defenses to all previous allegations and averments to all other paragraphs of the Complaint, as if set forth verbatim herein.

115. Endurance admits that the Policy is a valid contract between Endurance and Plaintiff, but denies the remaining allegations contained in paragraph 115 of the Complaint.

116. Denied.

117. Denied.

118. The allegations set forth in paragraph 118 of the Complaint purport to be a statement of law to which no response is required. To the extent a response is required, Endurance denies the allegations as stated.

119. Denied.

120. Denied.

121. Endurance denies that Plaintiff is entitled to the relief sought as well as all other allegations set forth in paragraph 121 of the Complaint.

RESPONSE TO: FOURTH CLAIM FOR RELIEF
Contractual Breach of the Implied Covenant of Good Faith and Fair Dealing
(Against Sompó)

122. Endurance hereby repeats and incorporates its answers and defenses to all previous allegations and averments to all other paragraphs of the Complaint, as if set forth verbatim herein.

123. Endurance admits that the Policy is a valid contract between Endurance and Plaintiff, but denies the remaining allegations contained in paragraph 123.

124. The allegations set forth in paragraph 124 of the Complaint purport to be a statement of law to which no response is required. To the extent a response is required, Endurance denies the allegations as stated.

125. Denied.

126. Denied.

127. Denied.

128. Endurance denies that Plaintiff is entitled to the relief sought as well as all other allegations set forth in paragraph 128 of the Complaint.

RESPONSE TO: FIFTH CLAIM FOR RELIEF
Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing
(Against Sompó)

129. Endurance hereby repeats and incorporates its answers and defenses to all previous allegations and averments to all other paragraphs of the Complaint, as if set forth verbatim herein.

130. Endurance admits that the Policy is a valid contract between Endurance and Plaintiff, but denies the remaining allegations contained in paragraph 130.

131. The allegations set forth in paragraph 131 of the Complaint purport to be a statement of law to which no response is required. To the extent a response is required, Endurance denies the allegations as stated.

132. The allegations set forth in the first sentence of paragraph 132 purport to be a statement of law to which no response is required. To the extent a response is required, Endurance denies the allegations as state. Responding further, Endurance denies the allegations set forth in the second sentence of paragraph 132 of the Complaint.

133. Denied.

134. Endurance denies that Plaintiff is entitled to the relief sought as well as all other allegations set forth in paragraph 134 of the Complaint.

135. Endurance denies that Plaintiff is entitled to the relief sought as well as all other allegations set forth in paragraph 135 of the Complaint.

RESPONSE TO: SIXTH CLAIM FOR RELIEF
Civil Conspiracy²
(Against Somp and Willis)

136. Endurance hereby repeats and incorporates its answers and defenses to all previous allegations and averments to all other paragraphs of the Complaint, as if set forth verbatim herein.

137. The allegations set forth in paragraph 137 of the Complaint purport to be a statement of law to which no response is required. To the extent a response is required, Endurance denies the allegations as stated.

138. Denied.

139. Denied.

140. Denied.

141. Denied.

142. Denied.

² Endurance denies the allegations contained in footnote 3 of the Complaint.

1 143. Denied.

2 144. Denied.

3 145. Denied.

4 146. Denied.

5 147. Endurance denies that Plaintiff is entitled to the relief sought as well as all other
6 allegations set forth in paragraph 147 of the Complaint.

7 **RESPONSE TO: SEVENTH CLAIM FOR RELIEF**

8 **Constructive Fraud**
9 **(Against Somp and Willis)**

10 148. Endurance hereby repeats and incorporates its answers and defenses to all previous
11 allegations and averments to all other paragraphs of the Complaint, as if set forth verbatim herein.

12 149. The allegations contained in paragraph 149 of the Complaint purport to be a
13 statement of law to which no response is required. To the extent a response is required, Endurance
14 denies the allegations as stated.

15 150. The allegations set forth in paragraph 150 of the Complaint purport to be a statement
16 of law to which no response is required.

17 151. The allegations set forth in paragraph 151 of the Complaint purport to be a statement
18 of law to which no response is required.

