

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

<p>POGO LLC DBA TRIV'S 17100 Royalton Road Strongsville, Ohio 44136 Plaintiff,</p> <p>vs.</p> <p>THE CINCINNATI INSURANCE COMPANY 6200 South Gilmore Road Fairfield, Ohio 45014-5151</p> <p>Also Serve c/o Steve Corbly, Statutory Agent The Cincinnati Insurance Company 6200 South Gilmore Road Fairfield, Ohio. 45014</p> <p>Defendant.</p>	<p>CASE NO.:</p> <p>JUDGE:</p> <p><u>COMPLAINT FOR DECLARATORY JUDGMENT AND BREACH OF CONTRACT</u></p> <p><u>JURY DEMAND ENDORSED HEREIN</u></p>
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For its Complaint against Defendant The Cincinnati Insurance Company ("Defendant"), Plaintiff POGO LLC DBA Triv's ("Plaintiff") alleges and states the following:

NATURE OF THE CAUSE OF ACTION

1. This is an action arising out of Defendant denying Plaintiff business income, extra expense, extended business income, civil authority, business income from dependent properties, and/or business personal property coverage under its property insurance policy resulting from or caused by the SARS-CoV-2 virus damaging Plaintiff's premises

and the property around the premises, and the government's stay-at-home orders and order shutting down on-premises dining at restaurants and bars. Plaintiff is suing for declaratory judgment and breach of contract.

PARTIES

2. Plaintiff is an Ohio company with its principal place of business in Cleveland, Ohio. Plaintiff owns and operates a restaurant and bar.

3. Defendant is an Ohio corporation with its principal place of business in Fairfield, Ohio. Defendant is an insurance company.

JURISDICTION AND VENUE

4. This Court has personal jurisdiction over the Plaintiff and Defendant, as they are both citizens of and domiciled in the State of Ohio.

5. This Court has subject matter jurisdiction over all causes of action asserted herein pursuant to the Ohio Constitution, Article IV, § 4, because this case is a cause not given by statute to other trial courts.

6. Venue is proper in Cuyahoga County under Ohio R. Civ. P. 3(C)(3) because it is the County in which Defendant conducted activity that gave rise to the claim for relief, including, without limitation, Defendant denying Plaintiff insurance coverage for business income, extended business income, extra expense, civil authority, and/or business income from dependent properties coverage under its policy.

7. Venue is proper in Cuyahoga County under Ohio R. Civ. P. 3(C)(5) because the property which has been damaged by the SARS-CoV-2 virus is located in Cuyahoga County.

8. Venue is proper in Cuyahoga County under Ohio R. Civ. P. 3(C)(6) because all or part of the claim for relief arose in Cuyahoga County, including without limitation, the issuance of the Insurance Policy to Plaintiff in Cuyahoga County, the issue of the SARS-CoV-2 virus impacting Plaintiff in Cuyahoga County, the fact that Ohio Government's orders have impacted Plaintiff in Cuyahoga County, Defendant denying Plaintiff insurance coverage in this County, and Plaintiff suffering loss and damage in this County.
9. Plaintiff brings this suit for declaratory judgment for insurance coverage pursuant to Ohio R. Civ. P. 57 and R.C. § 2721.01-2721.15 and breach of contract.

GENERAL ALLEGATIONS

A. SARS-CoV-2 AND COVID-19

10. COVID-19 is a disease caused by the SARS-CoV-2 virus that can result in serious illness or death.
11. On or about January 23, 2020, the Ohio Department of Health issued a Director's Journal Entry making COVID-19 a Class A reportable disease in Ohio.
12. As of the date this suit was filed, the State of Ohio has well in excess of 28,000 probable confirmed cases of COVID-19 and 1,700 deaths as a result of COVID-19.
13. The vast majority of medical literature and studies on the issue have confirmed that the SARS-CoV-2 virus can exist on paper, wood, glass for up to 4-5 days. *E.g., Persistence of Coronavirus on Inanimate Surfaces and Their Inactivation with Biological Agents*, The Journal of Hospital Infection, March 2020, Volume 104, Issue 3, Pages 246-251. This SARS-CoV-2 virus strain can, in all probability, exist on multiple surfaces beyond 4-5 days.

