

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

ROCK THE HOUSE ENTERTAINMENT GROUP,  
INC., RTH HOLDINGS, LLC, SELECTIVE  
SOUND ENTERTAINMENT, LLC, and ZONE  
ENTERTAINMENT, LLC  
7809 First Place  
Oakwood Village, Ohio 44146

Plaintiffs

vs.

THE CINCINNATI INSURANCE COMPANY  
6200 South Gilmore Road  
Fairfield, Ohio 45014-5141

Defendant

CASE NO.:

JUDGE:

**COMPLAINT FOR DECLARATORY  
RELIEF**

(With Jury Demand)

**COMPLAINT AND REQUEST FOR DECLARATORY RELIEF**

1. Plaintiffs Rock the House Entertainment Group, Inc., RTH Holdings, LLC, and Selective Sound Entertainment, LLC (“Plaintiffs”) are corporate entities organized under Ohio law with their principal place of business in Cuyahoga County, Ohio. Plaintiffs are in the event planning and production and audio-visual entertainment industries.

2. Defendant The Cincinnati Insurance Company (“CIC”) is also an Ohio corporation with its principal place of business in Ohio that sells insurance in Cuyahoga County and throughout Ohio.

3. Plaintiffs are filing concurrent with this Complaint a Motion to Consolidate pursuant to Judge Brendan J. Sheehan’s July 9, 2020 Journal Entry issued in Case No. 20-931683 ordering all cases filed against Cincinnati Insurance Company related to the Covid-19 pandemic be consolidated with Case No. 20-931683 before Judge Nancy A. Fuerst.

4. At all times relevant, CIC insured Plaintiffs pursuant to an insurance policy drafted by CIC. A copy of the CIC policy at issue, number EPP 009 88 99, is attached as Exhibit 1 (“the Policy”). All Plaintiffs are named and/or additional named insureds under the terms of the Policy.

5. Defendant CIC delivered the Policy to Plaintiffs in Cuyahoga County, the Policy insures Plaintiffs’ property(ies), business operations, and potential liabilities in connection with Plaintiffs’ business operations, at locations in Cuyahoga County, and the covered losses at issue were, at least in part, incurred by Plaintiffs in Cuyahoga County, making venue appropriate in this Court.

6. The Policy provides coverage for loss of Business Income (“BI”), loss of Business Income from Dependent Properties (“BIDP”), coverage for Expenses to Reduce Loss, and coverage for loss due to the actions of a Civil Authority.

7. Relevant portions of the Policy provide, subject to other Policy terms, that Defendant CIC will:

- a. “pay for the actual loss of “Business Income” and “Rental Value” 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;”
- b. “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;”
- c. “In the event of a covered loss of “Business Income” we will pay necessary expenses you sustain, except the costs of extinguishing a fire, to avoid further loss of “Business Income;” and
- d. that “[w]hen a Covered Cause of Loss causes damage to property other than Covered Property at a “premises”, [CIC] 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...”

8. The Insurance Services Office, Inc. (“ISO”) publishes policy forms for use by the insurance industry.

9. The Policy utilizes, in part, policy forms and language published by the ISO, as reflected by the ISO copyright designation at the bottom of numerous pages of the Policy.

10. Prior to the effective date of the Policy, ISO published and made available for use a standard virus exclusion form.

11. Defendant CIC chose not to include the ISO standard virus exclusion form in the Policy.

12. Other than reference to a computer virus, the Policy includes no exclusion that references the word virus.

13. While the Policy was in force, Plaintiffs sustained, and continue to sustain, a loss(es) due to SARS-CoV-2, sometimes referred to as the coronavirus that causes the illness COVID-19, at, in, on, and/or around Plaintiffs’ premises described in the Policy.

14. While the Policy was in force, Plaintiffs sustained, and continue to sustain, a loss(es) due to SARS-CoV-2 at, in, on, and/or around Dependent Properties as defined in the Policy.

15. While the Policy was in force, Plaintiffs sustained, and continue to sustain, a loss(es) due to the spread of SARS-CoV-2 and COVID-19 in the community (the “Pandemic”).

16. While the Policy was in force, Plaintiffs sustained, and continue to sustain, a loss(es) due to the civil authority orders issued by the Governor of Ohio and the Ohio Department of Health addressing SARS-CoV-2 and the Pandemic.

