

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

JENNISON CORPORATION,

CIVIL DIVISION

Plaintiffs,

G.D. 22- **000331**

v.

CINCINNATI INSURANCE COMPANY,

Defendant.

COMPLAINT IN CIVIL ACTION

AND NOW, comes the Plaintiff, JENNISON CORPORATION, by and through its undersigned counsel, Richard B. Sandow, Esquire, Edward C. Spontak, Esquire, and the law offices of Jones, Gregg, Creehan & Gerace, LLP, and hereby files the within Complaint in Civil Action, and in support thereof avers as follows:

PARTIES

1. Plaintiff, JENNISON CORPORATION (hereinafter "JENNISON") is a Pennsylvania Corporation with a principal place of business located at Arch Street Extension, Carnegie, PA 15106.

2. Defendant, Cincinnati Insurance Company (hereinafter "CINCINNATI") is an insurance company authorized to issue certain policies in the Commonwealth of Pennsylvania with a principal place of business located at Post Office Box 145496, Cincinnati, OH 45250-5496 and/or 6200 S. Gilmore Road, Fairfield, OH 45014-5141.

3. JENNISON is a machine and tool manufacturing company located in Carnegie, Allegheny County, Pennsylvania.

4. JENNISON purchased a CINCINNATI commercial insurance policy designated as EBA 018 68 69 (the "Policy") which had an effective date of April 1, 2020. (A true and correct copy of the Policy is attached hereto as Exhibit "A").

5. The CINCINNATI Policy issued to JENNISON covers all direct losses unless excluded or limited by the policy language. Therefore, this is an "all risk" policy.

6. JENNISON made a proper claim under the Policy for losses of Business Income and/or Extra Expense relating to Covid19, for the time period July 2020 through September 2020.

7. These losses are covered under the terms of the Policy, and pursuant to the prevailing Pennsylvania caselaw applicable to same.

8. Nonetheless, CINCINNATI has denied JENNISON's claim in bad faith.

9. The Policy contains "Coverage Extensions" beginning on p. 16 of 40.

10. Subpart b. on p. 18 details coverage of "Business Income and Extra Expense." With respect to (1) Business Income, the Policy states:

We will 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.

11. Business Income and Extra Expense coverage is also detailed in the Policy at Business Income (and Extra Expense) Coverage Form ("Coverage Form") at, 1. Business Income (a).

12. "Loss" is defined as "accidental physical loss or accidental physical damage," at Policy Definitions p. 38 of 40.

13. The Policy (at SECTION C. LOSS CONDITIONS at 3. Loss Determination a. (Coverage Form at p. 5 of 9)) indicates that the “Business Income” “loss” will be determined based on:

- (1) The net income of the business before the direct “loss” occurred;
- (2) The likely Net Income of the business if no direct “loss” had occurred...
- (3) The operating expenses, including payroll expenses, necessary to resume “operations” with the same quality of service that existed just before the direct loss; and
- (4) Other relevant sources of information...

14. The Policy Coverage Form at SECTION F. DEFINITIONS, defines “Business Income” as “Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred...”

15. JENNISON’S monthly income, expenses, and profit are relatively consistent year to year.

16. The Covid19 global pandemic caused direct loss and damage to businesses/property worldwide.

17. On March 6, 2020, Pennsylvania Governor Tom Wolf issued an Order declaring a Proclamation of Disaster Emergency.

18. On March 19, 2020, Gov. Wolf issued an Order requiring all non-life sustaining businesses in Pennsylvania to cease operations and close physical locations.

19. On March 23, 2020, the Governor issued a “Stay at Home” Order to mitigate the spread of Covid19, directing citizens in counties including Allegheny to stay at home except as needed to access life sustaining services.

20. Then on April 1, 2020, Gov. Wolf expanded the March 23, 2020, Order directing all Pennsylvania citizens to stay home.

21. JENNISON's income held steady in March 2020 through June 2020, as it continued to fill orders that had been placed prior to the Covid19 emergency.

22. However, this changed dramatically approximately twelve weeks after Covid19 and the Governor's Orders took hold in Pennsylvania.

23. As a result of the spread of Covid19 and the Governor's Orders, JENNISON's production and thus its Net Income plummeted.

24. As a testament to JENNISON's commitment to resuming its operations as quickly as possible, by October of 2020 JENNISON's income resumed to approximately pre-Covid19 levels.

25. However, the loss of Net Income in the three-month period was devastating to JENNISON and resulted in a loss of Net Income totaling \$411,851.59.

26. \$411,851.59 is the amount CINCINNATI is obligated to pay in accordance with the terms of the Policy as this is the actual loss of Business Income JENNISON sustained due to the necessary suspension of its operations caused by and/or resulting from direct loss to property at a premises caused by a Covered Cause.

