

INDIANA COMMERCIAL COURT

STATE OF INDIANA
IN THE MARION SUPERIOR COURTINDIANAPOLIS RACQUET CLUB,
INC.,

Plaintiff,

v.

THE CINCINNATI INSURANCE
COMPANY,

Defendant.

CAUSE NO.

COMPLAINT AND REQUEST FOR JURY TRIAL

Plaintiff Indianapolis Racquet Club, Inc. ("IRC"), for its complaint against Defendant The Cincinnati Insurance Company ("Cincinnati"), states as follows:

I.**Introduction**

1. This is an action for declaratory relief and breach of contract concerning insurance. IRC seeks: (1) a declaration and judgment, pursuant to Indiana Rule of Trial Procedure 57 and the Indiana Declaratory Judgment Act, Indiana Code § 34-14-1 *et seq.*, confirming Cincinnati's obligation to pay IRC's losses under a commercial property insurance policy on a claim arising from the natural disaster known as the COVID-19 pandemic; (2) actual and consequential damages arising from Cincinnati's breach of the policy; (3) prejudgment and post-judgment interest; and (4) any and all other relief to which it may be entitled.

II.
The Parties

2. IRC is an Indiana corporation and owner of insured locations located at 8249 Dean Road, Indianapolis, Indiana 46240 and 4901 N. Shadeland Avenue, Indianapolis, Indiana 46226 (the “Insured Locations”).

3. Cincinnati is an Ohio insurance company doing business in Indiana.

III.
Jurisdiction and Venue

4. This Court has jurisdiction over Cincinnati under Trial Rules 4.4(A)(1) and (6) because Cincinnati does business in Indiana, is licensed to do so, and sold a policy to IRC insuring property and risks within the State of Indiana.

5. Marion County is a preferred venue for this action under Trial Rule 75(A)(10) because Cincinnati is a nonresident organization without a principal office in Indiana and IRC’s principal office is located in Marion County.

6. Venue is proper in this Court pursuant to Commercial Court Rule 2(E)(12).

IV.
Factual Circumstances

7. IRC is a membership facility offering its members access to 24 indoor tennis courts and a fitness center. IRC offers lessons from professional tennis instructors to its members and guests. IRC also operates a retail tennis pro shop at each of the Insured Locations and a Team Sales business selling tennis clothing, equipment, and supplies to schools throughout the United States.

A. COVID-19 and the SARS-CoV-2 virus

8. In January 2020, the first known case of a U.S. resident infected by the novel SARS-CoV-2 coronavirus was reported in the state of Washington. SARS-CoV-2 quickly spread across the United States.

9. On March 6, 2020, Indiana Governor Eric Holcomb issued Executive Order 20-02 declaring the COVID-19 outbreak a disaster emergency for the State of Indiana.

10. On March 11, 2020, the World Health Organization (“WHO”) declared the illness caused by SARS-CoV-2, COVID-19 (Coronavirus Disease 2019), to be a global pandemic.

11. On March 13, 2020, the President of the United States declared a national emergency.

12. SARS-CoV-2 has an incubation period of 2-12 days, during which time it can be transmitted even before symptoms of COVID-19 develop. Symptoms often include fever, cough, shortness of breath, and, in severe cases, pneumonia and death.

13. SARS-CoV-2 is a coronavirus. It is a physical substance. It is visible under a microscope. It has mass.

14. SARS-CoV-2 is transmitted in multiple ways. When infected persons exhale, they project live virus particles into the environment. For example, those particles physically alter the chemical makeup of the air. Just as carbon monoxide physically alters the chemical makeup of the air making the air deadly, so too does the virus. Exhaled virus particles also adhere to, and alter, water molecules

suspended in the air. Virus molecules also adhere to, and alter, porous and nonporous surfaces with which they come into contact. An uninfected person can contract the virus by inhaling the altered air. They can also contract the virus by touching an altered surface and then touching their eyes, nose, or mouth.