17. In 2020, the State of Ohio, like much of the country, became plagued by the outbreak of the virus SARS-CoV-2 and COVID-19. This has resulted in losses to businesses throughout the state. Indeed, many businesses had to alter or shutter operations due to orders from Civil Authorities, such as the Ohio Governor and Director of Public Health.

18. Plaintiffs tendered a claim(s) for coverage under the Policy for their SARS-CoV-2, COVID-19 and/or Pandemic related losses.

19. Defendant refused to honor Plaintiffs' claim(s) and refused to provide coverage under the Policy. A copy of the denial letter is attached as Exhibit 2.

20. Defendant's decision not to provide coverage and/or its decision to reserve its rights and refuse to pay claims under the Policy issued to Plaintiffs gives rise to Plaintiffs' right to seek declaratory judgment.

21. SARS-CoV-2 is a virus.

22. SARS-CoV-2 is a physical substance.

23. SARS-CoV-2 is a human pathogen that causes the COVID-19 illness, which can be lethal.

24. SARS-CoV-2 can be present outside the human body in viral fluid particles.

25. SARS-CoV-2 can and does remain capable of being transmitted and active on inert physical surfaces for a period of time.

26. SARS-CoV-2 can and does remain capable of being transmitted and active on floors, walls, furniture, desks, tables, chairs, countertops, computer keyboards, touch screens, cardboard packages, and other items of property for a period of time.

27. SARS-CoV-2 can be transmitted by way of human contact with surfaces and items of physical property on which SARS-CoV-2 particles are physically present.

28. SARS-CoV-2 has been transmitted by way of human contact with surfaces and items of physical property located at premises in Ohio.

29. SARS-CoV-2 can be transmitted by human to human contact and interaction at premises in Ohio.

30. SARS-CoV-2 has been transmitted by human to human contact and interaction at premises in Ohio.

31. SARS-CoV-2 can be transmitted through airborne viral particles emitted into the air at premises.

32. SARS-CoV-2 has been transmitted by way of human contact with airborne SARS-CoV-2 particles emitted into the air at premises in Ohio.

33. The presence of any SARS-CoV-2 particles renders items of physical property unsafe.

34. The presence of any SARS-CoV-2 particles on physical property impairs its value, usefulness and/or normal function.

35. The presence of any SARS-CoV-2 particles causes direct physical harm to property.

36. The presence of any SARS-CoV-2 particles causes direct physical loss to property.

37. The presence of any SARS-CoV-2 particles causes direct physical damage to property.

38. The presence of any SARS-CoV-2 particles at premises renders the premises unsafe, thereby impairing the premises' value, usefulness and/or normal function.

39. The emission of SARS-CoV-2 particles into the air changes the physical composition of the air in the immediate vicinity and area into which those particles were emitted.

40. The presence of people infected with or carrying SARS-CoV-2 particles renders physical property in their vicinity unsafe and unusable, resulting in direct physical loss to that property.

41. The presence of people infected with or carrying SARS-CoV-2 particles at premises renders the premises, including property located at that premises, unsafe, resulting in direct physical loss to the premises and property.

42. In response to SARS-CoV-2, COVID-19 and the Pandemic, the Governor of Ohio has issued multiple executive orders pursuant to the authority vested in him by the Ohio Constitution and the laws of Ohio.

43. In response to SARS-CoV-2, COVID-19 and the Pandemic, the Ohio Department of Health, pursuant to its authority under Ohio law, has issued multiple orders, including a Stay At Home Order.

44. Among the orders issued by the Governor and the Ohio Department of Health were orders prohibiting mass gatherings and congregations of people over 50 and then over 10.

45. The term “civil authority” is not defined in the Policy.

46. The State of Ohio is a civil authority as contemplated by the Policy.

47. The Ohio Department of Health is a civil authority as contemplated by the Policy.

48. The Governor of the State of Ohio is a civil authority as contemplated by the Policy.

49. On March 9, 2020, Ohio Governor Mike DeWine issued Executive Order 2020-01D that declared a state of emergency in response to the physical presence of SARS-CoV-2 and the Pandemic.

50. On March 15, 2020, Ohio restricted food and beverage sales to carry-out and delivery only, with no onsite consumption permitted. The stated goal of this order was to slow the

spread of COVID-19 by minimizing in-person interaction “in an environment with a multitude of hard surfaces.” The order reiterated that “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.” Also that:

Previously studied human coronaviruses (including SARS, which is very closely related to COVID-19) can survive on paper, wood, glass, plastic up to 4-5 days. *Persistence of coronaviruses on inanimate surfaces and their inactivation with biocidal agents*, The Journal of Hospital Infection, March 2020, Volume 104, Issue 3, Pages 246-251.

