AFTAB PUREVAL
HAMILTON COUNTY CLERK OF COURTS

COMMON PLEAS DIVISION

ELECTRONICALLY FILED
October 19, 2020 05:01 PM
AFTAB PUREVAL
Clerk of Courts
Hamilton County, Ohio
CONFIRMATION 996997

TASTE OF BELGIUM LLC **A 2003670**

vs.

THE CINCINNATI INSURANCE COMPANY

FILING TYPE: INITIAL FILING (IN COUNTY) WITH JURY DEMAND

PAGES FILED: 356

EFR200

VERIFY RECORD

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

Taste of Belgium LLC, Individually and On Behalf of All Others Similarly Situated **Plaintiff,** **v.** **The Cincinnati Insurance Company,** **Defendant.**	**Case No.** **Judge:** **CLASS ACTION COMPLAINT** **and** **JURY DEMAND**

NATURE OF THE ACTION

1. Plaintiff Taste of Belgium LLC brings this action on its own behalf and on behalf of others similarly situated against Defendant The Cincinnati Insurance Company for its failure to pay Business Income, Extended Business Income, Extra Expense and Civil Authority coverage benefits pursuant to the terms of its insurance policies for claims related to the COVID-19 pandemic.

2. Plaintiff owns and operates a chain of local restaurants in Southern and Central Ohio. It purchased an "all-risk" insurance policy, No. ECP0557779 (the "Policy"),[1] from Defendant to protect its business against all perils except those that were specifically excluded from coverage by the Policy. The Policy's effective dates are from November 4, 2019 to November 4, 2020.

3. The Policy contains coverage extensions for Business Income, Extended Business Income, Extra Expense, and Civil Authority. These coverages provide for the payment of business income losses and extra expenses incurred by Plaintiff during a period of restoration, and Civil

[1] A copy of the Policy is attached as Exhibit A.

Authority coverage that compensates the insured for lost business income and extra expenses caused by an action of a civil authority preventing access to the property, such as the governmental orders closing Ohio restaurants, including Plaintiff's restaurants, at issue in this case.

4. On March 15, 2020, in direct response to the COVID-19 pandemic, Dr. Amy Acton, then the Director of Ohio's Department of Health, issued an Order pursuant to Ohio Revised Code §3701.13 declaring that "Food and beverage sales are restricted to carry-out and delivery only, no on-site consumption is permitted."[2] This Order states that "Multiple areas of the United States are experiencing "community spread" of the virus that causes COVID-19. Community spread, defined as the transmission of an illness for which the source is unknown, means that isolation of known areas of infection is no longer enough to control spread."[3]

5. One week later, on March 22, 2010, Gov. Mike DeWine announced that the Ohio Department of Health was issuing a Stay at Home order pursuant to Ohio Rev. Code § 3701.13 in response to the COVID-19 pandemic.[4] The order required all non-essential business and operations to cease in Ohio. The order also prohibited all non-essential travel.

6. Because of these Orders issued by the Ohio Department of Health, Plaintiff was forced to suspend its bar and eat-in business at all of its restaurants. Although Plaintiff was able to offer limited carry out and delivery services at two locations, the bars and indoor and outdoor dining areas at these two locations were prohibited from being accessed and Plaintiff's other locations were fully closed. Thus, as a direct and proximate result of orders issued by civil authorities (i.e., the Governor of the State of Ohio and the Director of the Ohio Department of Health) Plaintiff suffered a complete physical loss of its locations that closed and a significant

[2] A copy of this Order is attached as Exhibit B.
[3] *Id.*
[4] A copy of this Order is attached as Exhibit C.

partial physical loss of its two locations that were able to operate take out services for the time during which the orders were in effect.

7. Plaintiff provided Defendant timely notice of its claim under the Policy but has not received the benefits owed. Upon information and belief, Defendant uniformly refuse to pay their insureds for losses suffered due to mandatory business closures required by executive orders issued by civil authorities in response to the COVID-19 pandemic.

8. Beginning on May 15, 2020, the State of Ohio permitted restaurants such as Plaintiff's to resume limited outdoor service subject to a variety of limitations including limited group size and extra spacing between tables. Beginning on May 21, 2020, the State of Ohio permitted restaurants such as Plaintiff's to resume limited indoor dining service subject to additional similar limitations.

9. Plaintiff's business has suffered massive losses due to the COVID-19 pandemic and related fallout, which has been exacerbated by Defendant's refusal to honor the policy.

10. As a result of Defendant's wrongful conduct, Plaintiff and similarly situated policyholders in Ohio are entitled to damages, as well as declaratory and injunctive relief.