14. In the science and medical community, it is widely held that the SARS-CoV-2 virus can exist on inanimate surfaces. For example, the website WebMD states that the SARS-CoV-2 virus can exist on wood, including furniture, for four days and on glass, including windows and drinking glasses, for five days.

15. The insurance industry recognizes that viruses can cause physical loss of or physical damage to property. In the Insurance Service Office, Inc.'s ("ISO") July 6, 2006 Circular regarding an ISO endorsement (CP 01 40 07 06) for exclusion of viruses, ISO stated:

Disease-causing agents may render a product impure (change its quality or substance), or enable the spread of disease by their presence on interior building surfaces or the surfaces of personal property. When disease-causing viral or bacterial contamination occurs, potential claims involve the cost of replacement of property (for example, milk), cost of decontamination (for example, interior building surfaces), and business interruption (time element) losses.

Defendant chose not to use this ISO drafted and approved exclusion, or any other expressly stated and applicable alternative policy language, to eliminate coverage for loss or damage caused by viruses or bacteria in Plaintiff's policy.

B. STATE AND FEDERAL GOVERNMENT ORDERS

16. On January 20, 2020, the Center for Disease Control confirmed the first SARS-CoV-2 virus case in the United States. *First Case of 2019 Novel Coronavirus in the United State*, NEJM.org, January 31, 2020.

17. On or about January 31, 2020, President Trump signed the Proclamation on Suspension of Entry as Immigrants and Nonimmigrants of Persons who Pose a Risk of Transmitting 2019 Novel Coronavirus. This Proclamation states: "The entry into the

United States, as immigrants or nonimmigrants, of all aliens who were physically present within the People's Republic of China, excluding the Special Administrative Regions of Hong Kong and Macau, during the 14-day period preceding their entry or attempted entry into the United States is hereby suspended and limited subject to section 2 of this proclamation.”

18. On or about March 5, 2020, Governor Mike DeWine issued a state order prohibiting general spectators from attending the Arnold Sports Festival.

19. On or about March 12, 2020, Governor DeWine announced the closure of all K-12 schools starting on March 16, 2020 and ending on April 3, 2020. The Governor later extended the school closure to May 1, 2020 and then to the end of the school year.

20. On or about March 9, 2020, Governor DeWine issued Executive Order 2020-01D declaring a state of emergency for the State of Ohio as a result of the SARS-CoV-2 virus and COVID-19. A copy of Executive Order 2020-01D is attached as Exhibit A.

21. Executive Order 2020-01D states: “It may be possible that individuals can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose or eyes.”

22. On or about March 15, 2020, Dr. Amy Acton, Director of Health for the State of Ohio, issued a Director's Order stating: “I hereby **ORDER** liquor, beer, and wine sales in the State of Ohio are restricted to carry-out sales and delivery only, to the extent permitted by law. No on-site consumption is permitted. Food and beverage sales are restricted to carry-out and delivery only, no on-site consumption is permitted.” A copy of this Director's Order is attached as Exhibit B.

23. The Director's March 15, 2020 Order also states: "Restaurants and bars increase and encourage talking, touching and other social interaction in an environment with a multitude of hard surfaces." It further declares: "It may be possible that individuals can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or eyes."

24. On or about March 22, 2020, Dr. Acton signed a Stay-At-Home Order for the State of Ohio, effective March 23, 2020. A copy of the March 23, 2020 Order is attached as Exhibit C. The March 23, 2020 Order mandated all non-essential businesses and operations to cease. This Order allowed for restaurants to prepare and sell food, but for only off-premises consumption. Similar to the previous orders, the March 23, 2020 Order states: "It may be possible that individuals can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose or eyes."

25. The March 23, 2020 Order was to remain in effect until April 6, 2020.

26. On or about April 2, 2020, Dr. Acton issued an Amended Director's Stay-At-Home Order. A copy of this April 2, 2020 Amended Order is attached as Exhibit D.