19 152. Endurance admits that it issued the Endorsement to the Policy, but denies the
20 remaining allegations set forth in paragraph 152 of the Complaint.

21 153. Endurance denies the allegations set forth in paragraph 153 of the Complaint as
22 those allegations relate to Endurance. Endurance is without sufficient knowledge or information
23 to form a belief concerning the remaining allegations of paragraph 153 of the Complaint and
24 therefore denies those allegations and places upon Plaintiff strict proof thereof.

25 154. Endurance denies the allegations set forth in paragraph 154 of the Complaint as
26 those allegations relate to Endurance. Endurance is without sufficient knowledge or information
27 to form a belief concerning the remaining allegations of paragraph 154 of the Complaint and
28 therefore denies those allegations and places upon Plaintiff strict proof thereof.

1 155. Endurance denies the allegations set forth in paragraph 155 of the Complaint as
2 those allegations relate to Endurance. Endurance is without sufficient knowledge or information
3 to form a belief concerning the remaining allegations of paragraph 155 of the Complaint and
4 therefore denies those allegations and places upon Plaintiff strict proof thereof.

5 156. Endurance is without sufficient knowledge or information to form a belief
6 concerning the allegations of paragraph 156 of the Complaint and therefore denies those allegations
7 and places upon Plaintiff strict proof thereof.

8 157. Endurance is without sufficient knowledge or information to form a belief
9 concerning the allegations of paragraph 157 of the Complaint and therefore denies those allegations
10 and places upon Plaintiff strict proof thereof.

11 158. Responding to the allegations set forth in paragraph 158 of the Complaint,
12 Endurance denies that it would not be able to rely on the Endorsement and further denies that it
13 would pay Plaintiff's claim. Endurance is without sufficient knowledge or information to form a
14 belief concerning the remaining allegations of paragraph 158 of the Complaint and therefore denies
15 those allegations and places upon Plaintiff strict proof thereof.

16 159. Denied.

17 160. Responding to the allegations set forth in paragraph 160 of the Complaint,
18 Endurance denies that it failed to fulfill any duties to Plaintiff and further denies that Plaintiff was
19 harmed by Endurance's conduct. Endurance is without sufficient knowledge or information to
20 form a belief concerning the remaining allegations of paragraph 160 of the Complaint and therefore
21 denies those allegations and places upon Plaintiff strict proof thereof.

22 161. Responding to the allegations set forth in paragraph 161 of the Complaint,
23 Endurance denies that it made any misrepresentations or omissions regarding the Policy terms,
24 including the Endorsement, and further denies that Plaintiff was harmed by Endurance's conduct.
25 Endurance is without sufficient knowledge or information to form a belief concerning the
26 remaining allegations of paragraph 161 of the Complaint and therefore denies those allegations and
27 places upon Plaintiff strict proof thereof.

28 162. Denied.

1 163. Endurance denies the allegations set forth in paragraph 163 of the Complaint as
2 those allegations relate to Endurance. Endurance is without sufficient knowledge or information
3 to form a belief concerning the remaining allegations of paragraph 163 of the Complaint and
4 therefore denies those allegations and places upon Plaintiff strict proof thereof.

5 164. Endurance denies the allegations set forth in paragraph 164 of the Complaint as
6 those allegations relate to Endurance. Endurance is without sufficient knowledge or information
7 to form a belief concerning the remaining allegations of paragraph 164 of the Complaint and
8 therefore denies those allegations and places upon Plaintiff strict proof thereof.

9 165. Denied.

10 166. Endurance denies the allegations set forth in paragraph 166 of the Complaint as
11 those allegations relate to Endurance. Endurance is without sufficient knowledge or information
12 to form a belief concerning the remaining allegations of paragraph 166 of the Complaint and
13 therefore denies those allegations and places upon Plaintiff strict proof thereof.

14 167. Endurance denies the allegations set forth in paragraph 167 of the Complaint as
15 those allegations relate to Endurance. Endurance is without sufficient knowledge or information
16 to form a belief concerning the remaining allegations of paragraph 167 of the Complaint and
17 therefore denies those allegations and places upon Plaintiff strict proof thereof.

