

**IN THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
CIRCUIT CIVIL DIVISION**

3C'S CATERING, LLC  
D/B/A CAFÉ DELANIE

a Domestic Corporation,  
Plaintiff,

vs

Case No. \_\_\_\_\_

NATIONWIDE INSURANCE  
COMPANY OF AMERICA

a Foreign Corporation,  
Defendant,

\_\_\_\_\_/

**COMPLAINT AND DEMAND FOR JURY TRIAL**

COMES NOW, the Plaintiff, 3C'S CATERING, LLC D/B/A CAFÉ DELANIE by and through its undersigned counsel, and files this, its Complaint against the Defendant, NATIONWIDE INSURANCE COMPANY OF AMERICA, and alleges:

**JURISDICTON**

1. The matter in controversy exceeds the sum of \$30,000.00 exclusive of interest, attorney's fees and costs.

2. Plaintiff, 3C'S CATERING, LLC D/B/A CAFÉ DELANIE (hereinafter "Café Delanie"), was at all times material to the allegations in this Complaint, a corporation organized and existing under the laws of the State of Florida, and engaged in the restaurant and catering business, in Tampa, Florida.

3. Defendant, NATIONWIDE INSURANCE COMPANY OF AMERICA, is and at all times material to the allegation in this Complaint, was a corporation organized and existing under the laws of the State of Massachusetts, having its principal place of business in Columbus,

Ohio and which was authorized and licensed to do business in the State of Florida as an insurer, and which had an agent in Hillsborough County, Florida, making Hillsborough County a proper venue pursuant to Florida Statute Section 47.051.

#### **COMMON ALLEGATIONS**

4. At all times material to this action, there was in existence a policy of insurance issued by Defendant to Plaintiff, providing coverage to Plaintiff's location, 3016 N. US Hwy. 301 Ste. 100, Tampa, FL 33619-2268. A certified copy of the subject policy is attached hereto as **Exhibit "A"** and is incorporated by reference herein.

5. The subject insurance policy, among other things, provides coverage for loss of business income and extra expense caused by action of civil authority that prevents access to the insured premises, as more specifically set forth in Form CP 00 30 06 07 which provides in pertinent part as follows:

**a. Civil Authority**

**In this Additional Coverage – Civil Authority, the described premises are premises to which this Coverage Form applies, as shown in the Declarations.**

**When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described 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 the described premises are within that area but are not more than one mile from the damaged property; 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 72 hours after the time of the first action of civil authority that prohibits access to the described premises and will apply for a period of up to four consecutive weeks 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 described premises and will end:**

- (1) Four consecutive weeks after the date of that action; or**
  - (2) When your Civil Authority coverage for Business Income ends;**
- whichever is later**

6. This coverage was modified by endorsement as follows:

**FLORIDA CHANGES**

**\*\*\***

**G. The following applies to the Additional Coverage – Civil Authority under the Business Income (And Extra Expense) Coverage Form, Business Income (Without Extra Expense) Coverage Form and Extra Expense Coverage Form:**

- 1. The Additional Coverage – Civil Authority includes a requirement that the described premises are not more than one mile from the damaged property. With respect to described premises located in Florida, such one-mile radius does not apply.**
- 2. The Additional Coverage – Civil Authority is limited to a coverage period of up to four weeks. With respect to described premises located in Florida, such four-week period is replaced by a three-week period.**
- 3. Civil Authority coverage is subject to all other provisions of that Additional Coverage.**

7. On or about March 27, 2020 Hillsborough County issued a Civil Authority Order suspending on-premises food consumption for customers, all of which is more particularly

described in the copy of said Order attached hereto as **Exhibit “B”**, incorporated by reference herein. Additionally, Florida Governor Ron DeSantis issued Executive Order Number 20-71, a Civil Authority also suspending on-premises food consumption, which is attached as **Exhibit “C”**, incorporated by reference herein.

8. To the best of Plaintiff’s information and belief, businesses within 1 mile or more of the insured location was shut down due to the Hillsborough County Order. Within 1 mile of Café Delanie is The Dallas Bull, located at 3322 US Hwy 301 S. Tampa, FL 33619. This reference is not exhaustive.

9. Plaintiff further alleges that the Civil Authorities referenced above were issued in response to the state of emergency relating to Covid-19 and in response to a threat to the public health as more specifically described in the orders.

#### **COUNT I – BREACH OF CONTRACT**

10. Plaintiff re-alleges and incorporates allegations one (1) through nine (9) above.

11. Plaintiff suffered a loss of business income caused by the above mentioned action of civil authority that prohibited access to properties near Plaintiff’s property, as well as to Plaintiff’s property because access to the properties was prohibited by order of a civil authority as the direct result of a covered cause of loss to property in the immediate area of Plaintiff’s property as well as Plaintiff’s property under the terms and conditions of the policy quoted above.