15. SARS-CoV-2 can survive outside the body suspended in the air and on surfaces for “much longer periods of time than generally considered possible.”¹ SARS-CoV-2 physically harms real and personal property, such as indoor air and surfaces, rendering that property dangerous to staff and visitors.

16. Scientific research concerning SARS-CoV-2 has evolved since the start of the pandemic. Originally, researchers concluded that the virus could survive on surfaces for periods ranging from hours to days, depending on the ambient environment and the type of surface.² More recent research shows that the virus can survive for nearly a month at room temperature on a variety of surfaces, including glass, steel, vinyl, plastic, and paper.³

¹ Shane Riddell, *The Effect of Temperature on Persistence of SARS-CoV-2 on Common Surfaces*, 17 *VIROLOGY J.* 145 (Oct. 7, 2020).

² N. van Doremalen, et al. *Aerosol and Surface Stability of HCoV-19 (SARS-CoV-2) Compared to SARS-CoV-1*, 382 *NEW ENGL. J. MED.* 1564-67 (Apr. 16, 2020); Boris Pastorino et al., *Prolonged Infectivity of SARS-CoV-2 in Fomites*, 26 *EMERGING INFECTIOUS DISEASES* 9 (Sept. 2020); G. Kampf et al., *Persistence of Coronaviruses on Inanimate Surfaces and Their Inactivation with Biocidal Agents*, 104 *J. HOSP. INFECTION* 3, 246-51 (Mar. 1, 2020).

³ Minghui Yang et al., *SARS-CoV-2 Detected on Environmental Fomites for Both Asymptomatic and Symptomatic Patients with COVID-19*, 203 *AM. J. RESPIRATORY & CRITICAL CARE MED.* 3, 374-78 (Feb. 1, 2021).

17. Similarly, researchers first thought that cleaning was highly effective in eliminating the virus from hard, nonporous surfaces. More recent quantitative studies have led the Centers for Disease Control and Prevention (“CDC”) to conclude, however, that “surface disinfection once- or twice-per-day had little impact on reducing estimated risks of virus transmission.”⁴ The SARS-CoV-2 virus “is much more resilient to cleaning than other respiratory viruses.”⁵ As an illustration, a 2021 study by the largest hospital network in New York State demonstrated that even after trained hospital staff disinfected treatment areas, much of the virus still survived.⁶

18. Moreover, there is significantly less data about the effect of cleaning on porous surfaces or textiles. The best science available suggests that cleaning is less effective on such surfaces.⁷

⁴ *Science Brief: SARS-CoV-2 and Surface (Fomite) Transmission for Indoor Community Environments*, CDC (updated Apr. 5, 2021) (citing A. K. Pitol & T. R. Julian, *Community Transmission of SARS-CoV-2 by Fomites: Risks and Risk Reduction Strategies*, ENV’T SCI. & TECH. LETTERS (2020)), <https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/surface-transmission.html> (last visited Sept. 3, 2021).

⁵ Nevio Cimolai, *Environmental and Decontamination Issues for Human Coronaviruses and Their Potential Surrogates*, 92 J. MED. VIROLOGY 11, 2498-510 (June 12, 2020).

⁶ Zarina Brune et al., *Effectiveness of SARS-CoV-2 Decontamination and Containment in a COVID-19 ICU*, 18 INT’L J. ENV’T RSCH. & PUB. HEALTH 5, 2479 (Mar. 3, 2021).

⁷ E.g., V.A. Vicente, et al., *Environmental Detection of SARS-CoV-2 Virus RNA in Health Facilities in Brazil and a Systematic Review on Contamination Sources*. 18 INT’L J. ENV’T RES. PUBLIC HEALTH 7, 3824 (Apr. 6, 2021) (finding that virus particles persisted on clothing worn by hospital employees).

19. Because cleaning surfaces does not completely eliminate virus molecules, it can actually re-aerosolize them, or reintroduce them into the air and allow them to be inhaled and/or redeposit them onto surfaces where they reattach.

