

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

**FARMINGTON VILLAGE DENTAL
ASSOCIATES, LLC,**)
)
)
 Plaintiff)

v.)

**THE CINCINNATI INSURANCE
COMPANY,**)
)
)
 Defendant)

JURY TRIAL DEMANDED

OCTOBER 30, 2020

COMPLAINT

Plaintiff, Farmington Village Dental Associates, LLC (“Plaintiff”), brings this action against Defendant, The Cincinnati Insurance Company (“Defendant” or “Cincinnati”), and in support thereof states and alleges the following:

I. NATURE OF THE ACTION

1. This action arises out of Defendant’s failure to provide insurance coverage for the losses sustained and expenses incurred by Plaintiff because of the ongoing Coronavirus (COVID-19) Pandemic.

2. For many years, Plaintiff has operated a dental practice in the Farmington, Connecticut area. Since March 2020, Plaintiff’s routine operations have been suspended or limited, and they continue to be threatened by and at imminent risk of the novel Coronavirus, SARS-CoV-2, which causes the infectious

disease COVID-19 (“COVID-19”) which, in turn, has been designated a pandemic by the World Health Organization (“WHO”), or by government orders, or both.

3. To protect its business in the event that it suddenly had to suspend routine operations for reasons outside of its control, or in order to prevent further property damage, Plaintiff purchased insurance coverage from Defendant, including property coverage, as set forth in The Cincinnati Insurance Company’s Building and Personal Property Coverage Form and Business Income (And Extra Expense) Coverage Form.

4. Defendant’s coverage forms provide “Business Income” coverage, which promise to pay for actual loss due to the necessary suspension of operations caused by, among other things, accidental physical loss, or accidental physical damage to the covered property.

5. Defendant’s coverage forms, under sections titled “Duties in the Event of Loss”, require in the event of a loss that the policyholder take all reasonable steps to protect the Covered Property from further damage, and keep a record of the expenses necessary to protect the Covered Property, for consideration in the settlement of the claim.

6. Unlike some policies that provide Business Income (also referred to as “business interruption”) coverage, Defendant’s coverage forms do not include, and are not subject to, any exclusion for losses caused by viruses, communicable diseases or pandemics.

7. On or about March 23, 2020, Plaintiff was forced to suspend or reduce business at its dental practice due to the COVID-19 Pandemic and the ensuing orders issued by civil authorities in the State of Connecticut, and associated health guidance.

8. In addition, Plaintiff incurred expenses to repair, restore and protect the Covered Property from the impact of the COVID-19 Pandemic.

9. The Defendant has refused to pay the Plaintiff under its Business Income, Extra Expense, Civil Authority, Ingress and Egress, and Sue and Labor coverages for losses suffered due to the COVID-19 Pandemic, and any efforts to prevent further property damage or to minimize the suspension of business and continue operations. In particular, The Cincinnati Insurance Company has denied claims submitted by Plaintiff under its Policy.

II. THE PARTIES

10. Farmington Village Dental Associates, LLC is a Connecticut corporation, with its principal place of business in Farmington, Connecticut.

11. Defendant is, and at all times relevant hereto has been, an insurance company writing policies and doing business in the State of Connecticut, capable of using and being sued in the courts of this State. Defendant is a foreign corporation organized, incorporated and existing under the laws of the State of Ohio, with its principal place of business at 6200 S. Gilmore Road, Fairfield, Ohio 45014.

III. JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332, because Plaintiff and Defendant are citizens of different states, and because the amount in controversy exceeds \$75,000.00 exclusive of interest and costs, and no relevant exceptions apply to this claim.

13. Venue is proper in this District under 28 U.S.C. § 1391, because a substantial part of the events or omissions giving rise to the claims occurred, or a substantial part of property that is the subject of this action is situated in this judicial district. The Policy at issue covers Plaintiff's facilities located in the State of Connecticut and Plaintiff purchased the Policy at issue from an insurance broker in the State of Connecticut.

