

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

780 SHORT NORTH, LLC dba )  
Pint House )  
c/o Chris Corso, Statutory Agent )  
511 Park Street, Suite 300 )  
Columbus, Ohio 43215 )

CASE NO.  
  
JUDGE

and )  
)

721 SHORT NORTH, LLC dba Forno )  
c/o James P. Connors, Statutory Agent )  
145 East Rich Street, Suite 200 )  
Columbus, Ohio 43215 )

**COMPLAINT FOR BREACH OF  
CONTRACT AND DECLARATORY  
RELIEF**

Jury Demand Endorsed Hereon

and )  
)

1100 SHORT NORTH, LLC dba )  
Standard Hall )  
c/o Mark Sowash, Statutory Agent )  
511 Park Street )  
Columbus, Ohio 43215 )

and )  
)

1144 N. HIGH STREET LLC, dba )  
Michael's Goody Boy )  
c/o Michael Anthony, Statutory Agent )  
383 N. Front Street, LL )  
Columbus, Ohio 43215 )

and )  
)

6632 LONGSHORE VENTURE, LLC dba )  
Urban Meyers Pint House )  
c/o Mark Smith, Statutory Agent )  
1441 Langston Drive )  
Columbus, Ohio 43220 )

and )  
)

CORSO VENTURES, LLC )  
 c/o Christopher Corso, Statutory Agent )  
 721 N. High Street )  
 Columbus, Ohio 43215 )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 THE CINCINNATI INSURANCE )  
 COMPANY )  
 c/o Steve Corbly, Statutory Agent )  
 P.O. Box 145496 )  
 Cincinnati, Ohio 45250-5496 )  
 )  
 Defendant. )

**GENERAL ALLEGATIONS**

1. Plaintiff 780 Short North, LLC dba Pint House (“Pint House”) is an Ohio limited liability company with its principal place of business at 780 North High Street in Columbus, Ohio. Until the events that gave rise to this complaint occurred, Pint House was a successful and popular bar and restaurant located in Columbus’s Short North neighborhood, but its operations have been sharply curtailed as a result of those events.

2. Plaintiff 721 Short North, LLC dba Forno (“Forno”) is an Ohio limited liability company with its principal place of business at 721 North High Street in Columbus, Ohio. Also located in Short North, Forno has been a successful and popular restaurant, but its operations have been sharply curtailed by the events giving rise to this complaint.

3. Plaintiff 1100 Short North, LLC dba Standard Hall (“Standard Hall”) is an Ohio limited liability company with its principal place of business at 1100 North High Street in Columbus, Ohio. Located in the former “Little Brothers” music hall, Standard Hall is also a Short North bar

and restaurant that has been adversely affected by the events giving rise to this complaint.

4. Plaintiff 1144 N. High St., LLC dba Michael's Goody Boy ("Goody Boy") is an Ohio limited liability company with its principal place of business at 1144 North High Street in Columbus, Ohio. Serving upscale comfort food and craft cocktails in a classic diner space, Goody Boy is another Short North bar and restaurant that has been adversely affected by the events giving rise to this complaint.

5. Plaintiff 6632 Longshore Venture, LLC dba Urban Meyer's Pint House ("Urban Meyer's Pint House") is an Ohio limited liability company with its principal place of business at 6632 Longshore Street, Dublin, Ohio 43107. A popular sports bar and restaurant, Urban Meyer's Pint House had its business activity sharply curtailed by the events giving rise to this complaint.

6. Plaintiff Corso Ventures, LLC is an Ohio limited liability company based in Columbus, Ohio, and is the parent company of Pint House, Forno, Standard Hall, Goody Boy, and Urban Meyer's Pint House (collectively, the "restaurant entities"). Corso Ventures is engaged in the business of managing the operations of the restaurant entities, and has been adversely affected by the events giving rise to this complaint.

7. Defendant The Cincinnati Insurance Company ("Cincinnati Insurance") is an Ohio corporation with its principal place of business at 6200 South Gilmore Road, Fairfield, Ohio. As its name indicates, Cincinnati Insurance is in the business of providing insurance coverage to individuals and businesses.

8. In order to protect their business operations from losses outside their control, plaintiffs obtained a commercial insurance policy, number ENP 056 72 64, from Cincinnati Insurance ("the policy") providing coverage for plaintiffs' operations at the locations described

above. 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.

9. 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 FM 101 05 16 and FA 213 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 properties.

10. While the policy was in force, plaintiffs sustained, and continue to sustain, covered losses due to the presence, and the risk of the presence, of the pathogen that causes COVID-19 within and on their premises, as well as within and on other premises in the immediate vicinity.

11. 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, as Director of the Ohio Department of Health, subsequently 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.