27. The April 2, 2020 Amended Order basically continued the March 23, 2020 Order until May 1, 2020. It also continued the order that all non-essential businesses and operations cease. In addition, the April 2, 2020 order further continued to require restaurants to prepare and serve food only for off-premises consumption.

28. On or about April 30, 2020, Dr. Acton issued another "Director's Stay Safe Ohio Order" declaring, "I hereby **ORDER** all persons are to continue to stay at home or their

place of residence unless they are engaged in Essential Activities, Essential Governmental Functions, or to operate Essential and Unrestricted Businesses and Operations as set forth in this Order. This Order shall remain in full force and effect until 11:59 p.m. on May 29, 2020.” A copy of this April 30, 2020 Order is attached as Exhibit E.

29. The March 15, 2020 Order, the March 23, 2020 Order, the April 2, 2020 Order, and the April 30, 2020 Order shall be referred collectively to as the “Civil Authority Orders.”

30. Because of these governmental orders, including, without limitation, statements about how individuals can contract COVID-19 through touching various damaged surfaces, on or about March 15, 2020, Plaintiff shut down its restaurant and bar.

C. PLAINTIFF’S INSURANCE POLICY WITH DEFENDANT

31. Defendant issued Plaintiff a property insurance policy, Policy No. ECP 049 42 15 (“Insurance Policy”). A copy of the Declaration pages is attached as Exhibit F. A full copy of the policy is not attached as it is too lengthy to append as an exhibit. Defendant has a full copy of the Insurance Policy containing the terms, conditions, and exclusions it drafted and issued.

32. The policy period for the Insurance Policy is July 16, 2018 to July 16, 2021. Plaintiff has paid all applicable premiums owed for the policy and coverages issued by Defendant.

33. The Limits for Business Income with Extra Expense are 12 Months ALS.

34. The only location listed on the Schedule of Locations of the Insurance Policy is 17100 Royalton Road, Strongsville, Ohio 44136.

1. **Business Income, Extra Expense and Extend Business Income**

35. Paragraph (1) **Business Income** of Paragraph b **Business Income and Extra Expense** of Paragraph 5. **Coverage Extensions** states:

We will pay for the actual loss of 'Business Income'...you sustain due to the necessary 'suspension' of your 'operations' during the 'period of restoration'. The 'suspension' must be caused by direct 'loss' to property at a 'premises' caused by or resulting from any Covered Cause of Loss.

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With respect to the requirements of the preceding paragraph, if you are a tenant and occupy only part of the site at which the 'premises' are located, for the purpose of this Coverage Extension only, your 'premises' is the portion of the building that you rent, lease or occupy, including:

- (a) Any area within the building or on the site at which the 'premises' are located if that area services or is used to gain access to the 'premises'; and
- (b) Your personal property in the open...within 1,000 feet of the building or 1,000 feet of the 'premises', whichever is greater.

36. Paragraph (2) **Extra Expense** of Paragraph b **Business Income and Extra Expense** of Paragraph 5. **Coverage Extensions** states:

- (a) We will pay Extra Expense you sustain during the 'period of restoration'. Extra Expense means necessary expenses you sustain (as described in Paragraphs (2)(b), (c) and (d)) during the 'period of restoration' that you would not have sustained if there had been no direct 'loss' to property caused by or resulting from a Covered Cause of Loss.

37. Paragraph (6) **Extended Business Income** states:

(a) For 'Business Income' Other Than 'Rental Value', if the necessary 'suspension' of your 'operations' produces a 'Business Income' or Extra Expense 'loss' payable under this Coverage Part, we will pay for the actual loss of 'Business Income' you sustain and Extra Expense you incur during the period that:

1) Begins on the date property...is actually repaired, rebuilt or replaced and 'operations' are resumed; and

2) Ends on the earlier of:

a) The date you could restore your 'operations', with reasonable speed, to the level which would generate the business income amount that would have existed if no direct 'loss' had occurred; or

b) 60 consecutive days after the date determined in **b.(6)(a)1** above.

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Loss of 'Business Income' must be caused by direct 'loss' at the 'premises' caused by or resulting from any Covered Cause of Loss.