PARTIES

11. Plaintiff Taste of Belgium LLC is an Ohio limited liability company and a citizen of Ohio.

12. Defendant The Cincinnati Insurance Company is an Ohio corporation with its headquarters and principal place of business in Fairfield, Ohio.

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction over this matter pursuant to Ohio Revised Code § 2305.01. This Court has personal jurisdiction over Defendant pursuant to Ohio Revised Code § 2307.382.

14. Venue is appropriate in Hamilton County pursuant to Ohio Rule of Civil Procedure 3(B)(3) as Defendant conducted activities giving rise to the claims at issue in Hamilton County. Venue is also appropriate pursuant to Ohio Rule of Civil Procedure 3(B)(6) as Hamilton County is the county in which all or part of the claims for relief arose. Venue is also appropriate pursuant to Ohio Rule of Civil Procedure 3(B)(7).

FACTUAL ALLEGATIONS

A. Background

15. Civil authorities throughout the country have issued closure orders ("Closure Orders") that require all non-essential businesses to suspend activities in order to prevent the spread of the coronavirus known as COVID-19. COVID-19 has caused a global pandemic that as of the date of this Complaint has killed more than 1.08 million people worldwide, including 215,000 in the U.S. and nearly 5,000 in Ohio.

16. Despite the Closure Orders and other measures, the COVID-19 virus has spread and is continuing to spread throughout many parts of the U.S., including specifically Hamilton County, Ohio where Plaintiff's restaurants are located. As of the date of this Complaint, Hamilton County is classified by the State of Ohio as a "Level 3 Public Health Emergency: very high exposure and spread" where residents should "limit activities as much as possible."[5]

[5] *See* Johns Hopkins Coronavirus Resource Center https://coronavirus.jhu.edu/ (last visited July 21, 2020) and https://coronavirus.ohio.gov/wps/portal/gov/covid-19/public-health-advisory-system/ (last visited October 12, 2020).

17. Because Plaintiff's restaurants were not considered "essential," Plaintiff was prevented by law from offering eat in service at its restaurants during the effective dates of the Closure Orders. This caused Plaintiff to suffer a complete physical loss of the locations that were closed and a partial physical loss of all dining spaces at the two locations from which very limited take out service could be offered.

B. The Policy Terms

18. The Policy provides coverage for: "direct 'loss' to Covered Property at the 'premises' caused by or resulting from any Covered Cause of Loss." (*See* Ex. A, Form FM 101 05 16, Section A "Coverage," p. 3 of 40). Losses caused by viruses are not excluded from the covered causes of loss (*See* Ex. A, Form FM 101 05 16, Section A.3 "Covered Cause of Loss," p. 5 of 40). As a result, losses caused by COVID-19 and/or related governmental orders are covered if they constitute a "loss" as defined in the Policy.

19. The Policy defines "loss" as follows: "Loss means accidental physical loss *or* accidental physical damage." (Emphasis added). The Policy expressly defines "loss" in the disjunctive as either physical loss *or* physical damage clearly indicating that the two terms are not intended to be synonymous. Neither physical loss nor physical damage is defined in any other provision of the Policy.

20. The Policy provides business income coverage in two separate provisions – the "Building and Personal Property Coverage Form," Form FM 101 05 16, and the "Business Income (and Extra Expense) Coverage Form," Form FA 213 05 16 – but both forms contain substantially identical provisions stating that "[w]e will pay for the actual loss of 'Business Income'. . . you sustain due to the necessary 'suspension' of your 'operations' during the 'period of restoration'" as long as the "loss" is "caused by or result from" a Covered Cause of Loss.

21. The Policy (Form FM 101 05 16) also provides coverage for business income losses caused by an act of civil authority that "causes damage to property other than Covered Property" which will pay for "loss of Business Income and necessary Extra expense you [the insured] sustain caused by action of civil authority that prohibits access to the 'premises'. . . ." (*See* Ex. A, Form FM 101 05 16, Section E.1.b.(3) "Civil Authority," p. 19 of 40).

C. The Policy Does Not Contain A "Virus Exclusion"

22. The insurance industry has recognized that coverage may be reasonably sought by insureds for losses caused by viruses since at least 2006. In 2006, following the SARS outbreak of 2002-2004, the insurance industry drafting arm, the ISO, circulated a statement to state insurance regulators that included the following:

> Disease-causing agents may render a product impure (change its quality or substance), or enable the spread of disease by their presence on interior building surfaces or the surfaces of personal property. When disease-causing viral or bacterial contamination occurs, potential claims involve the cost of replacement of property (for example, the milk), cost of decontamination (for example, interior building surfaces), and business interruption (time element losses). Although building and personal property could arguably become contaminated (often temporarily) by such viruses and bacteria, the nature of the property itself would have a bearing on whether there is actual property damage. Allegation of property damage may be a point of disagreement in a particular case.