IV. FACTUAL BACKGROUND

The Insurance Policy

14. In return of the payment of a premium, Cincinnati issued Policy No. ECP 047 90 05 to Plaintiff, for a policy period of March 22, 2018 to March 22, 2021, including a Building and Personal Property Coverage Form and Business Income (And Extra Expense) Coverage Form. Policy No. ECP 047 90 05 is attached hereto and incorporated by reference as *Exhibit 1* (pages have been Bates numbered for the convenience of the Court)

15. Plaintiff is the Named Insured under the Policy, which remains in force.

16. Defendant is the effective and liable insurer under the Policy.

17. Plaintiff has performed all of its obligations under Policy No. ECP 047 90 05 including the payment of premiums and cooperation in Cincinnati's claims investigation and preservation of the property. The Covered Property, with respect to the Building and Personal Property Coverage Form, is its dental practice located at 320 Main Street, Farmington, Connecticut 06032.

18. Sometimes property insurance is sold on a specific peril basis, where coverage is limited to risks of loss that are specifically listed (e.g., hurricane, earthquake, etc.). Many property policies sold in the United States, however, including those sold by Defendant, are "all-risk" property damage policies. These types of policies cover all risks of loss except for risks that are expressly and specifically excluded.

19. Under the heading "Covered Causes of Loss", Defendant agreed to pay for "direct 'loss' unless the 'loss' is excluded or limited" in the policies.

20. Plaintiff suffered direct loss from the probable presence of a deadly virus that also damages property; or the imminent risk of such on-site contamination; or government orders limiting the use of Plaintiff's property; and stay at home orders or some combination of the foregoing.

21. Defendant did not exclude or limit coverage for losses from viruses in Plaintiff's Policy. The Policy did not exclude Pandemic coverage, communicable disease coverage or anything similar.

22. The Pandemic, the likely presence of SARS-CoV-2 on the covered property, and the loss of use as a result of governmental directives and guidance,

are Covered Causes of Loss under Defendant's Policy with the Building and Personal Property Coverage Form and Business Income (And Extra Expense) Coverage Form.

23. Plaintiff pleads all theories in the alternative, or cumulatively.

24. In the Building and Personal Property Coverage Form and Business Income (And Extra Expense) Coverage Form, Defendant agreed to pay for its insureds' actual loss of Business Income sustained due to the necessary suspension of their operations during the "period of restoration" caused by direct "loss" to property at the covered premises.

25. "Loss" is defined to mean accidental physical loss or accidental physical damage.

26. "Period of restoration" is defined to mean the period of time that begins at the time of direct loss. After beginning repairs to the property, Plaintiff has begun a partial reopening.

27. "Business Income" is defined to mean net income (net profit or loss before income taxes) that would have been earned or incurred and continuing normal operating expenses sustained, including payroll.

28. The likely presence of the SARS-CoV-2 and/or the imminent threat of the COVID-19 Pandemic has caused physical loss of or damage to property. Because the risk of the spread of the deadly virus occurs as a result of transmission from the surfaces and the air of covered property, a direct Covered Cause of Loss

has occurred. Plaintiff faced, and continues to face, imminent risk of direct physical loss.

29. Current science has shown how the virus attaches itself to surfaces and aerosols turning property into a virus incubator as crowds of people come and go.

30. In the Building and Personal Property Coverage Form and Business Income (And Extra Expense) Coverage Form, Defendant also agreed to pay necessary Extra Expense that its insured sustained during the “period of restoration” that the insured would not have sustained if there had been no direct loss to property caused by or resulting from a Covered Cause of Loss.

31. “Extra Expense” includes expenses to avoid or minimize the suspension of business, continue operations, and to repair or replace property.

32. Defendant also agreed to pay for losses caused by the prevention of existing ingress or egress at the premises. This is commonly known as “Ingress and Egress” coverage.

33. Defendant’s coverage forms, under sections titled “Duties in the Event of Loss”, require in the event of a loss that the policyholder take all reasonable steps to protect the Covered Property from further covered damages, and keep a record of the expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This is commonly referred to as “Sue and Labor” coverage. In this instance, Plaintiff was required to suspend operations

to reduce the spread of the virus and further losses occasioned by its spread on Plaintiff's premises.

34. Losses caused by SARS-CoV-2, the COVID-19 Pandemic and the related orders issued by state, and federal authorities triggered the Business Income, Extra Expense, Civil Authority, Ingress and Egress and Sue and Labor provisions of Defendant's policies.