18 168. Denied.

19 169. Denied.

20 170. Denied as stated.

21 171. Endurance denies that Plaintiff is entitled to the relief sought as well as all other
22 allegations set forth in paragraph 171 of the Complaint.

23 172. Endurance denies that Plaintiff is entitled to the relief sought as well as all other
24 allegations set forth in paragraph 172 as those allegations relate to Endurance. Endurance is without
25 sufficient knowledge or information to form a belief concerning the remaining allegations of
26 paragraph 172 of the Complaint and therefore denies those allegations and places upon Plaintiff
27 strict proof thereof.
28

RESPONSE TO: EIGHTH CLAIM FOR RELIEF

**Negligence
(Against Willis)**

173. Endurance hereby repeats and incorporates its answers and defenses to all previous allegations and averments to all other paragraphs of the Complaint, as if set forth verbatim herein.

174. The allegations set forth in paragraph 174 of the Complaint purport to be a statement of law to which no response is required.

175. The allegations set forth in paragraph 175 of the Complaint purport to be a statement of law to which no response is required.

176. Responding to the allegations set forth in paragraph 176 of the Complaint, Endurance denies that it had inappropriate communications with Willis about the Claim and further denies that the Endorsement is invalid. Endurance is without sufficient knowledge or information to form a belief concerning the remaining allegations of paragraph 176 of the Complaint and therefore denies those allegations and places upon Plaintiff strict proof thereof.

177. Denied.

178. Endurance denies the allegations set forth in paragraph 178 of the Complaint as those allegations relate to Endurance, but is without sufficient knowledge or information to form a belief concerning the remaining allegations of paragraph 178 of the Complaint and therefore denies those allegations and places upon Plaintiff strict proof thereof.

179. Responding to the allegations set forth in paragraph 179 of the Complaint, Endurance denies that Plaintiff is entitled to recovery any damages from Endurance. Endurance is without sufficient knowledge or information to form a belief concerning the remaining allegations of paragraph 179 of the Complaint and therefore denies those allegations and places upon Plaintiff strict proof thereof.

RESPONSE TO: NINTH CLAIM FOR RELIEF

**Intentional Interference With Contractual Relations
(Against Willis)**

180. Endurance hereby repeats and incorporates its answers and defenses to all previous allegations and averments to all other paragraphs of the Complaint, as if set forth verbatim herein.

1 181. Endurance admits that the Policy is a valid contract between Endurance and
2 Plaintiff, but denies the remaining allegations contained in paragraph 181.

3 182. Endurance is without sufficient knowledge or information to form a belief
4 concerning the allegations of paragraph 182 of the Complaint and therefore denies those allegations
5 and places upon Plaintiff strict proof thereof.

6 183. Endurance denies that it breached its agreement with Plaintiff, but is without
7 sufficient knowledge or information to form a belief concerning the remaining allegations of
8 paragraph 183 of the Complaint and therefore denies those allegations and places upon Plaintiff
9 strict proof thereof.

10 184. Endurance is without sufficient knowledge or information to form a belief
11 concerning the allegations of paragraph 184 of the Complaint and therefore denies those allegations
12 and places upon Plaintiff strict proof thereof.

13 185. Denied.

14 186. Endurance denies the allegations set forth in paragraph 186 of the Complaint as
15 those allegations relate to Endurance, but is without sufficient knowledge or information to form a
16 belief concerning the remaining allegations of paragraph 186 of the Complaint and therefore denies
17 those allegations and places upon Plaintiff strict proof thereof.

18 187. Responding to the allegations set forth in paragraph 187 of the Complaint,
19 Endurance denies that Plaintiff is entitled to recovery any damages or relief from Endurance.
20 Endurance is without sufficient knowledge or information to form a belief concerning the
21 remaining allegations of paragraph 188 of the Complaint and therefore denies those allegations and
22 places upon Plaintiff strict proof thereof.