23. The ISO drafts policy forms for the insurance industry that are widely used by insurers, including Defendant. In 2006, the ISO drafted Form CP 01-40-07-06 "Exclusion for Loss Due to Virus or Bacteria" (i.e., a "virus exclusion"). Upon information and belief, sometime thereafter Defendant began incorporating virus exclusions into some but not all of its policies. The Policy in this case and the policies of many other insureds of Defendant in effect during the periods at issue in this case do not contain a virus exclusion.

24. According to public filings in other cases, Defendant takes the position that, although it was foreseeable beginning at least in 2006 that claims would be made for losses caused

by viruses, it chose not to implement virus exclusions in Plaintiff's and other policies because such claims are "contrary to policy intent" which it claims is expressed in the definition of "Loss," which requires *either* "physical loss" *or* "physical damage." (*See* Ex. A, Form FM 101 05 16, Section G.8, p. 38 of 40). Defendant takes the position that the requirement of either physical loss or physical damage for most coverages available under the Policy (except Civil Authority coverage which Plaintiff contends requires only "damage" rather than "physical damage") precludes coverage for losses due to a virus. Defendant explains its deliberate decision not to include an express virus exclusion in many policies, calling it an unnecessary "belt and suspenders" approach.

25. As a result of Defendant's failure to include an express virus exclusion, it cannot dispute that, if an insured such as Plaintiff suffers "physical loss" *or* "physical damage" due to a virus, there is coverage available under the Policy. Thus, Defendant has staked a great deal of risk on how two undefined terms in its policy (i.e., "physical loss" and "physical damage") will be construed.

D. Plaintiff Suffered Physical Damage And Physical Loss

26. Plaintiff suffered direct physical damage and direct physical loss as defined by the Policy as a result COVID-19 and the Closure Orders. The COVID-19 virus was, is and will continue to be present in the air and on the surfaces of Plaintiff's restaurants. This has occasioned direct physical damage and direct physical loss. From March 15, 2020 through May 15, 2020, the direct physical loss of Plaintiff's premises was total except for limited carry-out service at two locations. Since that time, the loss has been partial as Plaintiff's business is dramatically diminished by the limitations on operations requiring extra spacing between seating areas, the extra costs associated with nearly continuous cleaning, and legitimate public concern about the risks of eating out, which has reduced Plaintiff's business since reopening.

27. Defendant contends in this case and others that a 2008 decision by Ohio's Eighth District Court of Appeals for Cuyahoga County, *Mastellone v. Lightning Rod Mut. Ins. Co.*, 175 Ohio App. 3d 23, 2008-Ohio-311 (Ohio Ct. App. 2008), is "directly on point" and dispositive with respect to the meaning of "physical damage." Defendant is wrong.

28. Defendant's reliance on *Mastellone* is misplaced. The *Mastellone* court quoted the policy at issue as covering "physical loss to the property" but then proceeded to specifically define the term "physical injury" as if the two are interchangeable. *Id*., ¶¶ 60-61. Moreover, the *Mastellone* holding is clearly limited to the circumstances of that case. The *Mastellone* court considered whether *exterior* siding that had become moldy was a "physical injury" to the property. The moldy condition of the exterior siding did not deprive the building of its functionality, and an expert testified that a simple cleaning would be "adequate" to remedy the situation. *Id*., ¶ 63.

29. Defendant has argued in filings in other cases that the presence of a virus on and throughout the property does not constitute physical damage because, like the mold at issue in *Mastellone*, it can be cleaned off a surface and the property becomes "as good as new" – *i.e*., it is undamaged. There are two problems with this reasoning. First, the moldy exterior siding in *Mastellone* in no way impaired the usefulness or habitability of the property so as to render the property useless for its intended purpose. As the Sixth Circuit has noted, many courts have recognized that "physical loss" occurs when real property becomes "uninhabitable" or substantially "unusable" as Plaintiff's property did in this case.[6]