38. The **BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM**

includes its own Business Income and Extra Expense provisions. Paragraph 1. **Business**

Income states:

a. We will pay for the actual loss of 'Business Income' you sustain due to the necessary 'suspension' of your 'operations' during the 'period of restoration'. The 'suspension must be caused by direct 'loss' to property at 'premises' which are described in the Declarations and for which a 'Business Income' Limit of Insurance is shown in the Declarations. The 'loss' must be caused by or result from a Covered Cause of Loss.

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b. With respect to the requirements set forth in the preceding paragraph, if you are a tenant and occupy only part of the site at

which the 'premises' are located, for the purposes of this Coverage Part only, your 'premises' is the portion of the building which you rent, lease or occupy, including:

- (1) Any area within the building or on the site at which the 'premises' are located if that area services or is used to gain access to the described 'premises'.
- (2) Your personal property in the open...within 1,000 feet of the building or 1,000 feet of the 'premises', whichever distance is greater.

39. Paragraph 2. **Extra Expense** states:

- a. Extra Expense coverage is provided at the 'premises' described in the Declarations only if the Declarations show that 'Business Income' coverage applies at that 'premises'.
- b. Extra Expense means necessary expenses you sustain (as described in Paragraphs 2.c., d. and e.) during the 'period of restoration' that you would not have sustained if there had been no direct 'loss' to property caused by or resulting from a Covered Cause of Loss.

40. Paragraph 5.c. **Extended Business Income**

(1) 'Business Income' Other Than 'Rental Value'

If the necessary 'suspension' of your 'operations' produces a 'Business Income' 'loss' payable under this Coverage Part, we will pay for the actual loss of 'Business Income' you sustain during the period that:

- (a) Begins on the date property...is actually repaired, rebuilt or replaced and 'operations' are resumed; and
- (b) Ends on the earlier of:
 - (i) The date you could restore your 'operations', with reasonable speed, to the level which would generate the 'Business Income' amount that would have existed if no direct 'loss' had occurred; or

(ii) 60 consecutive days after the date determined in **c.(1)(a)** above.

41. In the **ACTUAL LOSS SUSTAINED BUSINESS INCOME ENDORSEMENT**, it states:

B. For the purposes of this endorsement only, **SECTION A. COVERAGE, 5. Additional Coverages, c. Extended Business Income, (1), (b), (ii)** is deleted in its entirety and replaced by the following, and **(iii)** is added:

(ii) 90 consecutive days after the date determined in **c.(1)(a)** above; or

(iii) 12 consecutive months after the date of direct 'loss'.

42. Paragraph **(a) Covered Causes of Loss** of Paragraph **3 Covered Causes of Loss** defines Covered Causes of Loss to mean "direct 'loss' unless the 'loss' is excluded or limited in this Coverage Part." Neither the exclusions nor the limitations in the Coverage Part include a virus exclusion or any other applicable exclusion or limitation.

43. Paragraph **2** of Section **G. DEFINITIONS** defines "Business Income" as:

- a.** Net Income (net profit or loss before income taxes) that would have been earned or incurred; and
- b.** Continuing normal operating expenses sustained, including payroll.

44. Paragraph **8** of Section **G DEFINITIONS** defines "Loss" to mean "accidental physical loss or accidental physical damage."

45. Paragraph **10** of Section **G DEFINITIONS** defines "Operations" as:

- a.** Your business activities occurring at the 'premises'; and
- b.** The tenantability of the 'premises', if coverage for 'Business Income' including 'Rental Value' or 'Rental Value' applies.

46. Paragraph 11 of Section **G DEFINITIONS** defines “Period of restoration” as the period of time that:

- a. Begins at the time of direct ‘loss’.
- b. Ends on the earlier of:
 - (1) The date when the property at the ‘premises’ should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
 - (2) The date when business is resumed at a new permanent location.

47. Paragraph 13 of Section **G DEFINITIONS** defines “Premises” as the “Locations and Buildings described in the Declarations.”