23 188. Endurance is without sufficient knowledge or information to form a belief
24 concerning the allegations of paragraph 189 of the Complaint and therefore denies those allegations
25 and places upon Plaintiff strict proof thereof.

26 Endurance specifically denies that Plaintiff is entitled to any of the relief or damages
27 requested in the Complaint after the word “WHEREFORE,” including paragraphs 1-24 thereunder.
28 Endurance denies that Plaintiff is entitled to any relief or damages against Endurance whatsoever.

1 Endurance further denies any and all other paragraphs, headings, titles, claims for relief,
2 and all other allegations or averments not specifically responded to herein.

3 **AFFIRMATIVE DEFENSES**

4 **FIRST AFFIRMATIVE DEFENSE**

5 Plaintiff's Complaint should be dismissed for failure to state a claim upon which relief can
6 be granted.

7 **SECOND AFFIRMATIVE DEFENSE**

8 Plaintiff's claims should be dismissed, in part, because Plaintiff failed to plead with
9 particularity the circumstances allegedly constituting fraud.

10 **THIRD AFFIRMATIVE DEFENSE**

11 Plaintiff's claims against Endurance fail, in whole or in part, due to Plaintiff's failure to
12 satisfy conditions precedent to coverage, including but not limited to failing to provide a sworn
13 statement in proof of loss, failing to furnish complete documentation in support of its claimed
14 damages, and failing to produce for examination documents needed for an evaluation of the Claim,
15 as required by the terms of the Policy.

16 **FOURTH AFFIRMATIVE DEFENSE**

17 Plaintiff's claims against Endurance are barred because they fall outside the scope of
18 coverage provided by the Policy and are barred by the terms, exclusions, conditions, and/or
19 limitations contained in the Policy, all of which are incorporated herein by reference.

20 **FIFTH AFFIRMATIVE DEFENSE**

21 Endurance has not breached any duty to Plaintiff arising by statute, contract, tort, common
22 law, or otherwise.

23 **SIXTH AFFIRMATIVE DEFENSE**

24 Endurance has acted in good faith. Endurance's coverage position is entirely reasonable
25 based on the terms and conditions of the Policy, and the law. Therefore, there is no basis upon
26 which to find bad faith or liability as a result of Endurance's actions.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part by the doctrines of waiver and estoppel.

EIGHTH AFFIRMATIVE DEFENSE

Recovery of punitive or exemplary damages is barred because N.R.S. 42.005, under which punitive and exemplary damages are recoverable under Nevada law, is unconstitutionally vague as applied, and pursuant to the due process clause of the Fifth Amendment to the United States Constitution and Section 8, Article 1 of the Nevada Constitution, as it authorizes an award of punitive or exemplary damages in violation of Endurance's right of equal protection and authorizes and award of punitive damages which will constitute an excessive fine in violation of Section 6, Article 1 of the Nevada Constitution.

NINTH AFFIRMATIVE DEFENSE

Endurance performed no acts or omissions with relation to its dealing with Plaintiff that could warrant the imposition of punitive or exemplary damages.

TENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to plead any acts or omissions of Endurance sufficient to warrant the consideration of punitive or exemplary damages.

ELEVENTH AFFIRMATIVE DEFENSE

Endurance has committed no acts of oppression, fraud or malice, expressed or implied.

TWELFTH AFFIRMATIVE DEFENSE

To the extent Plaintiff's Complaint seeks punitive damages, punitive damages cannot be sustained because the standard for determining liability for punitive damages under Nevada law is vague and arbitrary and does not define with sufficient clarity the conduct or mental state which gives rise to such claims. Therefore, any award of punitive damages would violate Endurance's due process rights under the United States and Nevada Constitutions.

THIRTEENTH AFFIRMATIVE DEFENSE

To the extent Plaintiff's Complaint seeks punitive damages, such damages cannot be sustained because there are no meaningful standards for determining the amount of punitive damages award under Nevada law, and because Nevada law does not state with sufficient clarity

1 the consequences of conduct giving rise to a claim for punitive damages. Therefore, any award of
2 punitive damages would violate Endurance's rights under the United States and Nevada
3 Constitutions.

