

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

CHAPPARELLS INC.
2418 S. Arlington Road #2420
Coventry Township, Ohio 44319-2029

and

CHAPPARELLS BATON & DRUM
CORP., INC.
2418 S. Arlington Road #2420
Coventry Township, Ohio 44319-2029

Plaintiffs,

vs.

THE CINCINNATI INSURANCE
COMPANY
6200 South Gilmore Road
Fairfield, Ohio 45014-5141

and

LCA BANK CORPORATION OR ITS
AFFILIATE, LEASE, CORPORATION
OF AMERICA AND OR ITS ASSIGNS
3150 Livernois Road, Suite 300
Troy, Michigan, 48083-5000

Defendants.

) Case No:

) Judge:

) COMPLAINT

) JURY DEMAND ENDORSED
HEREIN

Plaintiffs Chapparells Inc. and Chapparells Baton & Drum Corp., Inc., (hereinafter collectively "Chapparells") for their Complaint against Defendants The Cincinnati Insurance Company and LCA Bank Corporation states and alleges as follows:

- 1. Plaintiff, Chapparells Inc., is the owner of property rented by Plaintiff, Chapparells Baton & Drum Corp., Inc., which runs a traveling baton group out of the rented property, which have been forced, by recent orders by the State of Ohio, to cease their operations

– through no fault of their own – as part of the State’s efforts to slow the spread of the COVID-19 global pandemic (hereinafter “the Pandemic”). The closures mandated by these orders present an existential threat to Plaintiffs’ businesses. To protect their business from situations like these, which threaten the livelihood of their employees and owners, based on factors wholly outside of their control, Plaintiffs obtained business interruption insurance from Defendant The Cincinnati Insurance Company (hereinafter “CIC”). In blatant breach of CIC’s insurance obligations that it voluntarily undertook in exchange for Plaintiffs’ premium payments, CIC has denied Plaintiffs’ claim arising from the State-ordered interruption of their businesses and the Pandemic.

2. As a result, Plaintiffs now bring this action against CIC for its failure to honor its obligations under a commercial business owners’ insurance policy sold and issued to Plaintiffs, which provides coverage for losses incurred due to a “necessary suspension” of their operations, including when their businesses are forced to close due to a government order. A copy of the insurance policy, number ENP 000 73 56 / EBA 000 73 56, is attached hereto as Exhibit A, and fully incorporated by reference (hereinafter “the Policy”).

3. On March 9, 2020, Governor Mike DeWine issued Executive Order 2020-01D, Declaring a State of Emergency in Ohio, and explaining: “COVID-19 is a respiratory disease that can result in serious illness or death, is caused by the SARS-CoV-2 virus, which is a new strain of coronavirus that had not been previously identified in humans and can easily spread from person to person. The virus is spread between individuals who are in close contact with each other (within about six feet) through respiratory droplets produced when an infected person coughs or sneezes. It may be possible that individuals can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose or eyes.”

4. On March 11, 2020, the head of the World Health Organization declared COVID-19 a pandemic.

5. On March 15, 2020, Ohio Governor Mike DeWine and Amy Acton, M.D., M.P.H., Director of the Ohio Department of Health, issued a Public Health Order, closing all bars and restaurants except sales for carry-out beverage and food, in an effort to address the ongoing COVID-19 pandemic.

6. On March 17, 2020, Governor DeWine and Dr. Acton issued orders closing all polling locations.

7. On March 22, 2020, Governor DeWine and Dr. Acton issued an order that all Ohio residents stay at home unless engaged in essential work or activity and ordered all non-essential businesses in Ohio to cease all activities. Chapparells does not qualify as an essential business, and so had to cease operations.

8. As a result of the Orders identified in Paragraphs 3-7, (hereinafter collectively "Closure Orders"), Plaintiffs have been forced to halt ordinary operations, resulting in substantial lost revenues and forcing the Plaintiffs to shut down operations indefinitely.