27. Actual loss of Business Income due to Covid19 is covered under the Policy. See Judge Ward's opinion in the Allegheny County Court of Common Pleas *Ungarean* case (GD-20-006544).

28. By way of claim letter dated October 6, 2021, JENNISON provided prompt notice to CINCINNATI of its claim, and provided Profit & Loss comparison statements for years 2019 and 2020 to support same. (A true and correct copy of the October 6, 2021, claim letter is attached hereto as Exhibit "B").

29. The Cincinnati Policy issued to Jennison covers all direct losses unless excluded or limited by the policy language. Therefore, this is an “all risk” policy.

30. With respect to (1) Business Income, the Policy states:

We will 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.

31. SECTION C. LOSS CONDITIONS at 3. Loss Determination a. (Coverage Form at p. 5 of 9), indicates that the “Business Income” “loss” will be determined based on:

- (1) The net income of the business before the direct “loss” occurred;
- (2) The likely Net Income of the business if no direct “loss” had occurred...
- (3) The operating expenses, including payroll expenses, necessary to resume “operations” with the same quality of service that existed just before the direct loss; and
- (4) Other relevant sources of information...

32. Accordingly, Cincinnati is obligated to pay in accordance with the terms of the Policy the actual loss of Business Income Jennison sustained due to the necessary suspension of its operations caused by and/or resulting from direct loss to property at a premises caused by a Covered Cause.

33. The Cincinnati Policy covers direct loss, defined as accidental physical loss.

34. The Covid pandemic or its repercussions were not expected.

35. This case presents an accidental physical loss as is covered under the Policy.

36. No tangible damage need to have been incurred in order for coverage to apply.

37. As detailed in the claim letter, the Policy obligates Defendant to pay for actual loss of Business Income and Rental Value the insured sustains due to the necessary suspension of its operations, where the suspension is caused by direct loss to property at a premises caused by or resulting from any Covered Cause of Loss.

38. As per the terms of the Policy CINCINNATI supplied JENNISON with a Proof of Loss form upon receipt of JENNISON's claim, and sent JENNISON a Reservation of Rights letter on October 22, 2021.

39. JENNISON submitted all data requested in the Proof of Loss form in November of 2021.

40. CINCINNATI denied JENNISON's claim by way of a December 2, 2021 Denial Letter from CINCINNATI's outside counsel.

41. CINCINNATI's Reservation of Rights letter and Denial Letter ignore the prevailing caselaw and Policy language, as JENNISON's claim is covered under the Policy.

42. CINCINNATI at all times relevant hereto conducted its investigation to reach a conclusion that it could deny coverage to JENNISON and avoid payment under the Policy despite the language of the Policy and caselaw dictating coverage.

43. CINCINNATI's denial of coverage for the loss suffered by JENNISON was lacking in any reasonable basis and CINCINNATI had no reasonable basis for denying the claim.

44. CINCINNATI did not fairly and carefully analyze the claim and did not properly apply the language of the Policy.

COUNT I:
DECLARATORY JUDGMENT

45. The preceding Paragraphs are herein incorporated by reference as if set forth fully herein.

46. JENNISON seeks a declaration that CINCINNATI is obligated to provide coverage to JENNISON for the loss of Net Income under the plain terms of the Policy, including but not limited to as set forth above.

47. Further, to the extent there is any ambiguity created by the drafting of the Policy by CINCINNATI, such ambiguity must be interpreted against CINCINNATI as the drafter of the Policy.

48. The issues present with respect to this action are whether there is a duty on the part of the insurance company to provide coverage for the loss claimed by JENNISON for the loss of Net Income.

49. Such controversy involves substantial rights of the parties to this action.

50. A judgment in this action will serve a useful purpose in clarifying the legal dispute at issue between the parties.

51. A judgment of this Court in this action will determine, terminate and afford relief from the uncertainty giving rise to this action.

52. Hence, JENNISON avers that Declaratory judgment relief is proper pursuant to the applicable provisions of the Declaratory Judgment Act, 42 P.S. §7531.

WHEREFORE, JENNISON respectfully requests this Honorable Court to declare that: (1) under the plain terms of the CINCINNATI Policy in question and express allegations contained herein CINCINNATI is obligated to provide coverage for any and all

damages stated by JENNISON and the losses it has claimed; and (2) for other relief as may be appropriate.

COUNT II:
BREACH OF CONTRACT

53. The preceding Paragraphs are herein incorporated by reference as if set forth fully herein.

54. The Policy at all times relevant was a contract which existed between JENNISON and CINCINNATI by which CINCINNATI agreed to pay for covered losses under the Policy.

55. Specifically, the Policy covered losses of Business Income as set forth herein, and did cover JENNISON's loss of Net Income in 2020 under the circumstances described above.