4 **RESERVATION OF RIGHTS**

5 All possible affirmative defenses may not have been alleged herein insofar as sufficient
6 facts are not available after reasonable inquiry upon the filing of the Complaint. Thus, Endurance
7 reserves the right to amend this Answer to allege additional affirmative defenses as subsequent
8 investigation warrants.

9 WHEREFORE, Endurance prays for judgment as follows:

- 10 1. That Plaintiff takes nothing by the Complaint, and that this action be dismissed in
11 its entirety with prejudice;
- 12 2. That the costs incurred in defense of this action be awarded against Plaintiff;
- 13 3. For reasonable attorneys' fees and costs incurred in defense of this action; and
- 14 4. And such other relief as the Court may deem just and proper.

15 **COUNTERCLAIMS**

16 Pursuant to NRCP 13, Counter-Claimant Endurance American Specialty Insurance
17 Company ("Endurance") brings its Counterclaims for declaratory judgment or, alternatively,
18 reformation, against Counter-Defendant Hakkasan USA, Inc. ("Hakkasan"), alleging as follows:

19 **PARTIES**

- 20 1. Endurance is a corporation organized and existing under the laws of Delaware with
21 its principal place of business in New York, New York.
- 22 2. Hakkasan is a company organized and existing under the laws of Delaware with its
23 principal place of business in Las Vegas, Nevada.

24 **JURISDICTION AND VENUE**

- 25 3. These Counterclaims arise out of the same transaction or occurrence alleged in the
26 Complaint.

FACTUAL BACKGROUND

7. In or about March 2019, Willis, Hakkasan's broker, requested that Endurance provide a quote to Hakkasan for commercial property insurance coverage.

8. On or about March 6, 2019, Endurance issued a quote for commercial property insurance coverage (the “2019 Quote”), which included “Special time element cancellation Coverage” with a proposed sublimit of \$1,500,000.

9. Following submission of the 2019 Quote, Willis gave Endurance the order to bind coverage.

10. In April 2019, Endurance issued the binder (the “Binder”) for Policy No. ARL30001017500, effective for the Policy Period of April 1, 2019 to April 1, 2020, (the “Policy”) to Hakkasan as the Named Insured.

11. The Binder for the Policy includes a description of the Limits of Liability, including a Sublimit of \$1,500,000 for “Special time element cancellation Coverage.”

12. Thereafter, Endurance issued the Policy on May 15, 2019.

13. As the underwriter was preparing for the 2020 renewal, Endurance noticed that the Special Time Element Cancellation Coverage sublimit was inadvertently omitted from the Policy. Accordingly, Endurance issued the General Change Endorsement, a copy of which is attached as Exhibit 2 to the Complaint (the “Endorsement”).

14. After Endurance issued the General Change Endorsement, Hakkasan's broker

submitted a claim to Endurance on March 13, 2020, for a reported business loss of due to the Coronavirus (the “Claim”).

15. On March 16, 2020, Endurance acknowledged receipt of the Claim.

16. On March 21, 2020, Endurance sent a letter to Hakkasan’s General Counsel, reserving its rights under the Policy and requesting information needed to evaluate the Claim.

17. On April 15, 2020, Endurance sent supplemental requests for information needed to evaluate the Claim.

18. On April 17, 2020, Hakkasan responded to Endurance’s requests for information with partial, incomplete information.

19. Despite the incomplete nature of the information provided, Endurance provided its initial coverage position letter on May 22, 2020 and reiterated its requests for information, subject to a full reservation of rights under the Policy. In that letter, Endurance noted that, pursuant to its terms and conditions, the Policy provides “Special Time Element – Cancellation Coverage,” which provides as follows:

Notwithstanding that Time Element loss insured under this Policy must be caused by or result from loss, damage or destruction not otherwise excluded, this Policy is extended to insure the actual loss sustained by the Insured resulting from the cancellation of, and/or inability to accept bookings or reservations for accommodation, receive admissions, and/or interference with the business at any insured location all as a direct result of the “Occurrence” of:

...
ii. contagious or infectious disease (including decontamination and clean up costs);

...
iv. any of the following that occur within a radius of five (5) miles of an insured location ...