[6] *See e.g. Universal Image Products v. Federal Ins. Co.*, 475 Fed. Apx. 569, 574-575, 2012 U.S. App. Lexis 7187, **15-16 (6th Cir. 2012) ("Several courts have held that 'physical loss' occurs when real property becomes 'uninhabitable' or substantially 'unusable.' *See e.g., Port Auth. of New York & New Jersey v. Affiliated FM Ins. Co.*, 311 F.3d 226, 236 (3d Cir. 2002) ('When the presence of large quantities of asbestos in the air of a building is such as to make the structure uninhabitable and unusable, then there has been a distinct [physical] loss to its owner.'); *Prudential Prop. & Cas. Co. v. Lillard-Roberts*, CV-01-1362-ST, 2002 U.S. Dist. LEXIS 20387, 2002 WL 31495830, at *9 (D. Or. June 18, 2002) (holding that there may be a 'direct physical loss' when property is 'rendered uninhabitable by mold'); *Murray v. State Farm Fire & Cas. Co.*, 203 W. Va. 477, 509 S.E.2d 1, 16-17 (W. Va. 1998) (holding policyholders to suffer a 'direct physical loss' when their homes were rendered uninhabitable due to

30. Second, by Defendant's logic, if the moldy siding in *Mastellone* could not have been restored through a simple cleaning so as to be as useful for its purpose as it was before, it would be physically damaged by the presence of the mold. The COVID-19 virus is not like the mold at issue in *Mastellone*. The siding in *Mastellone* was exterior siding on which mold grew as a result of moisture. In this case and others like it, the COVID-19 virus was present inside the premises, in the air and on surfaces, and it caused the premises to be completely unusable for an extended period of time and has continued to cause losses regardless of cleaning.

31. Unlike mold that grows on exterior siding, the COVID-19 virus is airborne. It is expelled from people when they breath, talk, eat and sneeze. It is present throughout and permeates the air inside the premises, especially when those premises are in use as a restaurant. No matter how often surfaces are cleaned, COVID-19 virus will continue to be deposited on the surfaces if the premises are occupied because people will be breathing, talking, sneezing and eating. The property is not restored with a simple cleaning because it immediately starts being damaged by the presence of the COVID-19 virus, including possibly even from the person doing the cleaning. An airborne, highly infectious, and deadly virus is not mold on exterior siding. It is a physically damaging agent that has been continuously present in the air of and on surfaces in Plaintiff's properties and all others like it.[7] Several courts, including federal court and Ohio state courts,

threat of rockfall); *W. Fire Ins. Co. v. First Presbyterian Church*, 165 Colo. 34, 437 P.2d 52, 55 (Colo. 1968) (holding that the policyholder suffered 'direct physical loss' when 'the accumulation of gasoline around and under the [building caused] the premises to become so infiltrated and saturated as to be uninhabitable, making further use of the building highly dangerous') . . . . In addition to the uninhabitable or unusable standard, a handful of courts have held that persistent and pervasive odor may constitute 'physical loss.' *See e.g., Essex Ins. Co. v. BloomSouth Flooring Corp.*, 562 F.3d 399, 406 (1st Cir. 2009) (holding that odor caused by defective carpeting may constitute 'physical injury' to property); *Arbeiter v. Cambridge Mut. Fire Ins. Co.*, No. 9400837, 1996 Mass. Super. LEXIS 661, 1996 WL 1250616, at *2 (Mass. Super. Ct. Mar. 15, 1996) ('[F]umes are a physical loss which attaches to the property.'); *Farmers Ins. Co. of Or. v. Trutanich*, 123 Ore. App. 6, 858 P.2d 1332, 1335 (Or. Ct. App. 1993) (holding that the persistence of an odor throughout a home physically damaged the property).").

[7] Given the rapidly developing science on COVID-19, its properties and transmission, it cannot be simply held as a matter of law that it is no different from mold on exterior siding that can be simply wiped off. Indeed, as has been widely recognized, the means and mode of transmission and the related science has become politicized and the subject of rapidly changing guidance from the Centers for Disease Control and Prevention ("CDC"), which Defendant has

considering claims against Defendant under substantially the same policy provisions at issue in this case have recognized that a claim is adequately stated based on the foregoing. *See, e.g., Studio 417, Inc. v. The Cincinnati Ins. Co.*, 2020 WL 4692385 (W.D. Mo. Aug. 12, 2020); *K.C. Hopps LTD v. The Cincinnati, Ins. Co.*, 20-cv-00437-SRB (W.D. Mo. Aug. 12, 2020) (attached as Exhibit D); *Francois Inc. v. The Cincinnati Ins. Co.*, Lorraine C. P. No. 20CV201416 (September 29, 2020) (attached as Exhibit E).

