

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

|                                   |   |  |
|-----------------------------------|---|--|
| iATHLETE & FITNESS, LLC           | ) | CASE NO.                               |
| dba RESULTS FITNESS               | ) |  |
| 6005 Landerhaven Drive, Suite C   | ) | JUDGE                                  |
| Mayfield Heights, Ohio 44124-4042 | ) |  |
|                                   | ) |  |
| Plaintiff,                        | ) |  |
|                                   | ) |  |
| v.                                | ) |  |
|                                   | ) |  |
| THE CINCINNATI INSURANCE          | ) | <b><u>COMPLAINT FOR BREACH OF</u></b>  |
| COMPANY                           | ) | <b><u>CONTRACT AND DECLARATORY</u></b> |
| c/o Steve Corbly, Statutory Agent | ) | <b><u>RELIEF</u></b>                   |
| P.O. Box 145496                   | ) |  |
| Cincinnati, Ohio 45250-5496       | ) | Jury Demand Endorsed Hereon            |
|                                   | ) |  |
| Defendant.                        | ) |  |

**GENERAL ALLEGATIONS**

1. Plaintiff iAthlete & Fitness, LLC, dba Results Fitness (“Results Fitness”), is an Ohio limited liability company with its principal place of business at 6005 Landerhaven Drive, Suite C, Mayfield Heights, Ohio 44124-4042. At all relevant times, and most importantly, until the events that gave rise to this complaint occurred, Results Fitness was a highly successful fitness center, providing athletic performance training, personal fitness training, and lifestyle coaching services to members of the public.

2. Defendant The Cincinnati Insurance Company (“Cincinnati Insurance”) is an Ohio corporation with its principal place of business at 6200 South Gilmore Road, Fairfield, Ohio 45014-

5141. Cincinnati Insurance is, as its name indicates, in the business of providing insurance coverage to individuals and businesses.

3. In order to protect its business operations from losses outside its control, Results Fitness obtained a commercial insurance policy, number ETD 030 6531, from Cincinnati Insurance (“the policy”), providing coverage for Results Fitness’s operations at 6005 Landerhaven Drive. A true and correct copy of the Commercial Property Coverage Part Declarations for the policy is attached as Exhibit A. The policy issued by Cincinnati Insurance is voluminous and is in the possession of Cincinnati Insurance, and therefore has not been attached in its entirety.

4. The policy issued by Cincinnati Insurance provides coverage for, among other things, Business Income loss, Extra Expense, and loss due to the actions of civil authorities. This coverage is extended in, among other things, Forms FA 213 04 06 and FM 101 05 16, which provide coverage for the actual loss of business income, along with extra expenses incurred to avoid or minimize the suspension, in the event of a suspension of business operations resulting from a covered cause of loss, including “action of civil authority that prohibits access” to the insured property.

5. While the policy was in force, Results Fitness sustained, and continues to sustain, covered losses due to the presence, and the risk of the presence, of the pathogen that causes COVID-19 within and on its premises, as well as within and on other premises in the immediate vicinity.

6. As Governor Mike DeWine noted in Executive Order 2020-01D, issued on March 9, 2020 and declaring a state of emergency due to the COVID-19 crisis, COVID-19 is caused by a new strain of coronavirus that can be contracted by touching a surface or object that has the virus on it. Amy Acton, M.D., MPH, Director of the Ohio Department of Health, has since issued Directors’ Orders restricting the operations of various types of businesses and commercial operations, noting

that COVID-19 is easily spread, and that previous studies have shown that human coronaviruses can survive on inanimate surfaces for as long as four to five days.

7. On March 17, 2020, following the issuance of Executive Order 2020-01D, Dr. Acton issued a Director's Order prohibiting a number of businesses, including "health clubs/fitness centers/workout facilities/gyms/yoga studios" from continuing operations "due to the imminent threat of the spread of COVID-19" within their facilities. As a direct and proximate result, Results Fitness was compelled to cease all business activities at the insured premises, and has sustained, and will sustain, serious business interruption losses and other damages that are covered under the policy. A copy of the March 17, 2020 Director's Order is attached as Exhibit B.

8. Dr. Acton issued the March 17, 2020 Director's Order pursuant to the statutory authority vested in her under R.C. § 3701.13.

9. Governor DeWine's declaration of a state of emergency, and Dr. Acton's March 17, 2020 Director's Order each constitute actions of civil authority for purposes of Cincinnati Insurance's policy.

10. On April 23, 2020, Results Fitness presented a claim for business interruption loss and other coverage under the policy, with the amount of the claim to be determined after the conclusion of the prohibition on business activities and any necessary period of restoration.

11. On May 11, 2020, Cincinnati Insurance denied Results Fitness's claim, asserting that the policy does not provide coverage for the business interruption and extra expense losses that have been claimed under the policy. A copy of the denial letter is attached as Exhibit C.