SARS-CoV-2 / COVID-19 and the Covered Cause of Loss

35. SARS-CoV-2 is a highly contagious virus that has rapidly spread and continues to spread across the United States. It is a physical substance, human pathogen and can be present outside the human body in viral fluid particles. The virus frequently causes a disease known as COVID-19. According to the CDC, everyone is at risk of getting COVID-19.

36. COVID-19 is spread by a number of methods, including "community spread", meaning that some people have been infected and it is not known how or where they became exposed. Public health authorities, including the CDC, have reported significant ongoing community spread of the virus including instances of community spread in all 50 states.

37. The CDC has reported that a person can become infected and it is not known how or where they became exposed.

38. More specifically, COVID-19 infections are spread through droplets of different sizes which can be deposited on surfaces or objects.

39. In addition, The New England Journal of Medicine reported finding that experimentally produced aerosols containing the virus remained infectious in tissue-culture assays, with only a slight reduction of infectivity during a 3-hour period of observations. An April 2020 study published in the journal, Emerging Infectious Diseases, found a wide distribution of SARS-CoV-2 on surfaces and in the air about 13 feet from patients in two hospital wards. This means there has been a finding of SARS-CoV-2 in the air.

40. SARS-CoV-2 has been transmitted by way of human contact with surfaces and items of physical property located at premises in Connecticut.

41. SARS-CoV-2 has been transmitted by way of human contact with airborne SARS-CoV-2 particles emitted into the air at premises in Connecticut.

42. The presence of any SARS-CoV-2 particles renders items of physical property unsafe and the premises unsafe.

43. The presence of any SARS-CoV-2 particles on physical property impairs value, usefulness and/or normal function.

44. The imminent threat of SARS-CoV-2 particles on physical property impairs value, usefulness and/or normal function.

45. The presence of any SARS-CoV-2 particles causes direct physical harm, direct physical damage, and direct physical loss to property.

46. The imminent threat of SARS-CoV-2 particles causes direct physical harm, direct physical damage, and direct physical loss to property.

47. The presence of often asymptomatic people infected with or carrying COVID-19 at premises renders the premises, including property located at that premises unsafe, resulting in direct physical loss to the premises and property.

48. In view of the prevalence of SARS-CoV-2 it is likely that the covered property was contaminated, and Plaintiff's premises remains at imminent risk of contamination with SARS-CoV-2 and it has suffered direct loss to the property. The incubation period for COVID-19 is at least 14 days. Current evidence shows that the first death from COVID-19 in the United States occurred as early as February 6, 2020 – weeks earlier than previously reported, suggesting that the virus has been circulated in the United States far longer than previously assumed. It is likely patients, employees and/or other visitors to the insured property were infected with COVID-19 and thereby infected the insured property with COVID-19.

49. To reduce the spread of the disease, the CDC has recommended that businesses clean and disinfect all surfaces, prioritizing the most frequently touched surfaces.

50. The effects of COVID-19 have resulted in the World Health Organization declaring the existence of a Pandemic.

51. The Pandemic is a public health crisis that has profoundly impacted American society, including the public's ability to safely obtain dental care.

52. In response to the loss and damage, Plaintiff has taken, and continues to take, corrective repairs to address the direct physical loss and/or

imminent risk of direct physical loss including, without limitation, continuous cleaning and erection of barriers to inhibit the spread of the virus in order to minimize the suspension of operations.

The Connecticut Closure Orders

53. On March 10, 2020, Governor Lamont of the State of Connecticut ordered a Declaration of Civil Preparedness and Public Emergencies.

54. On March 20, 2020, Governor Lamont entered an order directing all residents in Connecticut to stay at home, imposing social distancing rules, limited occupancy of buildings, and reiterated that any entity that does not employ individuals to perform essential worker functions as set forth in guidance provided by the U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency (CISA) shall adhere to limitations on social gatherings and social distancing set forth in the Order. The purpose of the order was to mitigate and slow the spread of COVID-19 in the state.

55. Thereafter, Governor Lamont, has continued to enter a series of Executive Orders.

56. On March 26, 2020, the Governor of the State of Connecticut issued a civil authority order limiting social gatherings of more than 5 people. The purpose of the order was to mitigate and slow the spread of COVID-19 in the state. On September 1, 2020, the Governor of the State of Connecticut extended Connecticut's State of Emergency in response to the COVID-19 pandemic until February 9, 2021.