9. But despite CIC's express promise in its Policy to cover the Plaintiffs' business interruption losses when the government forces them to close, CIC has issued a denial for any losses related to the Closure Orders without first conducting any meaningful coverage investigation, let alone an investigation that would result in any reasonable justification for denial of the claim as required by Ohio law.

10. CIC's denial of coverage is without justification and is contrary to the terms, obligations, and provisions of the Policy because as explained by Governor DeWine in his Order declaring a State of Emergency, and every other Order issued by Governor DeWine and Dr.

Acton, the substance of COVID-19 results in property damage and “direct physical loss of or physical damage” to Plaintiffs’ premises in that it can exist, contaminate, spread, and be contracted from surfaces and objects in and on premises.

11. CIC’s cursory coverage denial is arbitrary and unreasonable, and inconsistent with the facts and plain language of the Policy at issue. This denial appears to be driven by the insurance industry’s and CIC’s desire to preempt its own financial exposure to the economic fallout resulting from the COVID-19 crisis, rather than to initiate, as CIC is obligated to do, a thorough and fair investigation of the claims and a careful review of the Policy sold to Plaintiffs in exchange for valuable premiums.

12. As a result of CIC’s wrongful denial of coverage, Plaintiffs file this action for a declaratory judgment establishing that they are entitled to receive the benefit of the insurance coverage purchased, for indemnification of the business losses they have sustained, for breach of contract, and for bad faith claims handling.

### **PARTIES**

13. Plaintiff, Chapparells Inc. is a non-profit corporation organized under Ohio law with its principal place of business at 2418 S. Arlington Road, Coventry Township, Ohio 44319. Chapparells Inc. rents its facilities to Plaintiff, Chapparells Baton & Drum Corp., Inc., to hold bingo events and conduct activities in relation to its baton team in addition to several other vendors for uses such as concerts, weddings, showers, graduation parties, and sporting events.

14. Plaintiff, Chapparells Baton & Drum Corp., Inc. is a non-profit youth organization organized under Ohio law with its principal place of business at 2418 S. Arlington Road #2420, Coventry Township, Ohio 44319. It rents space from Plaintiff, Chapparells Inc. to hold bingo events as well as to conduct activities in relation to its baton team. Members of the

team twirl batons, flags, and play in a percussion band, often traveling in and out of the state of Ohio to march in parades.

15. Defendant, The Cincinnati Insurance Company, is an Ohio corporation engaged in the business of selling insurance contracts to commercial entities such as Plaintiffs with its principal place of business in Ohio.

16. The remaining Defendant, LCA Bank Corp., is an additional named insured under the Policy and is named a Defendant herein as it may claim an interest in the policy. Plaintiffs do not seek any damages against Defendant LCA Bank Corp.

### **JURISDICTION AND VENUE**

17. This Court has subject matter jurisdiction because the Policy at issue herein was issued to Plaintiffs in this County, CIC delivered a letter to Plaintiffs in Summit County, Ohio evidencing CIC's breach, and in accordance with R.C. 2721.01, et. seq., in regard to determining the rights and obligations of the parties through a declaratory judgment.

18. This court has person jurisdiction of CIC because it entered into a contract of insurance with Plaintiffs in Summit County, Ohio, and because CIC conduct business throughout the State of Ohio and County of Summit, marketing, selling underwriting, and issuing insurance policies.

19. Venue is proper because some or all of the facts giving rise to the claim for relief occurred in Summit County, Ohio.

### **FACTUAL ALLEGATIONS**

20. Plaintiffs incorporate by reference, as if fully set forth herein, the allegations set forth in paragraphs 1-19 above.

#### **A. CIC's Commercial Package Policy**

21. In exchange for substantial premiums, CIC sold Plaintiffs its commercial package policy promising to indemnify the Plaintiffs for losses resulting from occurrences, including the “necessary suspension” of business operations at any insured location caused by a government order, during the relevant time period.