32. Even under the inappropriately narrow definition of "physical damage" urged by Defendant, the policy still defines a covered "loss" disjunctively to include a "physical loss," a distinctly broader term, especially when juxtaposed as an alternative to "physical damage." The Policy does not define either of these terms; however, in those instances such as *Mastellone* where actual physical *alteration* of the property has been required (which notably is not expressly required by the Policy in any way), such requirement has been derived from the terms "physical damage" or "physical injury." *See Mastellone*, 2008-Ohio-311, ¶ 61.

33. Physical loss, on the other hand, encompasses more than physical alteration of the property. Black's defines "physical" in pertinent part as: "Material, substantive, having an objective existence, as distinguished from imaginary or fictitious." Black's defines loss as follows:

indicated should be recognized by the Court. CDC Guidance issued on September 18, 2020 stated that "respiratory droplets or small particles, such as those in aerosols, produced when an infected person coughs, sneezes, sings, talks or breathes" are "thought to be the main way the virus spreads." That guidance was withdrawn on September 21, 2020, and then reissued in a revised fashion to downplay the primacy of airborne transmission on October 5, 2020. *See* "CDC Flips, Acknowledges Aerosol Spread of COVID-19" Medscape Medical News, October 5, 2020, https://www.medscape.com/viewarticle/938588 (last visited Oct. 19, 2020). These events underscore the need for genuine expert testimony rather than simplistic assumptions based on evolving and clearly politicized guidance to understand the virus to properly apply the policy language. Likewise, on July 6, 2020, an open letter authored by two researchers – one from the WHO International Laboratory for Air Quality and Health and another from the Institute for Applied Environmental Health at the University of Maryland School of Public Health, and joined by 239 additional scientists, indicated that current guidelines to mitigate the risk of airborne transmission of the virus that causes COVID-19 are inadequate because the virus can travel much farther than six feet: "airborne transmission appears to be the only plausible explanation for several superspreading events investigated which occurred under such conditions … and others where recommended precautions related to direct droplet transmissions were followed." *See* Lidia Morawska, Donald K Milton, It is Time to Address Airborne Transmission of COVID-19, *Clinical Infectious Diseases*, , ciaa939, https://doi.org/10.1093/cid/ciaa939 (last visited July 22, 2020).

> Loss is a generic and relative term. It signifies the act of losing or the thing lost; it is not a word of limited, hard and fast meaning and has been held synonymous with, or equivalent to, "damage", "damages", "*deprivation*", "injury", and "privation". (Emphasis added).

34. The Policy uses the term "physical loss" in a way that indicates it must have a different meaning than "physical damage." Otherwise, one of the terms would be rendered redundant and meaningless. And any ambiguity about the meaning of these terms has been created by Defendant, the drafter of the Policy. Accordingly, the Policy must be construed against its drafter. Applying these principles to the definitions above, physical loss in the context of the Policy means the real or actual deprivation of the premises, which in fact occurred here and in every other case involving Closure Orders. Plaintiff was actually deprived of the premises and therefore suffered a physical loss.[8]

E. The Civil Authority Coverage Does Not Require Physical Loss Or Physical Damage

35. In form FM 101 05 16, civil authority coverage is stated as follows:

> When a Covered Cause of Loss causes damage to property other than Covered Property at a "premises", we 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" provided that both of the following apply: (a) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage; and (b) 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." (Ex. A, Form 101 05 16, Section A.5.b.(3), "Civil Authority," p. 19 of 40).

36. Defendant takes the position that the use of the term "Covered Cause of Loss" in the first sentence effectively incorporates a requirement of "physical damage" or "physical loss" into Civil Authority coverage because Covered Cause of Loss is defined elsewhere in the policy

[8] Official public proclamations have specifically found that "the virus physically is causing property loss and damage" (See New York City Executive Order 100, March 16, 2020, available at https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eeo-100.pdf (last visited July 22, 2020).

to include the defined term "loss," which is in turn elsewhere defined as accidental physical loss or accidental physical damage. In so doing Defendant reads the next three words out of the Policy: "[w]hen a Covered Cause of Loss *causes damage* to property other than the Covered Property . . . ." The express language of the Civil Authority coverage provision already states what sort of damage must be caused to trigger coverage. To read in an inconsistent provision creates an inconsistency and an ambiguity.

37. In the context of the Civil Authority coverage provision, Covered Cause of Loss refers to the *cause* of the loss because the very next three words state the type of loss that is required to trigger this coverage: "When a Covered Cause of Loss *causes damage* to property other than Covered Property . . ." Here, the drafter chose not to use the defined term "loss" but rather the undefined term "damage." Moreover, the drafter chose not to require "physical damage" or "physical loss," but just "damage."