1.(a) outbreak of a contagious and/or infectious disease

...
v. closing of the whole or part of the premises of the Insured either by the Insured or by order of a Public Authority consequent upon the existence or threat of hazardous conditions either actual or suspected at an insured location

...
The coverages stated above are subject to the sublimits of liability as shown in Paragraph F. **OTHER SUBLIMITS FOR LOSS ARISING OUT OF ONE OCCURRENCE** in the Declarations section of the policy and is subject to the Policy provisions, including applicable exclusions and deductibles, all as shown in this section and elsewhere in this Policy.

20. Pursuant to the terms of the Endorsement, Special Time Element Cancellation Coverage afforded by the Policy is subject to a \$1,500,000 sublimit. Accordingly, in the May 22, 2020 letter, Endurance informed Hakkasan that it appeared the Claim triggered the Special Time Element Cancellation Coverage and the sublimit set forth in the Endorsement.

COUNT I: DECLARATORY RELIEF

24. Endurance incorporates by reference each of the allegations of paragraphs 1 through 23 inclusive, as if set forth verbatim herein.

25. An actual, ripe, and justiciable controversy exists between Endurance and Hakkasan concerning their current rights and obligations under the Policy with respect to the applicable limit of liability in connection with the Claim because Hakkasan disputes that the \$1,500,000 sublimit applies to its Claim.

26. Endurance seeks a declaration that (a) the Endorsement is part of the Policy as contemplated by the parties and (b) Hakkasan's covered damages are limited to the \$1,500,000 sublimit for Special Time Element Cancellation Coverage.

27. By reason of the foregoing, an actual and justiciable controversy exists between Endurance and Hakkasan. A declaratory judgment is, therefore, both necessary and proper to determine the rights and obligations of these parties under the Policy.

COUNT II: REFORMATION

28. Endurance incorporates by reference each of the allegations of paragraphs 1 through 23 inclusive, as if set forth verbatim herein.

29. It was the mutual intent of the parties that the \$1,500,000 sublimit for Special Time Element Cancellation Coverage be included in the Policy, as evidenced by the 2019 Quote and the Binder. However, an error occurred in the drafting of the Policy—namely, when the Policy was prepared, the sublimit was inadvertently omitted from the Policy. The omission of the sublimit was a mistake and does not reflect the mutual intention of the parties.

30. Due to the advertent omission of the sublimit, the Policy issued on May 15, 2019, was not the correct and final Policy and did not reflect the complete intention of the parties.

31. Endurance learned about the missing sublimit on or about March 3, 2020, and issued

the Endorsement on March 9, 2020 reflecting the \$1,500,000 sublimit for the Special Time Element Cancellation Coverage, as well as another sublimit that was inadvertently omitted from the Policy.

32. Because the parties agreed that the Special Time Element Cancellation Coverage would be subject to a \$1,500,000 sublimit, and Endurance sent the corrected Endorsement upon realizing the inadvertent omission, the Policy with the corrected Endorsement is the operative Policy in effect between the parties and is the Policy that governs the rights and obligations of the parties.

33. Despite the terms of the Binder, Hakkasan contends that the Endorsement with the \$1,500,000 sublimit for the Special Time Element Cancellation Coverage is not a part of the Policy.

34. Because a mistake was made in the preparation of the Policy, Endurance seeks, in the alternative to the declaratory judgment count, to have the Policy reformed to reflect the true and mutual intention of the parties; namely to have the Policy reformed to include the \$1,500,000 sublimit for the Special Time Element Cancellation Coverage, as reflected in the Endorsement.