20. The indoor air is continuously harmed when an infected person breathes. Each breath can introduce more of the virus into the indoor air.

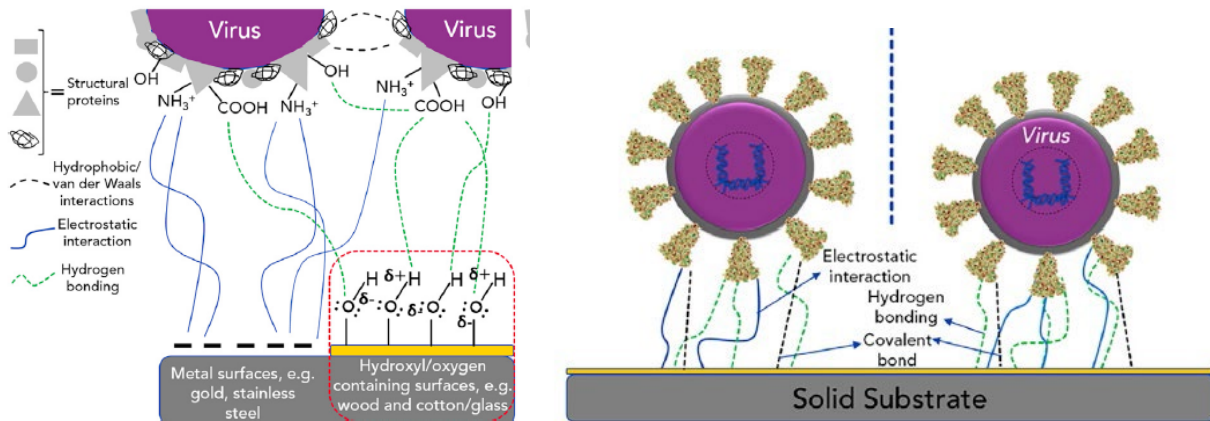
21. When SARS-CoV-2 travels through the air it can repeatedly land on and chemically attach to surfaces even after they have been cleaned. Such surfaces are thus continuously harmed, making that property physically unusable while SARS-CoV-2 exists on it or in the surrounding air physically altered by SARS-CoV-2.

22. SARS-CoV-2 physically alters both the surfaces and the air it comes into contact with.

23. The virus physically and chemically alters the composition of many common surfaces, such as tennis equipment, clothing, door handles, and office furniture at the Insured Locations.

24. The virus does not simply “rest” on a surface. In the language of surface chemistry, the virus “adsorbs” onto a surface through intermolecular electric interactions between the outer layer of the virus and the surface of a solid object. Those forces are described as “van der Waals” and “hydrogen bonding” forces.

25. The following figures illustrate these chemical bonds:



⁸ Such a surface is infectious and can transmit

the virus to those who touch a surface to which the virus has adsorbed.⁹

27. The virus also physically and chemically alters the air within a building or structure.

28. Indoor air is an integral component of any “building or structure.” There is an entire field of engineering dedicated to studying ventilation, air filtration, and indoor air quality. The American Society of Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE)¹⁰ dedicates considerable energy to establishing