48. Plaintiff’s business activities at the premises of its restaurant and bar have been suspended during the period of restoration due to a direct loss to property (e.g., chairs, tables, bar, glasses, etc.) at the restaurant and bar caused by or resulting from any direct, accidental physical loss or accidental physical damage. As a result, Plaintiff has suffered actual Business Income losses. Therefore, Plaintiff is entitled to coverage from Defendant for its Business Income losses under the **Business Income** provision of the Insurance Policy.

49. Plaintiff has sustained necessary expenses (e.g., avoid or minimize the suspension of the business) during the period of restoration that it would not have sustained if there had been no direct, accidental physical loss of or accidental physical damage to property (e.g., chairs, tables, bar, glasses, etc.) at the restaurant and bar caused by or resulting from direct, accidental physical loss or accidental physical damage. As a result, Plaintiff has

sustained Extra Expenses. Therefore, Plaintiff is entitled to coverage from Defendant for its Extra Expenses under the **Extra Expense** provision of the Insurance Policy.

50. Plaintiff has suffered the necessary suspension of its business activities that produced a Business Income or Extra Expense loss payable under the applicable coverage. The Business Income loss was caused by direct loss (e.g., chairs, tables, bar, glasses, etc.) at the restaurant and bar caused by or resulting from any direct, accidental physical loss or accidental physical damage. Therefore, Plaintiff is entitled to recover Business Income and Extra Expense under the **Extended Business Income** provision during the applicable period outlined in the Insurance Policy.

2. Civil Authority

51. Paragraph (3) **Civil Authority** of Paragraph b **Business Income and Extra Expense** of Paragraph 5. **Coverage Extensions** states:

When a Covered Cause of Loss causes damage to property other than Covered Property at a 'premises', we will pay for the actual loss of 'Business Income' and necessary Extra Expense you sustain caused by action of civil authority that prohibits access to the 'premises', provided that both of the following apply:

- (a) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage; and
- (b) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

This Civil Authority coverage for 'Business Income' will begin immediately after the time of that action and will apply for a period of up to 30 days from the date of that action.

This Civil Authority coverage for Extra Expense will begin immediately after the time of that action and will end:

- 1) 30 consecutive days after the time of that action; or
- 2) When your 'Business Income' coverage ends;

whichever is later.

52. The **BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM**

also includes a Civil Authority provision. Paragraph **A.5.b. Civil Authority** states:

When a Covered Cause of Loss causes direct damage to property other than Covered Property at the 'premises', we will pay for the actual loss of 'Business Income' you sustain and necessary Extra Expense you sustain caused by action of civil authority that prohibits access to the 'premises', provided that both of the following apply:

- (1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage; and
- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Civil Authority coverage for 'Business Income' will begin immediately after the time of the first action of civil authority that prohibits access to the 'premises' and will apply for a period of up to 30 consecutive days from the date on which such coverage began.

Civil Authority coverage for Extra Expense will begin immediately after the time of the first action of civil authority that prohibits access to the 'premises' and will end 30 consecutive days after the date of that action; or when your Civil Authority coverage for 'Business Income' coverage ends, whichever is later.

53. A direct, accidental physical loss or accidental physical damage caused damage to property (e.g., neighboring buildings) other than covered property at Plaintiff's business. Plaintiff suffered Business Income losses and necessary Extra Expenses caused by the Civil Authority Orders that prohibited access to the restaurant and bar. In addition, access to the area immediately surrounding the damaged property is prohibited by the Civil Authority Orders as a result of the damage. Furthermore, the Civil Authority Orders were taken in response to dangerous physical conditions resulting from the damage or continuation of the direct, accidental physical loss or accidental physical damage that caused the damage. As a result, Plaintiff is entitled to coverage from Defendant for its Business Income losses and Extra Expenses under the **Civil Authority** provision of the Insurance Policy.

54. In addition, Plaintiff incurred costs, expenses, and losses to mitigate the spread of the SARS-CoV-2 virus in response to the Civil Authority Orders.