PRAYER FOR RELIEF

WHEREFORE, Endurance respectfully requests judgment in its favor and against Hakkasan on the aforementioned Counterclaims as follows:

- (a) Declaring that that the Endorsement is part of the Policy as contemplated by the parties, and Hakkasan's covered damages are limited to the \$1,500,000 sublimit for Special Time Element Cancellation Coverage;
- (b) Alternatively, ordering the reformation of the Policy to include the \$1,500,000 sublimit for the Special Time Element Cancellation Coverage, as reflected in the Endorsement; and
- (c) Awarding such other and further relief as the Court may consider just and proper.

Dated this 12th day of October, 2020.

FORAN GLENNON PALANDECH PONZI &
RUDLOFF PC

By: /s/ Dylan P. Todd
Amy M. Samberg (NV Bar No. 10212)
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*Attorneys for Endurance American Specialty
Insurance Company*

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **DEFENANT ENDURANCE AMERICAN SPECIALTY INSURANCE COMPANY'S ANSWER TO PLAINTIFF'S COMPLAINT AND DEMAND FOR JURY TRIAL; AND COUNTER-CLAIMS** was served by the method indicated:

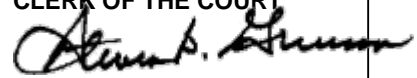
- ☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document(s).
- ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.
- ☒ **BY ELECTRONIC SERVICE:** submitted to the above-entitled Court for electronic service upon the Court's Service List for the above-referenced case.
- ☐ **BY EMAIL:** by emailing a PDF of the document listed above to the email addresses of the individual(s) listed below.

Dated: October 12th, 2020.

/s/ Darhyl Kerr
An Employee of Foran Glennon

Exhibit 3

**(Notice of Entry of Order re Willis
Defendants' Motion to Strike Plaintiff's Jury
Demand as to its Claims Against the Willis
Defendants or, in the Alternative, to Compel
Arbitration)**



NEOJ

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*Attorneys for Willis of Arizona, Inc. and
Willis Towers Watson Insurance Services West, Inc.*

DISTRICT COURT

CLARK COUNTY, NEVADA

HAKKASAN USA, INC., a Delaware
Corporation,

Plaintiff,

v.

ENDURANCE AMERICAN SPECIALTY
INSURANCE COMPANY, a Delaware
Corporation; SOMPO INTERNATIONAL
HOLDINGS, LTD., a Bermuda
Corporation; WILLIS OF ARIZONA,
INC., an Arizona Corporation; and
WILLIS TOWERS WATSON
INSURANCE SERVICES WEST, INC., a
California Corporation,

Defendants.

Case No. A-20-816145-B

Dept. No. XI

NOTICE OF ENTRY OF ORDER

1 Please take notice that an Order Re Willis Defendants' Motion to Strike Plaintiff's Jury
2 Demand as to its Claims Against the Willis Defendants or, in the Alternative, to Compel Arbitration
3 was entered on the 26th day of March, 2021 in the above-entitled matter, a copy of which is attached
4 hereto.

5 DATED this 14th day of April, 2021.

7 /s/ Patrick J. Reilly

8 Patrick J. Reilly
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15 *Attorneys for Willis of Arizona, Inc. and*
16 *Willis Towers Watson Insurance Services*
17 *West, Inc.*

CERTIFICATE OF SERVICE

Pursuant to Nevada Rule of Civil Procedure 5(b), I certify that I am an employee of BROWNSTEIN HYATT FARBER SCHRECK, LLP, and that the foregoing **NOTICE OF ENTRY OF ORDER** was served by submitting electronically for filing and/or service with the Eighth Judicial District Court's Odyssey eFileNV Electronic Filing system and serving all parties with an email address on record, as indicated below, pursuant to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R. on the 14th day of April, 2021, to the addresses shown below:

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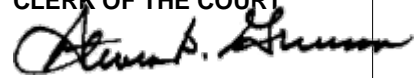
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DISTRICT COURT

CLARK COUNTY, NEVADA

HAKKASAN USA, INC., a Delaware
Corporation;

Plaintiff,

vs.