56. CINCINNATI was therefore obligated under the terms of the Policy to pay JENNISON for the subject losses.

57. There are no exclusions which apply to the loss suffered by JENNISON which would operate to relieve CINCINNATI of its obligation to provide compensation to JENNISON for its losses.

58. Nevertheless, CINCINNATI has to date failed to provide coverage for the losses suffered by JENNISON.

59. CINCINNATI's failure to pay for JENNISON's covered losses under the Policy is a breach of its contract with JENNISON and of its obligations under the Policy.

60. CINCINNATI's continued failure to provide coverage for these losses is a further breach of its duties under the Policy purchased by JENNISON and made part of the agreement between the parties.

61. As a direct result of CINCINNATI's breach of its duties and obligations under the Policy, JENNISON has sustained significant losses of income, which losses should be covered by the Policy.

WHEREFORE, JENNISON respectfully requests that this Honorable Court enter judgment in its favor and against CINCINNATI in an amount of at least Four Hundred Eleven Thousand Eight Hundred Fifty-One Dollars and Fifty-Nine Cents (\$411,851.59) which is in excess of Thirty-Five Thousand Dollars (\$35,000.00), plus costs, interest, and attorneys' fees, and any other form of relief as this Court should determine to be just and proper.

COUNT III:
BAD FAITH PURSUANT TO 42 Pa. C.S.A. § 8371

62. The preceding Paragraphs are herein incorporated by reference as if set forth fully herein.

63. In both its investigation of the claim submitted by JENNISON, as well as its denial of said claim, CINCINNATI failed to fulfill its obligations to handle the claim submitted by JENNISON, as its insured, in good faith.

64. The conduct of CINCINNATI in investigating and denying JENNISON's claim amounts to bad faith toward JENNISON, its insured, in at least the following particulars:

- a. CINCINNATI made the decision to deny JENNISON's claim before it had completed an investigation of the facts of JENNISON's claim, and without making a proper investigation of same;
- b. CINCINNATI claims adjusters/handlers knowingly misrepresented and misstated facts in the claims file in order to induce the persons responsible for rendering decisions on loss coverage to deny JENNISON's claim;

- c. CINCINNATI made its decision in contravention of the clear facts of the case, and the prevailing law relating to same;
- d. CINCINNATI knowingly misstated and omitted facts and conclusions; and
- e. CINCINNATI was aware of facts and the relevant law pursuant to which it was obligated under the Policy to provide coverage for JENNISON's loss yet, despite such facts, without reasonable explanation failed to fulfill its obligations.

65. It is believed and therefore averred that additional discovery on the issue of CINCINNATI's bad faith conduct will reveal further conduct, in addition to the facts cited *supra*, which amounts to further bad faith on the part of CINCINNATI.

66. CINCINNATI did not have a reasonable basis for denying JENNISON's claim under the Policy.

67. Further, CINCINNATI knew of or recklessly disregarded its lack of reasonable basis in denying the claim.

68. CINCINNATI failed to conduct a good faith investigation of JENNISON'S claim before denying said claim, and failed to apply the prevailing law to the facts of the claim.

69. CINCINNATI's conduct evidences an evasion of the spirit of the bargain between JENNISON and CINCINNATI, a lack of due diligence, a lack of performance of its obligations as insurer, and a willful rendering of imperfect performance of its obligations under the Policy.

70. Due to the bad faith conduct of CINCINNATI in its investigation and denial of JENNISON's claim, JENNISON has sustained significant losses of income, which losses should be covered by the Policy.

71. As a further result of the bad faith conduct of CINCINNATI, JENNISON has suffered investigative expenses and attorneys' fees and costs in the litigation of this matter.

72. CINCINNATI breached its duties of good faith and fair dealing in handling the claim for JENNISON.

73. CINCINNATI acted in a willful and purposely careless manner in denying JENNISON's claim.

74. Based on CINCINNATI acting in bad faith in violation of 42 Pa. C.S.A. § 8371 toward the insured (JENNISON), it is requested that the Court take all of the following actions:

- (1) Award interest on the amount of the claim from the date the claim was made by the insured in an amount equal to the prime rate of interest plus three (3) percent.
- (2) Award punitive damages against the insurer.
- (3) Assess court costs and attorney fees against the insurer.


WHEREFORE, JENNISON respectfully requests that this Honorable Court enter judgment in its favor and against CINCINNATI in an amount in excess of Thirty-Five Thousand Dollars (\$35,000.00), plus costs, interest, attorneys' fees, punitive damages, statutory damages, and any other form of relief as this Court should determine to be just and proper.

Respectfully submitted,

JONES, GREGG, CREEHAN & GERACE, LLP



By: _____
RICHARD B. SANDOW, ESQUIRE
PA I.D. No. 30914



By: _____
EDWARD C. SPONTAK, ESQUIRE
PA I.D. No. 87620

COUNSEL FOR PLAINTIFF