38. Reading this provision in the manner urged by Defendant, its drafter, creates inconsistency, ambiguity and redundancy, rendering the phrase "causes damage" to be meaningless. Defendant would rewrite its own provision to effectively read "when a cause not specifically excluded by this policy causes accidental physical damage or physical loss to a property other than Covered Property . . . ." But this is not what Defendant actually wrote in its policy. All that is required is "damage to a property other than Covered Property." Not "direct" damage, not "physical" damage, not "physical loss," but merely "damage."

39. As alleged above, Plaintiff's claim satisfies the requirement of "physical loss" or "physical damage," but this is not required for Civil Authority coverage. And Plaintiff has satisfied all other requirements for this coverage. Many other properties in the immediate vicinity of Plaintiff's properties were closed as a result of the COVID-19 virus. Access to these properties,

in addition to Plaintiff's properties, was prohibited by government order taken in response to dangerous physical conditions.

40. Plaintiff's experience is not unique. Upon information and belief, hundreds of businesses insured by Defendant have suffered losses similar to Plaintiff and been misled about or denied coverage by Defendant.

41. Plaintiff is entitled to the following under the Policy:

a. Under the Business Income coverage provisions within the "Building and Personal Property Coverage Form," Form FM 101 05 16, and "Business Income (and Extra Expense) Coverage Form," Form FA 213 05 16, Defendant is contractually obligated to "pay for the actual loss of 'Business Income'. . . you sustain due to the necessary 'suspension' of your 'operations' during the 'period of restoration.'"

b. The Policy's Extended Business Income provision provides, "[f]or 'Business Income' Other Than 'Rental Value', if the necessary 'suspension' of your 'operations' produces a 'Business Income' or Extra Expense 'loss' payable under this Coverage Part, we will pay for the actual loss of 'Business Income' you sustain and Extra Expense you incur. . . ."

c. The Policy's Extra Expense provision provides, "[w]e will pay Extra Expense you sustain during the 'period of restoration.'"

42. The Policy's Civil Authority coverage extension in FM 101 05 16 provides, "we 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'. . . ." In exchange for the payment of premiums, Defendant issued the Policy providing these coverages for the seven restaurant

locations listed on the Policy's Schedule of Locations. Plaintiff has performed all of its obligations under Policy, but Defendant has refused to pay Plaintiff the Policy benefits owed.

CLASS ACTION ALLEGATIONS

43. Plaintiff incorporates by reference all of the preceding allegations.

44. Upon information and belief, hundred of policyholders throughout Ohio paid premiums pursuant to policies substantially identical to the Policy issued by Defendant to Plaintiff.

45. Upon information and belief, thousands of Class members throughout Ohio have been and continue to be wrongfully denied benefits under their policies.

46. Plaintiff seeks to represent the following Classes:

"**Declaratory Judgment Class**" -- All persons and entities in Ohio with Business Income, Extended Business Income, Extra Expense, and/or Civil Authority coverage under an insurance policy issued by Defendant that suffered a suspension of some or all business at the premises covered by the policy due to COVID-19 and/or an order similar to those issued by the Director of Ohio's Department of Health in response to the COVID-19 pandemic.[9]

"**Damages Class**" -- All persons and entities in Ohio that: (a) had Business Income, Extended Business Income, Extra Expense, and/or Civil Authority coverage under an insurance policy issued by Defendant; (b) suffered a suspension of some or all business at the premises covered by the insurance policy due to COVID-19 and/or an order similar to those issued by the Director of Ohio's Department of Health; (c) made a claim under their insurance policy; and (d) Defendant refused to pay or have not paid all policy benefits owed.[10]

47. Excluded from the Class definitions are (1) Defendant, any entity in which Defendant has a controlling interest, and its legal representatives, officers, directors, employees,

[9] Plaintiff specifically reserves the right to amend this definition.
[10] Plaintiff specifically reserves the right to amend this definition.

assigns, and successors; (2) the Judge to whom this case is assigned and any member of the Judge's staff or immediate family; and (3) Class Counsel.

48. The Class Members are so numerous that joinder of all members is impracticable as there are believed to be hundreds of Class Members in Ohio.

49. There are numerous questions of law or fact common to the Classes including, but not limited to, the following:

a. whether the relevant terms of their policies are identical or substantially similar;

b. whether the Class Members suffered a covered loss;

c. whether Defendant's Business Income coverage applies to a suspension of business caused by COVID-19 or orders similar to those issued by the Director of Ohio's Department of Health;

d. whether Defendant's Extended Business Income coverage applies to a suspension of business caused by COVID-19 or orders similar to those issued by the Director of Ohio's Department of Health;

e. whether Defendant's Extra Expense coverage applies to a suspension of business caused by COVID-19 or orders similar to those issued by the Director of Ohio's Department of Health;

f. whether Defendant's Civil Authority coverage applies to a loss of Business Income caused by orders similar to those issued by the Director of Ohio's Department of Health;

g. whether Defendant breached the contracts with Plaintiff and Class Members by wrongfully denying or failing to pay claims based on the improper application of one or more policy provision or exclusion;

h. whether Plaintiff is entitled to an award of reasonable attorneys' fees, expenses, interest, and costs.