51. On March 22, 2020, the Ohio Department of Health issued a Stay At Home Order, effective March 23, 2020, ordering Ohio residents to stay at home. By way of this order the State of Ohio ordered all non-essential businesses in Ohio to cease all activities.

52. Plaintiffs’ businesses do not qualify as Essential Businesses and Plaintiffs were required to cease operations.

53. The civil authority orders, including, but not limited to the Stay At Home Order, prohibit access to Millenia’s premises described in the Policy.

54. The State of Ohio, through the Governor and the Department of Health, have Issued, and continue to issue, authoritative orders governing Ohioans and Ohio businesses, including Plaintiffs, in response to SARS-CoV-2 , COVID-19 and the Pandemic, the effect of which have required and continue to require Plaintiffs to cease and/or significantly reduce operations at, and that have prohibited and continue to prohibit access to, the premises described in the Policy.

55. State and local governmental authorities, and public health officials around the Country, acknowledge that SARS-CoV-2, COVID-19 and the Pandemic cause direct physical loss and damage to property. For example:

a. The state of Colorado issued a Public Health Order indicating that “COVID-

19... physically *contributes to property loss, contamination, and damage...*” (Emphasis added);

- b. The City of New York issued an Emergency Executive Order in response to COVID-19 and the Pandemic, in part “because the virus *physically is causing property loss and damage.*” (Emphasis added);
- c. Broward County, Florida issued an Emergency Order acknowledging that COVID-19 “*is physically causing property damage.*” (Emphasis added);
- d. The State of Washington issued a stay at home Proclamation stating the “COVID-19 pandemic and its progression... remains a public disaster affecting life, health, [and] *property...*” (Emphasis added);
- e. The State of Indiana issued an Executive Order recognizing that COVID-19 has the “propensity to *physically* impact surfaces and personal *property.*” (Emphasis added);
- f. The City of New Orleans issued an order stating “there is reason to believe that COVID-19 may spread amongst the population by various means of exposure, including the propensity to attach to surfaces for prolonged period of time, thereby spreading from surface to person and *causing property loss and damage* in certain circumstances.” (Emphasis added);
- g. The State of Illinois issued an Executive Order describing COVID-19’s “propensity to *physically* impact surfaces and personal *property.*” (Emphasis added);
- h. The State of New Mexico issued a Public Health Order acknowledging the “threat” COVID-19 “poses” to “*property.*” (Emphasis added);
- i. North Carolina issued a statewide Executive Order in response to the Pandemic not only “to assure adequate protection for lives,” but also to “assure adequate protection of... *property.*” (Emphasis added); and
- j. The City of Los Angeles issued an Order in response to COVID-19 “because, among other reasons, the COVID-19 virus can spread easily from person to person and it is *physically causing property loss or damage* due to its tendency to attach to surfaces for prolonged periods of time.” (Emphasis added).

56. SARS-CoV-2, COVID-19 and the Pandemic are physically impacting public and private property in Ohio and throughout the country.



57. SARS-CoV-2, COVID-19 and the Pandemic have caused and continue to cause direct physical loss and damage to property.

58. People in Ohio have been diagnosed with COVID-19.

59. People in Ohio have, and have had, COVID-19 disease but have not been diagnosed.

60. People in Cuyahoga County have SARS-CoV-2 particles on or about their person and personal property.

61. Properties and premises throughout Cuyahoga County contain the presence of SARS-CoV-2 particles on surfaces and items of property.

62. It is probable that SARS-CoV-2 particles have been physically present at Plaintiffs' premises described in the Policy during the Policy period.

63. It is probable that SARS-CoV-2 particles have been physically present on surfaces and items of property located at Plaintiffs' premises described in the Policy during the Policy period.

64. It is probable that airborne SARS-CoV-2 particles have been physically present at Plaintiffs' premises described in the Policy during the Policy period.

65. It is probable that SARS-CoV-2 particles have been physically present at dependent properties as that term is defined in the Policy during the Policy period.

66. It is probable that SARS-CoV-2 particles have been physically present on surfaces and items of property located at dependent properties as that term is defined in the Policy during the Policy period.

67. It is probable that airborne SARS-CoV-2 particles have been physically present at dependent properties as that term is defined in the Policy during the Policy period.