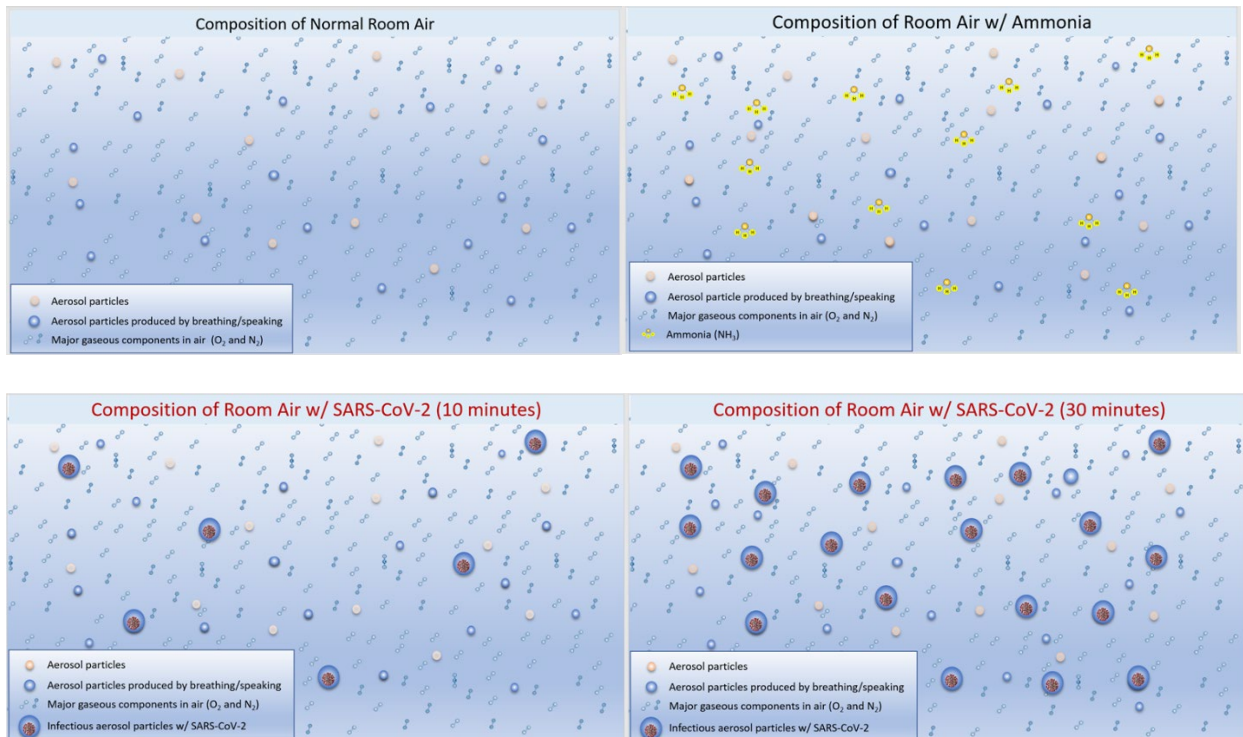
⁸ See generally Joonaki, et al., *Surface Chemistry Can Unlock Drivers of Surface Stability of SARS-CoV-2 in a Variety of Environmental Conditions*, 6 CHEMISTRY 9, 2135-46 (Sept. 10, 2020); Kempf, et al., *Persistence of Coronaviruses on Inanimate Surfaces and their Inactivation with Biocidal Agents*, 104 J. HOSP. INFECTION 246, 251 (2020).

⁹ A. Meiksin, *Dynamics of COVID-19 Transmission Including Indirect Transmission Mechanisms: A Mathematical Analysis*, 148 EPIDEMIOLOGY & INFECTION e257, 1-7 (Oct. 23, 2020).

¹⁰ <https://www.ashrae.org/about>

national standards on the subject. In Indiana, as in most states, ASHRAE standards are incorporated into state and local building codes.

29. The SARS-CoV-2 virus transforms the material content of the air in the same way that other harmful substances, such as ammonia, alter the air, as illustrated in the following figures:



30. Persistence of SARS-CoV-2 particles in the air is problematic for the same reasons as carbon monoxide or ammonia—it is dangerous for humans to inhale either substance.