3. Business Income From Dependent Properties

55. **COMMERCIAL PROPERTY POEWR AMENDATORY ENDORSEMENT** modifies **COMMERCIAL PROPERTY COVERAGE PART, SECTION A. COVERAGE**, Paragraph **5. Coverage Extensions**. Paragraph **V.A.2.** states:

Coverage Extension **b. Business Income and Extra Expense** is amended to include:

(9) Business Income From Dependent Properties

(a) We will pay for the actual loss of 'Business Income' you sustain due to the necessary 'suspension' of your 'operations' during the 'period of restoration'. The 'suspension' must be

caused by direct 'loss' to 'dependent property'
caused by or resulting from any Covered Cause of
Loss.

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The most we will pay for 'loss' in any one occurrence for each 'dependent property' location is \$10,000. This \$10,000 of coverage for Business Income From Dependent Properties does not increase the Limit of Insurance provided in this Coverage Extension.

56. Paragraph **2.9.(d)** defines dependent property to mean:

[P]roperty operated by others whom you depend on to:

(a) Deliver materials or services to you, or to others for your account (Contributing Locations). * * *

(b) Accept your products or services;

(c) Manufacture products for delivery to your customers under contract for sale; or

(d) Attract customers to your business.

57. Upon information and belief, Plaintiff suffered actual loss of Business Income due to the necessary suspension of its business activities at the restaurant and bar during the period of restoration. The suspension was caused by direct loss to dependent property (e.g., Contributing Locations) caused by or resulting from any direct, accidental physical loss or accidental physical damage. As a result, Plaintiff is entitled to coverage for its Business Income losses under the Business Income From Dependent Properties provision of the Insurance Policy.

4. Business Personal Property

58. **SECTION A. COVERAGE** states:

We will pay for direct 'loss' to Covered Property at the 'premises' caused by or resulting from any Covered Cause of Loss.

1. **Covered Property**

Covered Property, as used in this Coverage Part, means the following types of property for which a Limit of insurance is shown in the Declarations:

* * *

d. Business Personal Property

Your Business Personal Property consists of the following property located in or on the building or structure described in the Declarations....Your Business Personal Property consists of the following unless otherwise specified in the Declarations or on the **BUSINESS PERSONAL PROPERTY – SEPARATION OF COVERAGE ENDORSEMENT.**

* * *

(3) 'Stock';

(4) All other personal property owned by you and used in your business;

59. The Insurance Policy defines stock to mean "merchandise held in storage or for sale, raw materials and in-process or finished goods, including supplies used in their packaging and shipping."

60. Plaintiff suffered a direct loss to its stock and/or personal property (e.g., food) at its restaurant and bar caused by or resulting from direct, accidental physical loss or accidental physical damage. As a result, Plaintiff is entitled to coverage for its losses under the **Business Personal Property** provision.

D. Plaintiff Submits Claim to Defendant, Which was Denied

61. On or about April 30, 2020, Plaintiff presented its claims for coverage under the Insurance Policy to Defendant.

62. Following the presentation of the claim and on or about May 4, 2020, Defendant sent Plaintiff a form response letter. The form letter using the same or substantially the same language has also been sent to other insureds of Defendant.

63. Defendant's written response sent to Plaintiff and other insureds claimed that Defendant was conducting its investigation "subject to a full reservation of its rights," and did not accept coverage for any of Plaintiff's claims. Defendant's claimed investigation included requests for publicly available SARS-CoV-2 virus-related information.

64. On or about May 28, 2020, Plaintiff's counsel responded to Defendant's reservation of rights letter.

65. On or about June 1, 2020, Defendant sent Plaintiff's counsel a letter denying all of Plaintiff's claims for coverage under the Insurance Policy.

COUNT ONE
(Declaratory Judgment)

66. Plaintiff hereby adopts and incorporates as if fully re-written herein all the allegations set forth in paragraphs 1 through 65 of this Complaint.

67. Plaintiff submitted claims for Business Income and Extra Expense under the **Business Income, Extra Expense, Extended Business Income, Civil Authority, Business Income From Dependent Properties, and/or the extended and related provisions** of the Insurance Policy as a result of the Civil Authority Orders and/or the physical loss

of or damage to Plaintiff's property (e.g., chairs, tables, bar, glasses, etc.) at the restaurant and bar and/or dependent properties caused by the SARS-CoV-2 virus.