68. It is probable that people carrying SARS-CoV-2 particles in, on or about their person have been present at Plaintiff's premises described in the Policy during the Policy period.

69. It is probable that airborne SARS-CoV-2 particles have been physically present at Plaintiffs' premises described in the Policy during the Policy period.

70. Plaintiffs have sustained direct physical loss and damage to items of property located at their premises and direct physical loss and damage to their premises described in the Policy as a result of the presence of SARS-CoV-2, COVID-19 particles and/or the Pandemic that has required and continue to require Plaintiff to cease and/or significantly reduce and/or substantially slow down operations and business activities at the premises described in the Policy, and that has rendered the premises, at least in part, untenable.

71. Dependent properties, as that term is defined in the Policy, have sustained direct physical loss and damage to items of property located at their premises and direct physical loss and damage to their premises described in the Policy as a result of the presence of SARS-CoV-2, COVID-19 particles and/or the Pandemic.

72. Plaintiffs have sustained and continue to sustain losses as a result of the physical loss and damage to dependent properties referenced in the preceding paragraph.

73. Plaintiffs submitted a timely insurance claim(s) to Defendant CIC.

74. Defendant CIC responded with a reservation of rights letter.

75. There is a dispute about whether Plaintiffs are entitled to coverage under the Policy for their loss(es) sustained and to be sustained in the future. Accordingly, Plaintiffs are entitled to declaratory relief from this Court pursuant to Ohio Civil Rule 57 and R.C. §§2721.01 to 2721.15.

76. Plaintiffs are entitled to and demand a declaration that:

- (1) Plaintiffs sustained direct physical loss or damage to property at its premises described in the Policy as a result of SARS-CoV-2, COVID-19 and/or the Pandemic;
- (2) Plaintiffs sustained covered losses as a result of dependent properties sustaining direct physical loss or damage to property as a result of SARS-CoV-2, COVID-19 and/or the Pandemic;
- (3) SARS-CoV-2 virus is a covered cause of loss under the Policy;
- (4) the Pandemic is a covered cause of loss under the Policy;
- (5) the losses incurred by Plaintiffs as the result of the orders issued by the Governor of Ohio and the Ohio Department of Health are covered losses under the Policy;
- (6) Defendant CIC has not and cannot prove the application of any exclusion or limitation to the coverage for Plaintiffs' losses alleged herein;
- (7) Plaintiffs are entitled to coverage for their past and future Business Income loss(es) and Extra Expense resulting from SARS-CoV-2, COVID-19 and/or the Pandemic for the time period set forth in the Policy;
- (8) Plaintiffs are entitled to coverage for loss(es) due to the actions of Ohio's civil authorities, including the Governor of Ohio and the Ohio Department of Health;
- (9) Plaintiffs have coverage for any substantially similar civil authority order in the future that limits or restricts the access to Plaintiffs' places of business and/or its operations; and
- (10) any other issue that may arise during the course of litigation that is a proper issue on which to grant declaratory relief.

77. Plaintiffs do not seek a determination of their damages resulting from the SARS-CoV-2, COVID-19 and/or the Pandemic. If there is a dispute between the parties as to the amount of the loss, the Policy provides that such a dispute should be resolved by **Appraisal**:

### **Appraisal**

If we and you disagree on the amount of “Business Income” or Extra Expense “loss”, either may make written demand for an appraisal of the “loss”. In this event, each party will select a competent and impartial appraiser.

The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of “Business Income” or Extra Expense “loss”. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding.

Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we still retain our right to deny the claim. (FA 215 0516, page 4 of 9)

78. Plaintiffs pray for declaratory relief from the Court that Defendant CIC must resolve any dispute about the amount of loss via Appraisal. Plaintiffs also request the Court to appoint the umpire if the appraisers cannot agree.

79. Plaintiffs pray for any further relief the Court deems proper, including attorney fees, interest, and costs as allowed by law or in the exercise of the Court’s equitable jurisdiction.

WHEREFORE, Plaintiffs seek judgment against Defendant CIC, as set forth above, plus interest, costs, and attorney fees as allowed by law.

Respectfully submitted,

/s/ Robert A. Rutter

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### **JURY DEMAND**

Plaintiffs hereby request, pursuant to Civil Rule 38(B), a trial by jury of any of the issues in the within lawsuit that are properly triable to a jury.

/s/ Robert P. Rutter

Robert P. Rutter