57. The Connecticut Closure Orders were issued in response to the rapid spread of COVID-19 throughout Connecticut and the Pandemic. The Closure Orders are civil authority orders which contributed to causing the suspension of Plaintiff's routine operations.

58. As a response to COVID-19 and the Pandemic, the Governor of Connecticut has issued these orders pursuant to the authority vested in him by the Connecticut Constitution and the laws of Connecticut.

59. Similarly, the Connecticut Department of Public Health, pursuant to its authority under Connecticut law, has issued directives and guidance related to COVID-19 commencing on March 16, 2020 and continuing to the present time.

60. The State of Connecticut is a civil authority contemplated by Defendant's Policy.

61. The Governor of the State of Connecticut and the State of Connecticut Public Health Department are civil authorities contemplated by Defendant's Policy.

62. The Pandemic has constituted a disaster.

63. The Pandemic which prompted CDC guidance, American Dental Association guidance, Connecticut State Dental Association guidance, together with the stay at home orders contained within Governor Lamont's Executive Orders with the lack of availability of PPE combined to effectively cause the suspension of ordinary business operations.

The Impact of SARS-CoV-2 / COVID-19 and the Closure Orders

64. Loss of use of property that has not been physically altered constitutes “physical loss” or “physical damage” for purposes of first-party property insurance.

65. As the drafter of the Policy, if Defendant had wished to exclude from coverage loss of use of property that has not been physically altered or deformed, it could have used explicit language stating such a definition, but it did not do so.

66. The existence of SARS-CoV-2 caused direct “physical loss” and/or risk of “physical damage” to the covered property or “premises” under the Plaintiff’s Policy, by denying use of and damaging the covered property, and by causing a necessary suspension (in whole or in part) of operations during a period of restoration and requiring prevention and restoration measures.

67. The State of Connecticut, through the Governor and Department of Public Health, have issued and continue to issue authoritative orders governing Connecticut citizens and businesses, including the Plaintiff’s business, in response to COVID-19 and the Pandemic, the effect of which have caused and continue to cause Plaintiff to cease and/or significantly reduce operations at the premises described in the Policy and to incur Extra Expenses.

68. State and local governmental authorities and public health officials around the United States acknowledge that COVID-19 and the Pandemic cause direct physical loss and damage to the property. For example: (a) The State of

Colorado issued a Public Health Order indicated that “COVID-19...physically contributes to property loss, contamination and damage...” (b) The City of New York issued an Emergency Executive Order in response to COVID-19 and the Pandemic, in part “because the virus physically is causing property loss and damage”. (c) Broward County, Florida issued an Emergency Order acknowledging that COVID-19 “is physically causing property damage”. (d) The State of Washington issued a Stay at Home Proclamation stating the “COVID-19 Pandemic and its progression...remains a public disaster affecting life, health [and] property”. (e) The State of Indiana issued an Executive Order recognizing that COVID-19 has the “propensity to physically impact surfaces and personal property”. (f) The City of New Orleans issued an order stating “there is reason to believe that COVID-19 may spread amongst the population by various means of exposure, including the propensity to attach to surfaces for a prolonged period of time, thereby spreading from surface to person and causing property loss and damage in certain circumstances”. (g) The State of New Mexico issued a Public Health Order acknowledging the “threat” COVID-19 “poses” to “property”. (h) North Carolina issued a statewide Executive Order in response to the Pandemic not only “to assure adequate protection for lives” but also to “assure adequate protection of...property”. (i) The City of Los Angeles issued an Order in response to COVID-19 “because, among other reasons, the COVID-19 virus can spread easily from person-to-person and it is physically causing property loss or damage due to its tendency to attach to

surfaces for prolonged periods of time; and (j) The City of Kansas City, Missouri issued a Proclamation in response to COVID-19 “to protect life and property”.

69. As a result of the presence of COVID-19, Plaintiff lost Business Income and incurred Extra Expense.

Plaintiff Submitted Notices of Loss to Cincinnati and was Wrongfully Denied Coverage

70. Plaintiff submitted a notice of loss to Defendant under the Policy due to the probable presence of SARS-CoV-2 and the COVID-19 Pandemic. The Defendant denied those claims by letter dated April 27, 2020. Denial letter is attached hereto and incorporated by reference as *Exhibit 2*.