68. Plaintiff is entitled to coverage under the **Business Income, Extra Expense, Extended Business Income, Civil Authority**, Business Income From Dependent Properties, and/or the extended and related provisions in its Insurance Policy as a result of the Civil Authority Orders and/or the physical loss of or damage to Plaintiff's property (e.g., chairs, tables, bar, glasses, etc.) at the restaurant and bar and/or dependent properties caused by the SARS-CoV-2 virus.

69. Defendant has expressly denied Plaintiff's claims for Business Income and Extra Expenses under the **Business Income, Extra Expense, Extended Business Income, Civil Authority**, Business Income From Dependent Properties, and/or the extended and related provisions as a result of the Civil Authority Orders and/or the physical loss of or damage to Plaintiff's property (e.g., chairs, tables, bar, glasses, etc.) at the restaurant and bar and/or dependent properties caused by the SARS-CoV-2 virus.

70. Plaintiff has also sought covered for losses to its stock (e.g., food) under the **Business Personal Property** provision of the Insurance Policy.

71. Defendant has denied Plaintiff coverage for losses to its stock and/or personal property (e.g., food) under the **Business Personal Property** provision of the Insurance Policy.

72. Plaintiff is entitled to recover its incurred costs, expenses, and losses to mitigate the spread of the SARS-CoV-2 virus in complying with the Civil Authority Orders, which are covered under the Insurance Policy.

73. Defendant has denied Plaintiff's claim for costs, expenses, and losses to mitigate the spread of the SARS-CoV-2 virus in complying with the Civil Authority Orders.

74. An actual case or controversy exists regarding whether the Insurance Policy under the applicable provisions provides Business Income, Extra Expense, Business Personal Property and/or mitigation coverage as a result of the Civil Authority Orders and/or the physical loss of or damage to Plaintiff's property (e.g., chairs, tables, bar, glasses, food, etc.) at the restaurant and bar and/or dependent properties caused by the SARS-CoV-2 virus.

75. Pursuant to Ohio R. Civ. P. 57 and R.C. § 2721.01-2721.15, Plaintiff is entitled to a declaratory judgment declaring that:

- (a) Plaintiff is entitled to coverage for all of its Business Income losses under the **Business Income** provision of the Insurance Policy;
- (b) Plaintiff is entitled to coverage for all of its Extra Expenses under the **Extra Expense** provision of the Insurance Policy;
- (c) Plaintiff is entitled to coverage for all of its Business Income and Extra Expense losses under the **Extended Business Income** provision of the Insurance Policy;
- (d) Plaintiff is entitled to coverage for all of its Business Income losses and Extra Expenses under the **Civil Authority** provision of the Insurance Policy;
- (e) Plaintiff is entitled to coverage for all of its Business Income losses under the Business Income From Dependent Properties provision of the Insurance Policy;
- (f) Plaintiff is entitled to coverage for all of its losses to its stock (e.g., food) under the **Business Personal Property** provision of the Insurance Policy.

- (g) Plaintiff incurred costs, expenses, and losses to mitigate the spread of the SARS-CoV-2 virus in complying with the Civil Authority Orders, which are covered under the Insurance Policy;
- (h) Defendant is obligated to pay Plaintiff the established amount of its Business Income losses under the **Business Income** provision of the Insurance Policy;
- (i) Defendant is obligated to pay Plaintiff the established amount of its Extra Expenses under the **Extra Expense** provision of the Insurance Policy;
- (j) Defendant is obligated to pay Plaintiff the established amount of its Business Income and Extra Expense losses under the **Extended Business Income** provision of the Insurance Policy;
- (k) Defendant is obligated to pay Plaintiff the established amount of its Business Income losses and Extra Expenses under the **Civil Authority** provision of the Insurance Policy;
- (l) Defendant is obligated to pay Plaintiff the established amount of its Business Income losses under the Business Income From Dependent Properties provision of the Insurance Policy;
- (m) Defendant is obligated to pay Plaintiff the established amount of its losses to its stock (e.g., food) under the **Business Personal Property** provision of the Insurance Policy; and
- (n) Defendant is obligated to reimburse Plaintiff the costs, expenses, and losses that Plaintiff incurred to mitigate the spread of the SARS-CoV-2 virus in complying with the Civil Authority Orders.