50. Plaintiff is a member of the Classes described above.

51. Plaintiff's claims are typical of the claims of the Class Members.

52. Plaintiff will fairly and adequately protect the interest of the Classes and has engaged counsel experienced in litigating class actions and experienced in litigating insurance coverage class actions.

53. The prosecution of separate actions by or against individual Class Members will create a risk of inconsistent or varying adjudications with respect to the individual members of the Class, which could establish incompatible standards of conduct for Defendant.

54. Defendant has acted and is refusing to act on grounds generally applicable to the Declaratory Judgment Class as a whole, thereby making final injunctive and declaratory relief with respect to the Declaratory Judgment Class as a whole appropriate.

55. Questions of law and fact common to the Class Members predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

56. To that end, (1) upon information and belief, individual Class Members' interest in controlling and litigating separate actions would be low for a number of reasons including the difficulty of retaining and paying counsel to litigate their claims especially in light of the economic hardships created by the COVID-19 pandemic; (2) given the recent nature of this controversy, the extent and nature of any litigation previously commenced has been rare and is likely to only be pursued by a relatively small number of policy holders; (3) it is highly desirable to concentrate this litigation in this particular forum so as to ensure that every member of this vulnerable population

receives the policy benefits for which they paid and to which they are entitled in a timely manner; and (4) there likely would be little, if any, difficulties encountered in the management of this case as a class action.

CLAIMS

COUNT I

Declaratory Relief under Ohio Rev. Code §§ 2721.01-.15

Declaratory Judgment Class

57. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this complaint.

58. Plaintiff brings this claim for relief on behalf of itself and the members of the Declaratory Judgment Class. An actual controversy has arisen and now exists between Plaintiff and the members of the Declaratory Judgment Class, on the one hand, and Defendant, on the other hand, concerning their respective rights and duties under the policies with regard to losses incurred as the result of orders similar to those issued by the Director of Ohio's Department of Health.

59. Defendant has refused to pay claims related to COVID-19 and orders similar to those issued by the Director of Ohio's Department of Health on a uniform and class-wide basis, such that the Court can render declaratory judgment irrespective of whether members of the Declaratory Judgment Class have filed a claim for coverage.

60. A judicial declaration is necessary and appropriate at this time, under the circumstances presented, in order that Plaintiff, the members of the Declaratory Judgment Class, and Defendant may ascertain their respective rights and duties with respect to Defendant's obligations to pay claims.

COUNT II

Breach of Contract

Damages Class

61. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this complaint.

62. Plaintiff brings this claim individually and on behalf of the Damages Class defined above.

63. Plaintiff and the Damages Class entered into similar contracts with Defendant whereby they purchased policies from Defendant and paid premiums in exchange for coverage.

64. In the policies, Defendant provided Business Income, Extended Business Income, Extra Expense, and Civil Authority coverage.

65. Defendant agreed to pay for their insureds' actual loss of Business Income sustained due to the necessary suspension of its operations during the "period of restoration."

66. Under the policies, a "suspension" is defined as "the slowdown or cessation of your business activities" and "a part or all of the 'premises' is rendered untenantable."

67. Pursuant to the business income coverage provisions within the "Building and Personal Property Coverage Form," Form FM 101 05 16, and "Business Income (and Extra Expense) Coverage Form," Form FA 213 05 16, Defendant promised that it would "pay for the actual loss of 'Business Income'. . . you sustain due to the necessary 'suspension' of your 'operations' during the 'period of restoration.'"

68. Pursuant to the form's extended business income provision, Defendant promised that "[f]or 'Business Income' Other Than 'Rental Value"', if the necessary 'suspension' of your 'operations' produces a 'Business Income' or Extra Expense 'loss' payable under this Coverage

Part, we will pay for the actual loss of 'Business Income' you sustain and Extra Expense you incur. . . ."

69. Pursuant to the form's Extra Expense provision, Defendant promised that "[w]e will pay Extra Expense you sustain during the 'period of restoration.'"

