

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

BAUER FAMILY ENTERPRISES, INC.,
Plaintiff,

v.

Case No.: _____

OHIO SECURITY INSURANCE COMPANY,
Defendant.

_____/

**COMPLAINT AND
DEMAND FOR JURY TRIAL**

COMES NOW, the Plaintiff, BAUER FAMILY ENTERPRISES, INC., (“PLAINTIFF”) by and through the undersigned legal counsel, hereby sues the Defendant, OHIO SECURITY INSURANCE COMPANY (“OHIO”) and state and allege as follows:

INTRODUCTION

This is a cause of action for Declaratory Judgement pursuant to Florida Statute Chapter 86 and 28 U.S.C. §2201 et seq. with the purpose to settle and to afford relief from insecurity and uncertainty with respect to rights, status, and other equitable or legal relations of the Plaintiff and the Defendant under a Business Owner’s Insurance/Commercial Protector policy, specifically Business Loss, Business Interruption and/or Business Income coverage.

PARTIES, JURISDICTION AND VENUE

1. This is an action for damages exceeding \$75,000.00, exclusive of attorney's fees, interest, and costs.

2. At all times material hereto, the Plaintiff, BAUER FAMILY ENTERPRISES, INC., (“BAUER”) is a duly registered and active Florida Corporation with its principal place of business at 105 Spring Lake Ave., Ponte Vedra, FL 32081. Upon information and belief BAUER is a “citizen” of the State of Florida for the purposes of diversity jurisdiction.

3. The Defendant, OHIO SECURITY INSURANCE COMPANY is a duly registered and active New Hampshire Corporation domiciled at 62 Maple Ave., Keene, New Hampshire 03431. Upon information and belief OHIO is a “citizen” of the State of New Hampshire for the purposes of diversity jurisdiction.

4. A substantial part of the acts, omissions, transactions, events, and occurrences described within this Complaint took place in this district.

5. Venue is proper in the Middle District pursuant to 28 U.S.C. § 1391(b) because (i) the Plaintiffs reside in St. John’s County, Florida, (ii) OHIO is doing business in St. John’s County, Florida, and (iii) a substantial amount of all of the events giving rise to Plaintiffs’ claims occurred in the Middle District.

GENERAL ALLEGATIONS

6. OHIO underwrote subscribed, issued and delivered a Business Owners Insurance Policy/Commercial Protector, (“POLICY”), protecting PLAINTIFFS from all risks unless specifically excluded with a policy period from April 29, 2019 to April 29, 2020.

7. PLAINTIFFS paid policy premiums.

8. POLICY has been active during the policy period.

9. The policy number issued is: BZS596397501.

10. A copy of the POLICY as provided by the insurance agent McNamara Company is attached as Exhibit "A."

11. The Description of Business ("BUSINESS") as found on the POLICY is: Men's Barbershop Franchisee.

12. The Description of Location ("LOCATION") as found on Business Owners Policy Property Declarations is: 5016 Gate Parkway, Unit 4, Jacksonville, FL 32256.

13. The POLICY provides loss of Business Income and Extra Expense coverage.

14. The POLICY provides coverage for Civil Authority action.

15. Based on information and belief, DEFENDANT have accepted the policy premiums with no intention of providing any coverage due to direct physical loss resulting for Civil Authority action.

16. On April 1st, 2020, while the policy issued to PLAINTIFFS was in effect, Governor Ron Desantis ordered issued Executive Order 20-91, see attached as Exhibit "B".

17. The ORDER in part limits all people's movement ("Safer At Home") in Florida to essential activities and excludes non-essential businesses from operating if unable to maintain social distancing.

18. BUSINESS is a Men's Barbershop Franchisee.

19. BUSINESS immediately complied with the ORDER.

20. BUSINESS continues to comply with the ORDER and any extensions thereof.

21. BUSINESS has suffered and continues to suffer business income loss.
22. The nature and/or effect of the ORDER also requires BUSINESS to plan, pay and make changes to the LOCATION.
23. Upon suffering business income loss, BUSINESS immediately and properly filed a claim with DEFENDANT providing details surrounding the loss and allowing them the opportunity to investigate.
24. BUSINESS further requested that any and all benefits owed under the policy be paid.
25. DEFENDANT's issued Claim No.: 23796039.
26. On March 31, 2020, the DEFENDANT denied claim no.: 23796039. See attached Exhibit "C".
27. Recognizing a new reality, BUSINESS will have to adapt and take action to past, present and/or future Orders, rules, regulations and/or statutes, (whether or not the LOCATION is actually comprised), in order to offer men's barbershop services.
28. For DEFEDANT to deny the new reality that the effect of past, present and/or future Orders, rules, regulations and/or statutes, (whether or not the LOCATION was, is or maybe comprised), does not cause physical loss and damage, would constitute a false and potentially fraudulent misrepresentation that could endanger policyholders and the public.

Count I: Declaratory Judgment

29. Plaintiff re-alleges and incorporates by reference paragraphs 1-28 of this Complaint.

30. All conditions precedent to this action have been performed, have been waived, or are excused.

31. PLAINTIFF is presently in genuine doubt and uncertain as to its rights, status, and privileges, under the POLICY, specifically, its rights, status, and privileges and DEFENDANT's obligations to provide coverage for the losses stemming from the ORDER.

32. PLAINTIFF has a bona fide, actual and present need for a declaration and construction of the POLICY, its status, rights, and privileges, and DEFENDANT's obligation to provide coverage to PLAINTIFF under the POLICY, including its primary coverage and all coverage extensions, including the applicable coverage triggers under the policy.

33. PLAINTIFF has become obligated to retain counsel.

34. DEFENDANT is required to pay PLAINTIFF reasonable attorney's fees pursuant to F.S. 627.428.

WHEREFORE, DEFENDANT requests that the court declare and construe the policy of insurance and enter its declaratory judgment as follows:

- a. declare that the POLICY issued by DEFENDANT provides coverage for the losses stemming from the ORDER including business operations for business income, extra expense, and all other coverage extensions up to the limits of the policy;
- b. declare that the virus exclusion is no applicable to PLAINTIFFS claim;
- c. grant further and supplementary relief based on the declaratory

judgment and after adjudication of the rights of the parties, when necessary and proper, and, after notice to DEFENDANT require DEFENDANT to show cause why further relief should not be granted;

d. enter final declaratory judgment in PLAINTIFF's favor and against DEFENDANT for all declaratory and supplemental relief within the declaratory jurisdiction of this court, including taxing costs of suit, prejudgment interest, and a reasonable attorney's fee as part of that declaratory judgment.

DEMAND FOR JURY TRIAL

PLAINTIFF hereby request trial by jury on all issues so triable.

Respectfully submitted,
Dated this 18th day of May, 2020.

BLACK ROCK TRIAL LAWYERS



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