12. Under the terms and conditions of the subject policy, Defendant is obligated to pay Plaintiff’s actual loss of business income and any other extra expense caused by the action of civil authorities pursuant to the terms and conditions of the subject policy.

13. Plaintiff submitted a claim for business income and extra expense losses caused

by the above mentioned actions of civil authority to the Defendant.

14. By letter dated May 28, 2020 Defendant denied coverage for the subject claim. This denial letter is attached as **Exhibit “D”**.

15. Because of Defendant’s failure to pay Plaintiff’s claim, Defendant has materially breached the terms and conditions of the subject policy.

16. As a result of the breach, Plaintiff has suffered damages in the form of loss business income which Plaintiff alleges is covered under the subject policy of insurance.

17. All conditions precedent to recover under the subject policy have been performed by the Plaintiff or waived by the Defendant.

18. Because of Defendant’s breach of the subject insurance policy, Plaintiff has had to retain the services of the undersigned attorneys and have agreed to pay the undersigned attorneys a reasonable fee.

WHEREFORE, Plaintiff, 3C’S CATERING, LLC D/B/A CAFÉ DELANIE, demands judgment for damages, together with interest, costs and reasonable attorneys fees, pursuant to Section 627.428 Florida Statutes, together with such other and further relief which this Court may deem proper and just; and demands trial by jury on all issued so triable.

#### **COUNT II – DECLARATORY JUDGEMENT**

19. Plaintiff re-alleges and incorporates allegations one (1) through nine (9) above.

20. This is an action for Declaratory Judgment to determine liability under the subject insurance policy pursuant to Chapter 86, Florida Statutes.

21. Plaintiff contends that the subject claim for business interruption is a covered cause of loss because the orders of civil authority prevented access to Plaintiff’s property and caused their business to be shut down in whole or in part.

22. Defendant denied Plaintiff's claim, alleging that the subject policy did not provide coverage for multiple reasons. These are addressed individually below.

#### **A. Direct Physical Damage**

23. Defendant's first basis for denial is there was no direct physical loss or damage to property at the insured premises.

24. The subject policy under civil authority provides as follows:

##### **a. Civil Authority**

**In this Additional Coverage – Civil Authority, the described premises are premises to which this Coverage Form applies, as shown in the Declarations.**

**When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described 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 the described premises are within that area but are not more than one mile from the damaged property; 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 48 hours after the time of the first action of civil authority that prohibits access to the described premises and will apply for a period of up to four consecutive weeks 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 described premises and will end:**

- (1) Four consecutive weeks after the date of that action; or**

**(2) When your Civil Authority coverage for Business Income ends;  
Whichever is later**

25. Plaintiff alleges that this additional coverage only requires damage to premises next to Plaintiff's property by stating "when a Covered Cause of Loss causes damage to property other than property at the described premises. This clause does not require direct physical damage to the insured premises, but rather, only damage to property other than property at the described premises.

26. The above quoted policy provision is ambiguous and unclear as to whether or not direct physical damage is required at other property, or even the insured premises to trigger civil authority coverage and a reasonable interpretation of the policy should be that if property around the insured location suffers damage, not direct physical loss or damage, and a civil authority prevents access to that property as well as to the insured property, there would be coverage for the business interruption loss.

27. Plaintiff contends that Defendant has erroneously construed the subject insurance policy to require direct physical damage and that civil authority coverage is only applicable when access to the described premises is prohibited due to direct physical damage to other property. Plaintiff alleges it is entitled to recover damages for business interruption due to civil authority because other businesses were likewise shut down due to action of civil authority causing damage to businesses.

**B. Civil Authority**

28. Defendant's second basis for denial was that Civil Authority Coverage does not apply in this matter.

29. Specifically, Defendant claimed "To date, there has been no action of civil

authority prohibiting access to your premises. There has been no damage to property within 1 mile of your premises from a covered Cause of Loss.” (See denial letter).

30. Plaintiff in this matter alleges that Hillsborough County Executive “Safer-At-Home Order” and Florida Governor Ron DeSantis’ Executive Order 20-71 are proper civil authorities.

31. Damage to the insured property, and damage to properties within one mile or more of the insured property occurred when access to both were prohibited by these civil authorities.

32. Within the Hillsborough Safer-At-Home Order, restaurants and/or catering companies were not among the list of “essential individuals, businesses and services” exempt from the order, and thus restaurants were forced shut, including Plaintiff’s restaurant and catering business.