70. COVID-19 and the orders issued by the Director of Ohio's Department of Health, and those similar to those issued by the Director of Ohio's Department of Health, caused direct physical loss and damage to Plaintiff and the other Damages Class Members' Scheduled Premises, requiring suspension of operations at the Scheduled Premises. These losses triggered the Business Income, Extended Business Income, and Extra Expense provisions of Plaintiff's and the other Damages Class Members' policies.

71. COVID-19 and the orders issued by the Director of Ohio's Department of Health, and those similar to those issued by the Director of Ohio's Department of Health, also caused physical loss and damage to property other than Plaintiff and the other Damages Class members' Covered Property at the premises, resulting in a prohibition of access to the premises. These events triggered the civil authority provisions of Plaintiff's and the other Damages Class Members' policies.

72. Alternatively, civil authority provisions of Plaintiff's and other Damages Class Members' policies do not require physical loss or physical damage to premises other than the Covered Property, but rather merely "damage." COVID-19 and the orders issued by the Director of Ohio's Department of Health, and those similar to those issued by the Director of Ohio's Department of Health, caused damage to property other than Plaintiff and the other Damages Class members' Covered Property at the premises, resulting in a prohibition of access to the premises.

These events triggered the civil authority provisions of Plaintiff's and the other Damages Class Members' policies.

73. Plaintiff and the other Damages Class Members have complied with all applicable provisions of their policies and/or those provisions have been waived by Defendant, or Defendant is estopped from asserting them.

74. By denying coverage and/or refusing to pay policy benefits owned to Plaintiff and the other Damages Class Members, Defendant has breached the policies.

75. As a result, Plaintiff and the other Damages Class Members have sustained substantial damages in an amount to be established at trial.

COUNT III

Ohio Deceptive Trade Practices Act

Damages Class

76. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this complaint.

77. Defendant, Plaintiff, and the members of the Damages Class are all "persons," as defined by Ohio Rev. Code § 4165.01(D).

78. Defendant's conduct as alleged herein violated the following provisions of Ohio's Deceptive Trade Practices Act, Ohio Rev. Code § 4165.02:

a. Passing off goods or services as those of another, in violation of Ohio Rev. Code § 4165.02(A)(1);

b. Representing that its goods and services have characteristics, uses, benefits, or qualities that they do not have, in violation of Ohio Rev. Code § 4165.02(A)(7);

c. Representing that its goods and services are of a particular standard or quality when they are of another, in violation of Ohio Rev. Code § 4165.02(A)(9); and

d. Advertising its goods and services with intent not to sell them as advertised, in violation of Ohio Rev. Code § 4165.02(A)(11).

79. Defendant's representations and omissions were material because they were likely to deceive reasonable consumers.

80. Defendant intended to mislead Plaintiff and Damages Class members and induce them to rely on its misrepresentations and omissions.

81. Plaintiff and the Damages Class have been injured as a direct and proximate result of Defendant's violation of Ohio Rev. Code § 4165.02, and they were damaged in an amount that will be proven at trial.

82. Plaintiff and Damages Class members seek all monetary and nonmonetary relief allowed by law, including injunctive relief, actual damages, attorneys' fees, and any other relief that is just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the members of the proposed Classes, respectfully requests: (a) an order certifying the proposed Classes and appointing Plaintiff and its undersigned counsel to represent the proposed Classes; (b) a declaratory judgment declaring the acts and practices complained of herein to constitute a breach of contract; (c) injunctive relief; (d) an award of actual damages for Plaintiff and members of the Damages Class; (e) costs and expenses; (f) both pre- and post-judgment interest on any amounts awarded; (g) payment of reasonable attorneys' fees; (h) punitive damages; and (i) such other relief as the Court may deem proper.

Respectfully submitted,

/s/ *Jeffrey S. Goldenberg*

Jeffrey S. Goldenberg (0063771)
Todd B. Naylor (0068388)
GOLDENBERG SCHNEIDER, LPA
4445 Lake Forest Drive, Suite 490
Cincinnati, Ohio 45242
Tel: (513) 345-8291
Fax: (513) 345-8294
jgoldenberg@gs-legal.com
tnaylor@gs-legal.com

Kristen M. Myers (0078047)
Alison DeVilliers (0079612)
BECKMAN WEIL SHEPARDSON, LLC
Centennial Plaza III
895 Central Avenue, Suite 300
Cincinnati, Ohio 45202
Tel: (513) 621-2100
Fax: (513) 621-0106
kmyers@beckman-weil.com
adevilliers@beckman-weil.com

Attorneys for Plaintiff

JURY DEMAND

With the filing of this Complaint, Plaintiff hereby demands a trial by jury.

/s/*Jeffrey S. Goldenberg*