22. The Policy lists the Plaintiffs’ places of business as “scheduled premises” to be covered and insured.

23. CIC issued Commercial Package Policy, number ENP 000 73 56 / EBA 000 73 56, effective 01/20/2019 to 01/20/2022.

24. The Policy is an “all risk” or “special perils” policy that provides broad coverage for losses caused by any causes unless expressly excluded.

25. The Policy does not exclude for losses of business income as a result of the property damage occasioned in Plaintiffs’ premises caused by the novel COVID-19 Coronavirus.

26. The Policy does not exclude for losses of business income as a result of compliance with government orders as a result of the community spread of the novel COVID-19 Coronavirus.

27. The Policy does not exclude for losses of business income as a result of pandemics.

28. Thus, the Policy, an all-risk policy purchased by Plaintiffs covers losses caused by the novel COVID-19 Coronavirus.

29. In addition to property damage losses, CIC agreed to “pay for the actual loss of Business Income” sustained by Plaintiffs “due to the necessary suspension” of Plaintiffs’ operations during the period of business interruption caused “by direct physical loss of or physical damage to property” at the Plaintiffs’ premises.

30. With respect to business interruption losses, “suspension” means: (1) “the partial shutdown or complete cessation of your business activities”; or (2) “that part or all of the ‘scheduled premises’ is rendered untenable as a result of Covered Cause of Loss if coverage for Business Income applies to the policy.”

31. “Business Income” is defined in relevant part under the Policy as “Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred if no direct physical loss or physical damage has occurred” plus “continuing normal operating expenses incurred, including payroll.”

32. CIC also expressly promises to pay “reasonably and necessary Extra Expense” incurred during the interruption period that Plaintiffs “would not have incurred if there had been no direct physical loss or physical damage to property at the ‘scheduled premises’.”

33. “Extra Expense” is defined in relevant part under the Policy as any expense incurred (1) “to avoid or minimize the suspension of business and to continue ‘operations’”; (2) to “minimize the suspension or business if you cannot continue ‘operations’;” or (3) “to repair or replace any property[.]”

34. The Policy also includes coverage for “Civil Authority”, under which CIC expressly promises to pay for the loss of Business Income and necessary Extra Expense sustained by Plaintiffs “when access to [Plaintiffs’] ‘scheduled premises’ is specifically prohibited by order of a civil authority as a direct result of a Covered Cause of Loss to property in the immediate area of [Plaintiffs’] ‘scheduled premises’.”

## **B. Plaintiffs’ Losses Due to the Coronavirus Pandemic and Closure Orders**

35. On March 11, 2020, the World Health Organization declared that the emerging threat from the novel Coronavirus – otherwise known as COVID-19 – constituted a global pandemic.

36. Research on COVID-19 and recent reports from the CDC indicate that the COVID-19 strains physically infect and can remain viable on surfaces for at least 17 days, a characteristic that renders property exposed to the contagion potentially unsafe and dangerous. Other research indicates that COVID-19 can linger on surfaces for up to four weeks in low temperatures.

37. In response to the Pandemic, and the community spread of COVID-19 in Ohio, Governor DeWine and Dr. Acton issued the Closure Orders.

38. The Closure Orders specifically apply to the Plaintiffs' scheduled premises under the Policy.

39. The continuous presence of COVID-19 on or around Plaintiffs' premises has rendered the premises unsafe and unfit for their intended use and therefore caused direct physical property damage or physical loss under the Policy.

40. The Closure Orders issued by Governor DeWine and Dr. Acton issued in response to these dangerous physical conditions, prohibit non-essential services, including those of Plaintiffs, thereby causing the necessary suspension of Plaintiffs' business operations and triggering the Civil Authority coverage under the Policy. In this regard, Dr. Acton's "Stay at Home Order" prohibits continuing business operations which are "non-essential".