ENDURANCE AMERICAN SPECIALITY
INSURANCE COMPANY, a Delaware
Corporation; SOMPO INTERNATIONAL
HOLDINGS, LTD., a Bermuda Corporation;
WILLIS OF ARIZONA, INC., an Arizona
Corporation; and WILLIS TOWERS WATSON
INSURANCE SERVICES WEST, INC., a
California Corporation

Defendants.

Case No.: A-20-816145-B

Dept. No.: ● XI

(Business Court)

**~~PROPOSED~~ ORDER RE WILLIS
DEFENDANTS' MOTION TO STRIKE
PLAINTIFF'S JURY DEMAND AS TO
ITS CLAIMS AGAINST THE WILLIS
DEFENDANTS OR, IN THE
ALTERNATIVE, TO COMPEL
ARBITRATION**

Defendants WILLIS OF ARIZONA, INC. AND WILLIS TOWERS WATSON INSURANCE SERVICES WEST, INC.'S MOTION TO STRIKE PLAINTIFF'S JURY DEMAND AS TO ITS CLAIMS AGAINST THE WILLIS DEFENDANTS OR, IN THE ALTERNATIVE, TO COMPEL ARBITRATION ("Willis Defendants' Motion to Strike") was fully briefed and, pursuant to Administrative Order 21-03, decided without oral argument. Having reviewed the Motion filed by Defendants on February 11, 2021, the Opposition filed by Plaintiff on February 25, 2021, and the Reply in support of the Motion filed on March 8, 2021, the Court DENIES the Willis Defendants' Motion to Strike.

On March 29, 2019 Defendants Willis of Arizona, Inc. and Willis Towers Watson Insurance Services West, Inc. (collectively, "Willis") presented a proposal to Hakkasan to procure various insurance policies for the 2019–20 policy term (the "Proposal"). The Proposal included a nine-page document entitled "Brokerage Terms, Conditions & Disclosures" (the "T&Cs"). Section 1.13 of the T&Cs reads as follows:

Dispute Resolution. The parties agree to work in good faith to resolve any disputes arising out of or in connection with the services provided under these Terms, Conditions & Disclosures. If a dispute cannot be resolved it will be submitted to non-binding mediation to be conducted by Judicial Arbitration and Mediation Services (JAMS) before either party pursues other remedies hereunder. If the mediation does not resolve the dispute and a party or both parties wish to pursue other remedies, the parties agree that their legal dispute will be resolved without a jury trial and agree not to request or demand a jury trial. To the fullest extent permitted by applicable law, the parties hereby irrevocably waive any right they may have to demand a jury trial.

To the extent the foregoing jury trial waiver is not enforceable under the governing law, except as provided below, any dispute arising out of or in connection with these Terms, Conditions & Disclosures which the parties are unable to resolve between themselves or through mediation as provided above, will be resolved by binding arbitration in the state as provided for in paragraph 14 below, or other mutually agreed location, before a panel of three arbitrators in accordance with the Commercial Arbitration Rules of the American Arbitration Association. . . .

Willis contends that the foregoing section of the T&Cs precludes Hakkasan from trying its present claims for civil conspiracy, constructive fraud, negligence, and intentional interference with contractual relations against Willis to a jury. Willis further contends that Hakkasan's claims against Willis in this case should be compelled to arbitration in accordance with the T&Cs if the jury waiver provision is not enforceable under Nevada law. In response, Hakkasan argues *inter alia* the T&Cs only govern Hakkasan's purchase of insurance through Willis, and Hakkasan's present tort claims do not "aris[e] out of or in connection with" that transaction. The Court agrees with Hakkasan and concludes that Hakkasan's present claims against Willis for civil conspiracy, constructive fraud, negligence, and intentional interference with contractual relations are outside the scope of the Dispute Resolution clause in Section 1.13 of the T&Cs.

For the aforementioned reasons, IT IS HEREBY ORDERED that the Willis Defendants' Motion to Strike is DENIED.

Dated this 25th day of March, 2021.


DISTRICT COURT JUDGE

Respectfully Submitted By:

Approved as to form by:

SANTORO WHITMIRE

**BROWNSTEIN HYATT FARBER
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