31. The aerosol droplets carrying the virus are highly infectious and difficult to eliminate. Once exhaled, viral particles can remain suspended in the air “for

indefinite periods of time unless removed by air currents or dilution ventilation.”¹¹
The particles generally travel between 20-30 feet simply by being exhaled.¹²

32. Standard ventilation systems will not fully capture the virus. Even if ultimately removed by advanced ventilation systems, however, virus particles can travel for dozens of meters and still remain infectious.¹³

33. Moreover, virologists have documented instances where the ventilation system itself causes viral particles to be transmitted, still infectious, from one space to another.¹⁴

34. These phenomena were poorly understood at the beginning of the pandemic. However, as “essential workers” returned to work in March/April 2020 and as some businesses were allowed to reopen, patterns emerged. People working in enclosed spaces with standard ventilation systems were infected, hospitalized, and killed by COVID-19 at a much higher rate than people in their surrounding

¹¹ Kevin P. Fennelly, *Particle Sizes of Infectious Aerosols: Implications for Infection Control*, 8 LANCET RESPIRATORY MED. 9, 914-24 (Sept. 1, 2020).

¹² *Id.*; Lydia Bourouiba, *Turbulent Gas Clouds and Respiratory Pathogen Emissions, Potential Implications for Reducing Transmission of COVID-19*, 323 JAMA 18, 1837-38 (Mar. 26, 2020).

¹³ Lisa Morawska & Donald K. Milton, *It is Time to Address Airborne Transmission of Coronavirus Disease 2019 (Covid-19)*, 71 CLINICAL INFECTIOUS DISEASES 9, 2311-13 (Dec. 3, 2020).

¹⁴ Zahra Noorimotlagh et al., *A Systematic Review of Possible Airborne Transmission of the COVID-19 Virus (SARS-CoV-2) in the Indoor Air Environment*, 193 ENV'T RSCH. 110612, 1-6 (Feb. 2021); Jianyun Lu et al., *COVID-19 Outbreak Associated with Air Conditioning in Restaurant, Guangzhou, China, 2020*, 26 EMERGING INFECTIOUS DISEASES 7 (July 2020); Keun-Sang Kwon et al., *Evidence of Long-Distance Droplet Transmission of SARS-CoV-2 by Direct Air Flow in a Restaurant in Korea*, 35 J. KOREAN MED. SCI. 46, e415 (Nov. 30, 2020).

communities not confined to such indoor spaces. For example, grocery-store workers tested positive at five times the rate as the general population, despite masking requirements.¹⁵ Essential workers accounted for 87% of excess deaths in California and over 60% in New York City.¹⁶ Nursing home residents and employees have accounted for at least 35% of all COVID-19 deaths in the United States.¹⁷ Similar findings have been reported across other sectors, including correctional officials and factory workers.¹⁸ The common element in each of these—the virus physically altered the air in buildings and structures.

35. These discoveries prompted the CDC to warn against the risks of indoor activities in spaces with “inadequate ventilation.”¹⁹ In the CDC’s view, “adequate

¹⁵ Joanna Gaitens et al., *COVID-19 and Essential Workers: A Narrative Review of Health Outcomes and Moral Injury*, 18 INT’L J. ENV’T RSCH. PUB. HEALTH 4, 1446 (Feb. 4, 2021); Fan-Yun Lan et al., *Association Between SARS-CoV-2 Infection, Exposure Risk and Mental Health Among a Cohort of Essential Retail Workers in the USA*, 78 OCCUPATIONAL ENV’T MED. 237-43 (Oct. 30, 2020).

¹⁶ Yea-Hung Chen et al., *Excess Mortality Associated with the COVID-19 Pandemic Among Californians 18-65 Years of Age, by Occupational Sector and Occupation: March Through November 2020*, 16 PLOS ONE 6 (June 4, 2021), <https://pubmed.ncbi.nlm.nih.gov/34086762/>; *The Plight of Essential Workers During the COVID-19 Pandemic*, 395 LANCET 1587 (May 23, 2020).

¹⁷ Artis Curiskis et al., *Federal COVID Data 101: Working with CMS Nursing Home Data*, ATLANTIC (Mar. 4, 2021).