COUNT TWO
(Breach of Contract)

76. Plaintiff hereby adopts and incorporates as if fully re-written herein all the allegations set forth in paragraphs 1 through 75 of this Complaint.

77. Plaintiff has performed or substantially performed all required conditions precedent under its Insurance Policy, those provisions have been waived by Defendant, or Defendant is estopped from asserting them.

78. Defendant has refused to provide Plaintiff its Business Income losses, Extra Expenses, and mitigation costs and losses under the **Business Income, Extra Expense, Extended Business Income, Civil Authority**, Business Income From Dependent Properties, and/or extended or related coverage of the Insurance Policy as a result of the Civil Authority Orders and/or physical loss of or damage to Plaintiff's property (e.g., chairs, tables, bar, glasses, etc.) at the restaurant and bar and/or dependent properties caused by the SARS CoV-2 virus.

79. By refusing to accept and/or denying such coverage as outlined in its policy, Defendant has materially breached Plaintiff's Insurance Policy.

80. As a direct and proximate result of Defendant's breaches of the Insurance Policy, Plaintiff has been damaged in an amount in excess of \$25,000.00, the exact amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief against Defendant:

- a. For Count One, a declaratory judgement against Defendant and in favor of Plaintiff as follows:
 1. Plaintiff is entitled to coverage for all of its Business Income losses under the **Business Income** provision of the Insurance Policy;
 2. Plaintiff is entitled to coverage for all of its Extra Expenses under the **Extra Expense** provision of the Insurance Policy;

3. Plaintiff is entitled to coverage for all of its Business Income and Extra Expense losses under the **Extended Business Income** provision of the Insurance Policy;
4. Plaintiff is entitled to coverage for all of its Business Income losses and Extra Expenses under the **Civil Authority** provision of the Insurance Policy;
5. Plaintiff is entitled to coverage for all of its Business Income losses under the Business Income From Dependent Properties provision of the Insurance Policy;
6. Plaintiff is entitled to coverage for all of its losses to its stock (e.g., food) under the **Business Personal Property** provision of the Insurance Policy.
7. Plaintiff incurred costs, expenses, and losses to mitigate the spread of the SARS-CoV-2 virus in complying with the Civil Authority Orders, which are covered under the Insurance Policy;
8. Defendant is obligated to pay Plaintiff the established amount of its Business Income losses under the **Business Income** provision of the Insurance Policy;
9. Defendant is obligated to pay Plaintiff the established amount of its Extra Expenses under the **Extra Expense** provision of the Insurance Policy;
10. Defendant is obligated to pay Plaintiff the established amount of its Business Income and Extra Expense losses under the **Extended Business Income** provision of the Insurance Policy;
11. Defendant is obligated to pay Plaintiff the established amount of its Business Income losses and Extra Expenses under the **Civil Authority** provision of the Insurance Policy;
12. Defendant is obligated to pay Plaintiff the established amount of its Business Income losses under the Business Income From Dependent Properties provision of the Insurance Policy;

13. Defendant is obligated to pay Plaintiff the established amount of its losses to its stock (e.g., food) under the **Business Personal Property** provision of the Insurance Policy; and
14. Defendant is obligated to reimburse Plaintiff the costs, expenses, losses that Plaintiff incurred to mitigate the spread of the SARS-CoV-2 virus in complying with the Civil Authority Orders.
- b. For Count Two, an award of damages in excess of \$25,000.00, the exact amount to be proven at trial, to Plaintiff for Defendant's breaches of the Insurance Policy;
- c. An award against Defendant of pre- and post-judgment interest on any amounts awarded;
- d. An award against Defendant and in favor of Plaintiff for its attorney's fees and costs; and
- e. An award of such other or further equitable relief that this Court may deem just.

JURY DEMAND

Plaintiff demands a jury trial on all issues and claims that are decided by a jury.

/s/Daniel P. Goetz

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