41. As a result of the Closure Orders, Plaintiffs have suffered substantial Business Income loss and incurred Extra Expense. The covered losses incurred by Plaintiffs and owed under the Policy are increasing daily, and are expected to exceed the policy limit.

42. Plaintiffs submitted a claim through their attorney-in-fact, Ronald K. Starkey to CIC requesting coverage for their business interruption losses promised under the Policy, attached hereto as Exhibit B, and fully incorporated by reference (hereinafter “the Claim”).

43. On May 11, 2020, CIC wrongfully denied the Claim by issuing a reservation of rights letter in which it questioned whether Plaintiffs sustained a loss covered by the policy, attached hereto as Exhibit C, and fully incorporated by reference (hereinafter “the Letter”).

44. As of June 8, 2020, Ohio had 36,350 confirmed cases of Coronavirus. Summit County had a total of 1,548. Coronavirus has killed at least 2,259 people in Ohio as of the date of this filing; at least 183 from Summit County.

45. It is readily apparent that people and property through Summit County are infected with the virus, and that the virus has done, and continues to do, significant property damage in Summit County.

46. Based on the prevalence of the virus in Summit County, Plaintiffs’ insured locations have sustained direct physical property damage or physical loss due to the presence of Coronavirus, and has unquestionably sustained direct physical loss of and at the locations as the result of the Pandemic and/or civil authority orders issued by Governor DeWine and Dr. Acton.

#### **COUNT I: DECLARATORY JUDGMENT**

47. Plaintiffs incorporate by reference, as if fully set forth herein, the facts and allegations set forth in paragraphs 1-46 above.

48. The Policy is an insurance contract under which CIC was paid premiums for its promise to pay Plaintiffs’ losses for claims covered by the Policy, such as business losses incurred as a result of the Closure Orders forcing them to close their businesses.

49. Plaintiffs have complied with all applicable provisions of the Policy, including payment of the premiums in exchange for coverage under the Policy.

50. CIC has arbitrarily and without justification refused to reimburse Plaintiffs for any losses incurred by Plaintiffs in connection with the covered business losses related to the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic.

51. An actual case or controversy exists regarding Plaintiffs' rights and CIC's obligations under the Policy to reimburse Plaintiffs for the full amount of losses incurred by Plaintiffs in connection with the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic.

52. In accordance with Rule 57 of the Ohio Rules of Civil Procedure, and R.C. 2721.01 to 2721.15, inclusive, Plaintiffs' seek a declaratory judgment from this Court declaring the following:

- a. Plaintiffs' losses incurred in connection with the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic are insured losses under the Policy;
- b. CIC has waived any right it may have had to assert defenses to coverage or otherwise seek to bar or limit coverage for Plaintiffs' losses by issuing coverage denials without conducting a claim investigation as required under Ohio law;
- c. There is no exclusion under the Policy that applies to preclude Plaintiffs' Claim;
- d. Plaintiffs have coverage for any future orders issued by the Governor and/or the Ohio Department of Health; and,
- e. CIC is obligated to pay Plaintiffs for the full amount of the losses incurred and to be incurred in connection with the covered business losses related to the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic.

## **COUNT II: BREACH OF CONTRACT**

53. Plaintiffs incorporate by reference, as if fully set forth herein, the facts and allegations set forth in paragraphs 1-52 above.

54. The Policy is a contract under which CIC was paid premiums in exchange for the promise to pay Plaintiffs' losses for claims covered under the Policy, including the business losses incurred as a result of the Closure Orders and due to the direct physical damage to the premises forcing Plaintiffs to close their business operations.

55. Plaintiffs have complied with all applicable provisions and obligations of the Policy, including payment of premiums in exchange for coverage under the Policy, and yet CIC has failed to comply with its obligations under the Policy's clear and unambiguous terms.

56. In the event any of the terms and conditions of the Policy are ambiguous, those terms and conditions must be interpreted in favor of Plaintiffs and in favor of coverage, since CIC drafted the Policy and presented it to Plaintiffs as a form contract without any ability of Plaintiffs to modify any portions of it.