¹⁸ *Id.*

¹⁹ *Scientific Brief: SARS-CoV-2 Transmission*, CDC (updated May 7, 2021), www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/sars-cov-2transmission.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fscience%2Fscience-briefs%2Fscientific-brief-sars-cov-2.html (last visited Sept. 3, 2021).

ventilation” is not just opening a window or flipping on the internal HVAC system.²⁰ Instead, it recommends substantial increases in airflow and adding air-filtration systems (such as high-efficiency particulate air, or “HEPA” systems).²¹

36. ASHRAE, sharing those concerns, has made similar technical recommendations. First, facilities need to increase the rate at which the indoor air is expelled from the building and replaced with fresh, outdoor air. Second, although the standard HEPA systems are helpful, they capture only 15% of small viral particles and 50% of larger particles. More effective “MERV-13” filters and ionization devices—uncommon in most buildings—increase safety, but only eliminating 66% of small particles and 92% of larger particles. These systems are expensive, both in terms of their physical components and in the extra electricity needed to power them.

B. State and Local Responses to COVID-19.

37. In an attempt to mitigate the spread of COVID-19, national, state, and local civil authorities have issued various orders ordering people to stay at home and restricting entities from operating (collectively, the “Orders”).

38. On March 16, 2020, Director and Chief Medical Officer of the Marion County Public Health Department Virginia A. Cane ordered that all gyms and fitness centers shall be closed to the public through April 6, 2020. All schools in Marion

²⁰ *Ventilation in Buildings*, CDC (updated June 2, 2021), www.cdc.gov/coronavirus/2019-ncov/community/ventilation.html#:~:text=HEPA%20filters%20are%20even%20more,with%20SARS%2DCoV%2D2 (last visited Sept. 3, 2021).

²¹ *Id.*

County also were ordered closed. Dr. Cane subsequently extended the public health order closing gyms and fitness centers through June 1, 2020.

39. Effective June 1, 2020, Dr. Cane permitted community tennis courts to reopen provided they could comply with social distancing guidelines and other restrictions. Gyms and fitness centers were allowed to reopen at 50% capacity provided similar restrictions could be met.

40. On July 9, 2020, gyms and fitness centers were allowed to reopen temporarily at 100% capacity, subject to social distancing requirements, but on July 24, 2020, Dr. Cane ordered that gyms and fitness centers must limit capacity to 25% and imposed additional restrictions on indoor recreation and exercise. Dr. Cane's July 24, 2020 order also required retail stores to limit customers to 75% capacity. On September 25, 2020, Dr. Cane ordered that gyms and fitness centers must limit capacity to 50%, but on November 16, 2020, Dr. Cane reduced capacity to 25%. Dr. Cane expanded capacity limits for gyms and fitness centers to 50% effective March 1, 2021 and to 75% effective June 8, 2021. On July 1, 2021, Dr. Cane allowed all business to reopen at 100% occupancy.

41. On March 23, 2020, Governor Holcomb issued Executive Order 20-08 which closed all non-essential businesses and ordered all individuals living in Indiana to stay at home through at least April 6, 2020, with limited exceptions. Governor Holcomb extended the stay-home order through May 1, 2020. On May 1, 2020, Governor Holcomb issued Executive Order 20-26 announcing a staggered approach to reopening businesses in the state. However, gyms, exercise, and fitness centers

were to remain closed. On May 21, 2020, in Executive Order 20-28, Governor Holcomb authorized the reopening of tennis courts at full capacity and gyms, exercise, and fitness centers at 50% capacity.

42. On September 24, 2020, Governor Holcomb issued Executive Order 20-43 announcing “the new normal during a global pandemic.” Effective September 26, 2020, all Hoosier businesses and entities were permitted to fully open and operate, required to develop COVID-response plans, take proactive measures to ensure compliance with social distancing and sanitation measures, and utilize policies regarding remote work when reasonable and practicable, among other requirements.

43. Similar orders have been issued in cities and states across the country closing or limiting the occupancy of non-essential businesses and schools located in those cities and states.