33. Governor DeSantis’ Order specifically addressed Restaurants and Bars, stating “I hereby order all restaurants and food establishments... to suspend on-premises food consumption for customers.”

34. Since this is an all risks policy, and this particular type of loss is not excluded, this would be a covered cause of loss. This covered cause of loss clearly caused damage, by shutting down the Plaintiff’s location, and businesses within one mile or more of the insured location.

35. Plaintiff contends therefore that Defendant has erroneously mischaracterized and understood the civil authority language in this matter, and that Plaintiff is entitled to recover.

### **C. Fungi, Bacteria or Virus Exclusion**

36. Defendant’s third basis for denial was that the policy’s virus exclusion applies.

37. The exclusion provides as follows:



## **EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA**

**This endorsement modified insurance provided under the following:**

### **COMMERCIAL PROPERTY COVERAGE PART STANDARD PROPERTY POLICY**

**A. The exclusion set forth in Paragraph B. applies to all coverage under all forms and endorsements that comprise this Coverage Part or Policy, including but not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense or action of civil authority.**

**B. We will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.**

**However, this exclusion does not apply to loss or damage caused by or resulting from “fungus”, wet rot or dry rot. Such loss or damage is addressed in a separate exclusion in this Coverage Part or Policy**

**C. With respect to any loss or damage subject to the exclusion in Paragraph B, such exclusion supersedes any exclusion relating to “pollutants”.**

**D. The following provisions in this Coverage Part or Policy are hereby amended to remove reference to bacteria:**

**1. Exclusion of “Fungus”, Wet Rot, Dry Rot And Bacteria; and**

**2. Additional Coverage – Limited Coverage for “Fungus”, Wet Rot, Dry Rot And Bacteria, including any endorsement increasing the scope or amount of coverage.**

**E. The terms of the exclusion in Paragraph B., or the inapplicability of this exclusion to a particular loss, do not serve to create coverage for any loss that would otherwise be excluded under this Coverage Part of Policy.**

38. Plaintiff alleges that this is the standard Insurance Services Office, Inc. (ISO) language which has been incorporated into Defendant’s policy. Pursuant to ISO themselves, this endorsement was only meant to exclude the cost of damages to either the insured locations or the

insured's products when a virus specifically infected the insured locations. See the attached ISO circular regarding this endorsement attached hereto as **Exhibit "E"**. Because there is no allegation that the insured properties were specifically affected by the COVID-19 virus, this particular exclusion does not apply.

39. The above quoted policy exclusion is ambiguous and unclear as to what is excluded and should be considered as only excluding costs when a virus or bacteria affects the interior of the insured property or affects the product of the insured. A reasonable interpretation would be that this exclusion does not exclude orders by civil authority regarding covid-19 because covid-19 did not actually affect the interior of the insured locations and therefore the exclusion would not apply.

40. Plaintiff contends that Defendant has erroneously construed the subject insurance policy and that Plaintiff is entitled to recover damages for business interruption due to civil authority.

41. Plaintiff is in doubt of its rights and obligations under the subject policy as to whether Defendant is required to pay the business interruption claim under the terms and conditions of the subject policy.

42. An actual controversy of a justiciable nature as to whether Plaintiff is entitled to recover business interruption damages under the subject policy exists between Plaintiff and Defendant involving the rights and liabilities of Plaintiff and Defendant under the policy of insurance attached hereto and Plaintiff is in doubt as to its rights under the subject policy.

43. The controversy existing between Plaintiff and Defendant may be determined by a judgment of this Honorable Court without the necessity of other law suits.

44. Plaintiff has no other adequate remedy of law.

45. Because of Defendant's wrongful denial of Plaintiff's claim, Defendant has materially breached the terms and conditions of the subject policy.

46. All conditions precedent to recovery under the subject policy have been performed by Plaintiff and their agent or waived by Defendant.

47. Because of Defendant's breach of the subject insurance policy, Plaintiff has had to retain the services of the undersigned attorneys and agreed to pay the undersigned attorneys a reasonable fee.

WHEREFORE, Plaintiff, 3C'S CATERING, LLC D/B/A CAFÉ DELANIE, demands judgment declaring that Defendant, NATIONWIDE INSURANCE COMPANY OF AMERICA, is required to pay Plaintiff the damages resulting from the above business interruption claim and that judgment be entered for Plaintiff's damages, together with interest, costs and reasonable attorneys fees pursuant to Section 627.428, Florida Statutes, together with any such other and further relief which this Honorable Court deems proper and demands trial by jury on all issues so triable.

Dated this 20th day of October, 2020

/s/ Ronald S. Haynes

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