12. On March 15, 2020, following the issuance of Executive Order 2020-01D, Dr. Acton issued a Director’s Order prohibiting the sale of food and beverages for onsite consumption, and restricting all food and beverage sales to carry-out and delivery only, in order “to avoid an imminent

threat with a high probability of widespread exposure to COVID 19." In her March 15, 2020 Director's Order prohibiting the sale of food and beverages for on-site consumption, Dr. Acton specifically noted 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. A copy of the order is attached as Exhibit B.

13. On March 22, 2020, Dr. Acton issued a "Stay At Home Order" restricting the activities and movement of Ohio residents, including Ohio residents who would otherwise frequent plaintiffs' restaurant operations, and again restricting the activities of these businesses, and all other businesses engaged in the sale of food and beverages, to carry-out and delivery service. A copy of the order is attached as Exhibit C.

14. As a direct and proximate result, plaintiffs have been compelled to restrict their business activities at the insured premises to carry-out service only, and as a result have sustained, and will continue to sustain, serious business interruption losses and other damages that are covered under Cincinnati Insurance's policy.

15. Dr. Acton issued the March 15, 2020 and March 22, 2020 Director's Orders pursuant to the statutory authority vested in her under R.C. § 3701.13.

16. The pathogen that causes COVID-19 is a physical substance that is capable of remaining active and virulent on physical surfaces, including the physical surfaces within the insured property and properties within close proximity.

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

18. Plaintiffs timely presented claims for business interruption loss and other coverage

under the policy, with the amount of their claims to be determined after the conclusion of the prohibition on business activities and any necessary period of restoration.

19. On April 27, 2020, Cincinnati Insurance formally denied plaintiffs' claims asserting that the policy does not provide coverage for the business interruption and other losses that have been claimed. A copy of the denial letter is attached as Exhibit D.

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

20. In return for payment of a premium, Cincinnati Insurance issued plaintiffs a comprehensive policy of insurance for plaintiffs' business operations, Policy number ENP 056 72 64, effective January 30, 2020, which included (among other things) the following forms:

- a. Form FM 101 05 16 (Building and Personal Property Coverage Form (Including Special Causes of Loss)), 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 "by action of civil authority that prohibits access" to the insured property; and
- b. Form FA 213 05 16 (Business Income (And Extra Expense) Coverage), 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, including "action of civil authority that prohibits access" to the insured property.

21. A true and correct copy of Form FM 101 05 06 is attached as Exhibit E, and a true and correct copy of Form FA 213 05 16 is attached as Exhibit F.

22. 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.

23. The term “loss” is defined for purposes of the policy to mean “accidental physical loss or accidental physical damage.”

24. The insurance industry has long recognized that the presence of pathogens and disease-causing agents such as fungi, bacteria, and viruses can constitute physical loss or damage to property, and for that reason have incorporated express exclusions for such coverage into some of their policies. Nothing in Cincinnati Insurance’s policy, however, excludes virus coverage.

**COUNT I – BREACH OF CONTRACT**

25. The preceding paragraphs are fully incorporated herein.

26. The policy issued to plaintiffs is a contract under which plaintiffs paid a premium in exchange for Cincinnati Insurance’s promise to indemnify them for certain losses specified in those policies, including business income lost, and extra expenses incurred, as a result of a covered loss.

27. 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 curtailment of plaintiffs’ business operations is covered under the policy, and Cincinnati Insurance is obligated to indemnify plaintiffs for the loss.

28. Plaintiffs have performed all of their obligations under Cincinnati Insurance’s policy, including the payment of premiums, and have otherwise satisfied all conditions precedent to recovering under the policy.

29. Plaintiffs’ loss claims are not subject to any applicable policy exclusion.

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

**COUNT II - DECLARATORY JUDGMENT**

31. The preceding paragraphs are fully incorporated herein.

32. There is a dispute between plaintiffs, on the one hand, and Cincinnati Insurance, on the other, 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.

33. As a result, plaintiffs are entitled to a declaration of their rights under the policy, including their right to indemnification for business income and extra expense losses arising from the events at issue in this case.

34. Plaintiffs are entitled to a declaration that their ongoing business income and extra expense losses incurred as a result of, and in connection with, the drastic curtailment and/or cessation of their business activities due to the COVID-19 pandemic are insured losses under Cincinnati Insurance's policy, 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, plaintiffs pray for the following:

- a. Judgment in their favor on Count I in an amount to be proven at trial or, in the alternative, an order that an appraisal of damages be conducted with respect to the Plaintiffs in accordance with the policy terms;
- b. A declaration that the business income and extra expense losses incurred by Plaintiffs as a result of the drastic curtailment of business activities due to the COVID-19 pandemic are insured losses under the policy;
- 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/ Jonathan D. Mester

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