44. Schools in Indiana and around the country cancelled or delayed their fall 2020 tennis seasons.

45. These Orders were issued in response to the presence of the SARS-CoV-2 virus in Marion County and Indiana, including property owned (and not owned) by IRC.

46. The Orders restricted or prohibited access to property not insured by Cincinnati’s policy.

47. The explicit intent and effect of these Orders were to partially or totally prohibit access to the Insured Locations.

C. IRC's Response to COVID-19

48. The pandemic, the existence of the virus in and/or on the property's indoor air and/or surfaces, and/or these Orders have required IRC to partially or totally close its Insured Locations or limit their occupancy, causing IRC to sustain losses and damages.

49. IRC has confirmed the presence of SARS-CoV-2 at the Insured Locations. IRC is aware of employees and instructors who have tested positive for SARS-CoV-2.

50. A study conducted in April 2020 by researchers at the Indiana University Fairbanks School of Public Health established that the prevalence of SARS-CoV-2 in Indianapolis was at a minimum 5%.²²

51. As illustrated by the scientific studies detailed above, the presence of SARS-CoV-2 has physically altered the indoor air and surfaces in the Insured Locations, damaging them and rendering them unsafe, uninhabitable, and/or unsuitable for their intended purposes. This resulted in an interruption of IRC's operations.

52. IRC has had to modify the physical use of its Insured Locations by employees, instructors, members, and invitees through social distancing, avoiding confined indoor spaces, and avoiding gatherings in order to reduce the impact and transmission of SARS-CoV-2.

53. IRC has had to modify its operations to mitigate the impact of SARS-CoV-2's physical presence on surfaces (such as tennis equipment, clothing, lockers,

²² See <https://www.pnas.org/content/118/5/e2013906118#T5>.

door handles, office furniture, and numerous other places) and in indoor air within the Insured Locations, including but not limited to the physical alteration of spaces and the disinfection of surfaces.

54. SARS-CoV-2 has caused IRC to sustain losses and damages, including, but not limited to, losses and damages associated with the closing of the Insured Locations and revenue lost from tennis classes, summer camps, and retail sales.

V. The Policy

55. Cincinnati sold IRC a fitness and recreation business insurance policy, Policy No. ETD 034 40 33, with an effective date of August 1, 2018 through August 1, 2021 (the “Policy”). A true and accurate copy of the Policy is attached as **Exhibit 1**.

56. IRC has paid all required premiums and performed all conditions precedent for obtaining coverage under the Policy

57. IRC timely notified Cincinnati of the loss on March 16, 2020 under Claim Number 3539921.

58. On July 15, 2020, Cincinnati informed IRC that it was denying the claim because:

Although [IRC] has asserted that Coronavirus was present at their premises, that presence alone is not direct physical loss to property . . . Although [IRC] has stated that they are aware of several customers/members who tested positive for Coronavirus, this does not establish direct physical loss to property. [IRC] has not shown direct physical loss to property, as required by the Policy.

A true and accurate copy of Cincinnati’s denial letter is attached as **Exhibit 2**.

59. Cincinnati wrongfully denied coverage. The Policy covers “direct ‘loss’ to Covered Property.” Ex. 1 at PDF p. 27. “Loss” is defined as “accidental physical loss or accidental physical damage.” Ex. 1 at PDF p. 62 (emphasis added).

60. Cincinnati understood and intended IRC’s covered “loss” under the Policy to include the inability to use its facilities for their intended purposes.

61. Cincinnati unilaterally chose to use the disjunctive “or” in the business-income insuring agreement.

62. A reasonable policyholder expects coverage for loss of use of physical property for its intended purpose because “physical loss” is different than “physical damage” in the Policy’s insuring agreement.

63. Courts have found that the “physical loss” language is ambiguous, and that this language does not require policyholders to show physical alteration to their property.