57. By denying coverage for any business losses incurred by Plaintiffs in connection with the Closure Orders and the COVID-19 pandemic, CIC has breached its obligations and promises made under the Policy.

58. As a proximate result of CIC's breach of the Policy, Plaintiffs have sustained and continues to sustain damages for which CIC is liable, in an amount to be established at trial.

## **COUNT III: BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING**

59. Plaintiffs incorporate by reference, as if fully set forth herein, the facts and allegations set forth in paragraphs 1-58 above.

60. Every insurance policy contains an implied covenant of good faith and fair dealing.

61. CIC breached the implied covenant of good faith and fair dealing by wrongfully, and without reasonable justification, denying coverage to the Plaintiffs under the Policy. The breach of the implied covenant of good faith and fair dealing is ongoing as Plaintiffs' reserve the right to amend this Complaint as new facts are discovered and/or developed.

62. Plaintiffs are informed and believe, and therefore allege, that CIC has intentionally and maliciously, as part of a preconceived design, acted so as to deny Plaintiffs their rightful benefits under the Policy.

63. Plaintiffs are informed and believe, and therefore allege, that CIC failed to conduct any reasonable investigation of the Claim under the Policy, and instead issued a denial not based on reasonable justification, but rather in order to establish an industry-wide trend in response to the potential mammoth economic exposure the CIC, and other similarly situated insurers face as a result of the global pandemic, that claims for business losses under its policies will not be covered and to thwart other similarly situated businesses from seeking such benefits under their policies.

64. As a direct and proximate result of the breach of the implied covenant of good faith and fair dealing by CIC, Plaintiffs have suffered, and will continue to suffer damages. Plaintiffs have been forced to cease their business operations and close their facilities, while CIC reaped the benefits of huge premium dollars and promised policyholders, like Plaintiffs, that business interruption claims would be paid.

WHEREFORE, Plaintiffs Chapparells Inc. and Chapparells Baton & Drum Corp, Inc. respectfully prays that the Court:

1. Enter a declaratory judgment on Count I of the Complaint in favor of the Plaintiffs and against CIC, declaring as follows:
  - a. Plaintiffs' losses incurred in connection with the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic are insured losses under the Policy;
  - b. CIC has waived any right it may have had to assert defenses to coverage or otherwise seek to bar or limit coverage for Plaintiffs' losses by issuing coverage denials without conducting a claim investigation as required under Ohio law;
  - c. There is no exclusion in the Policy that applies to preclude Plaintiffs' Claim;
  - d. Plaintiffs have coverage for any future orders issued by the Governor and/or the Ohio Department of Health; and
  - e. CIC is obligated to pay Plaintiffs for the full amount of the losses incurred and to be incurred in connection with the covered business losses related to the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic.
2. Enter a judgment on Count II of the Complaint in favor of Plaintiffs and against CIC and award damages for breach of contract in an amount to be proven at trial;
3. Enter judgment on Count III of the Complaint in favor of Plaintiffs and against CIC for all compensatory damages in an amount in excess of Twenty-Five Thousand Dollars, plus attorneys' fees, costs, and punitive damages;
4. Enter judgment in favor of Plaintiffs and against CIC in an amount equal to all attorneys' fees and related costs incurred for the prosecution of this coverage action, which amount to be established at the conclusion of this action;
5. Award to Plaintiffs and against CIC prejudgment interest, to be calculated according to law, to compensate Plaintiffs for the loss of use of funds caused by CIC's wrongful refusal to pay Plaintiffs for the full amount in costs incurred in connection with the Claim; and
6. Award Plaintiffs such other, further, and additional relief as this Court deems just and proper, both at equity and at law.

Respectfully submitted,

STARKEY & RUNKLE, LLC

/s/ Ronald K. Starkey

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