#### **CINCINNATI INSURANCE'S COVERAGE**

12. In return for payment of a premium, Cincinnati Insurance issued Results Fitness a

comprehensive policy of insurance for Results Fitness's operations, Policy number ETD 65 31, with a policy period of January 20, 2018 to January 20, 2021, which included (among other things) the following forms:

- a. Form FA 213 05 16 (Business Income (And Extra Expense) Coverage), which provides coverage for the actual loss of business income, along with extra expenses incurred to avoid or minimize the suspension, in the event of a suspension of business operations resulting from a covered cause of loss, including "action of civil authority that prohibits access" to the insured property; and
- b. Form FM 101 05 16, which also provides business income and extra expense coverage in the event of a suspension of business operations resulting from a covered cause of loss, and also provides coverage for business income loss resulting "by action of civil authority that prohibits access" to the insured property.

13. A true and correct copy of Form FA 213 05 16 is attached as Exhibit D, and a true and correct copy of Form FM 101 05 16 is attached as Exhibit E.

14. Cincinnati Insurance's policy is what is known as an "all-risk" policy, in that it covers all risks that do not fall within the scope of express policy exclusions. Specifically, in Section A.3.a of Form FM 101 05 16, Cincinnati Insurance's policy defines "Covered Causes of Loss" as follows:

Covered Causes of Loss means direct "loss" unless the "loss" is excluded or limited in this Coverage Part.

15. The term "loss" is defined for purposes of the policy to mean "accidental physical loss or accidental physical damage."

16. The insurance industry has long recognized that the presence of pathogens and

disease-causing agents such as fungi, bacteria, and viruses can constitute accidental physical loss or damage to property, and for that reason have incorporated exclusions for such coverage into some of their policies. The policy issued to Results Fitness by Cincinnati Insurance, however, does not exclude such coverage in this case.

### **COUNT I - BREACH OF CONTRACT**

17. The preceding paragraphs are fully incorporated herein.

18. The policy issued to Results Fitness by Cincinnati Insurance is a contract under which Results Fitness paid premiums in exchange for Cincinnati Insurance's promise to indemnify Results Fitness for certain losses specified in the policy, including business income lost, and extra expenses incurred, as a result of a covered loss.

19. Contamination with the pathogen that causes COVID-19 caused direct physical loss and damage to the insured premises, as well as to other premises, such that the loss of business income and extra expense resulting from the suspension of Results Fitness's business operations is covered under the policy, and Cincinnati Insurance is obligated to indemnify Results Fitness for the loss.

20. Results Fitness has performed all of its obligations under the policy, including the payment of premiums, and has otherwise satisfied all conditions precedent to recovering under the policy.

21. Results Fitness's loss claims are not subject to any applicable policy exclusion.

22. By denying coverage, Cincinnati Insurance has breached its obligations under the policy, and as a result, Results Fitness has sustained, and will continue to sustain, damages in an amount to be determined at trial.

## **COUNT II – DECLARATORY JUDGMENT**

23. The preceding paragraphs are fully incorporated herein.

24. There is a dispute between Results Fitness and Cincinnati Insurance as to the construction of the policy of insurance at issue in this action, and the enforceability of its terms, such that an actual controversy exists between the parties for purposes of Chapter 2721 of the Ohio Revised Code.

25. As a result, Results Fitness is entitled to a declaration of its rights under the policy, including its rights to indemnification for business income and extra expense losses arising from the events at issue in this case.

26. Results Fitness is entitled to a declaration that its business income and extra expense losses incurred as a result of, and in connection with, the cessation of its business activities due to the COVID-19 pandemic are insured losses under the policy issued by Cincinnati Insurance, and that once documented, Cincinnati Insurance shall be obligated to pay the full amount of those expenses or to pay policy limits, whichever is less.

WHEREFORE, plaintiff iAthlete & Fitness, LLC, dba Results Fitness prays for the following:

- a. Judgment in its favor on Count I in an amount to be proven at trial or, in the alternative, an order that an appraisal of plaintiff's damages be conducted in accordance with the policy terms;
- b. A declaration that plaintiff's business income and extra expense losses incurred as a result of the cessation of business activities due to the COVID-19 pandemic are insured losses under the policy of insurance issued by defendant The Cincinnati Insurance Company;
- c. Costs, including attorneys' fees; and
- d. Such other and further relief as this Court deems just and equitable.

**JURY DEMAND**

Plaintiff hereby demands trial by jury on all claims so triable.

Respectfully submitted,

/s/ David M. Paris

David M. Paris, Esq. (0001358)

Jeffrey M. Heller, Esq. (0087795)

NUREMBERG, PARIS, HELLER &

McCARTHY CO., L.P.A.

600 Superior Ave. E., Suite 1200

Cleveland, Ohio 44114

Tel: (216) 621-2300; Fax: (216) 771-2242

Email: [Dparis@nphm.com](mailto:Dparis@nphm.com)

[Jheller@nphm.com](mailto:Jheller@nphm.com)

Attorneys for Plaintiff