64. The insurance industry has acknowledged that the existence of the virus on surfaces constitutes a covered cause of loss that triggers business income coverage. On information and belief, both Cincinnati and a leading insurance-industry organization (the Insurance Services Office) are in possession of documents that concede this fact.

65. Moreover, even if physical alteration of some kind was required under the Policy, as discussed above, SARS-CoV-2 has physically altered and damaged the indoor air and surfaces of the Insured Locations. SARS-CoV-2 has also physically altered and damaged property not owned by IRC in Indianapolis and in other places

surrounding the Insured Locations.

66. Cincinnati utilized a business income “waiting period” form. This form establishes a time-limit deductible for short-term losses.

67. Given Cincinnati’s use of this form, it concedes that short-term direct physical loss or direct physical damage does trigger its policy.

68. The Policy provides several coverages for IRC’s losses, including, but not limited to, Building, Personal Property, Business Income, Extra Expense, Civil Authority, and Crisis Event Expense coverages.

69. If Cincinnati had intended to exclude coverage for loss caused by a virus, it could have included a virus exclusion in the relevant coverages. Cincinnati was aware of these exclusions when it created the Policy it sold to IRC, but Cincinnati only elected to utilize the exclusion in the liability coverage forms included in the package Policy. Cincinnati’s decision to omit virus exclusions from the relevant coverages indicates that Cincinnati intended to cover virus related business income losses.

70. The Policy provides coverage for the losses suffered by IRC associated with the COVID-19 pandemic.

VI.
Cause of Action

Count 1: Declaratory Relief

71. IRC incorporates by reference the above Paragraphs.

72. An actual controversy exists as to the scope of IRC’s rights and Cincinnati’s obligations under the Policy.

73. Multiple coverage provisions yield coverage for IRC's losses under the Policy. For example, the coverage grant of the Business Income and Extra Expenses Form portion of the Policy 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 "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.

Ex. 1 at PDF p. 42.

74. IRC has suffered a loss of "Business Income," among other losses, that is covered by the terms of the Policy.

75. Cincinnati's refusal to pay these losses has damaged, and will continue to damage, IRC as long as the losses continue and remain unpaid.

76. This declaratory judgment action is necessary and useful in determining all of the rights and responsibilities of the parties.

77. Pursuant to Indiana Code § 34-14-1-1 and Rule 57 of the Indiana Rules of Trial Procedure, IRC is entitled to declaratory relief establishing that the losses IRC has suffered are covered by the Policy.

Count 2: Breach of Contract

78. IRC incorporates by reference the above Paragraphs.

79. The Policy obligates Cincinnati to pay for the losses suffered by IRC.

80. Cincinnati's denial of IRC's claim and refusal to pay these losses is a breach of its obligations to IRC under the Policy.

81. As a result of Cincinnati's breach, IRC has incurred, and will continue to incur, substantial costs, expenses, and losses related to the COVID-19 pandemic.

82. IRC is entitled to damages equal to the costs that have been, and will be, incurred as a result of the losses, consequential damages arising from Cincinnati's breach, and prejudgment and post-judgment interest on all such costs or expenses.

WHEREFORE, IRC requests that the Court enter judgment against Cincinnati and in favor of IRC:

- A. declaring that IRC's losses are covered under the terms of the Policy;
- B. declaring the amounts Cincinnati owes to IRC pursuant to the terms of the Policy;
- C. finding Cincinnati in breach of its obligations under the Policy and ordering Cincinnati to pay IRC the full amount of its damages, plus prejudgment and post-judgment interest; and
- D. declaring and ordering payment of all other compensatory, consequential, and other amounts owed to IRC, including but not limited to IRC's attorneys' fees, costs, and expenses incurred in bringing this action, and all other and further relief as this Court may deem proper.

Respectfully submitted,

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REQUEST FOR JURY TRIAL

Plaintiff Indianapolis Racquet Club, Inc. demands a trial by jury for all issues so triable.

Respectfully submitted,

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