71. Upon information and belief, Cincinnati is using a form denial letter to deny coverage to all its insured with policies similar to Plaintiff's and is otherwise uniformly refusing to pay insureds under its standard policy for losses related to COVID-19.

72. Upon information and belief, Cincinnati did not engage in any investigation related to the claimed loss at the Covered Property.

V. LEGAL CLAIMS FOR RELIEF

Count I – Breach of Contract

73. Plaintiff repeats and realleges the preceding paragraphs as if fully set forth herein.

74. Plaintiff's Cincinnati Policy is a contract under which Cincinnati was paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the Policy.

75. In the Building and Personal Property Coverage Form and Business Income (And Extra Expense) Coverage Form, Cincinnati agreed to pay for its insureds' actual loss of Business Income sustained due to the necessary suspension of its operations during the "period of restoration".

76. A "slowdown or cessation" of business activities at the Covered Property is a "suspension" under the Policy, for which Cincinnati agreed to pay for loss of Business Income during the "period of restoration" that begins at the time of direct loss.

77. "Business Income" means net income (net profit or loss before income taxes) that would have been earned or incurred and continuing normal operating expenses sustained, including payroll.

78. SARS-CoV-2 and the COVID-19 Pandemic caused direct "physical loss" and/or "physical damage" to Plaintiff's Covered Property, requiring suspension of operations at the Covered Property. Losses caused by SARS-CoV-2 and the COVID-19 Pandemic thus triggered the Business Income provision of Plaintiff's Cincinnati's Policy.

79. Plaintiff has complied with all applicable provisions of the Policy and/or those provisions have been waived by Defendant, or Defendant is estopped

from asserting them, and yet Defendant has abrogated its insurance coverage obligations pursuant to the Policy's clear and unambiguous terms.

80. By denying coverage for any Business Income losses incurred by Plaintiff in connection with the COVID-19 Pandemic, Defendant has breached its coverage obligations under the Policy.

81. In the Building and Personal Property Coverage Form and Business Income (And Extra Expense) Coverage Form, Defendant also agreed to pay necessary Extra Expense that its insured incurred during the "period of restoration" that the insured would not have sustained if there had been no direct loss to property caused by or resulting from a Covered Cause of Loss.

82. "Extra Expense" includes expenses to avoid or minimize the suspension of business, continue operations, and to repair or replace property.

83. Due to SARS-CoV-2 and the COVID-19 Pandemic, Plaintiff incurred Extra Expense at Covered Property. Plaintiff has complied with all applicable provisions of the Policy and/or those provisions have been waived by Defendant, or Defendant is estopped from asserting them, and yet Defendant has abrogated its insurance coverage obligations pursuant to the Policy's clear and unambiguous terms.

84. By denying coverage for any business losses incurred by Plaintiff in connection with the COVID-19 Pandemic, Defendant has breached its coverage obligations under the Policy.

85. In the Building and Personal Property Coverage Form and Business Income (And Extra Expense) Coverage Form, Defendant agreed to give due consideration in settlement of a claim to expenses incurred in taking all reasonable steps to protect Covered Property from further damage.

86. In suspending or limiting operations, Plaintiff incurred expenses in connection with reasonable steps to protect Covered Property.

87. Plaintiff has complied with all applicable provisions of the policy and/or those provisions have been waived by Defendant, or Defendant is estopped from asserting them, and yet, Defendant has abrogated insurance coverage obligations pursuant to the Policy's clear and unambiguous terms.

88. By denying coverage for any Sue and Labor expenses incurred by Plaintiff in connection with the SARS-CoV-2 and the COVID-19 Pandemic, Defendant has breached its coverage obligations under the Policy.

89. In the Building and Personal Property Coverage Form and Business Income (And Extra Expense) Coverage Form, Defendant agreed to give due consideration in settlement of a claim to expenses incurred in taking all reasonable steps to protect Covered Property from further damage.

90. In complying with the Closure Orders and otherwise suspending or limiting operations, Plaintiff incurred expenses in connection with reasonable steps to protect Covered Property.

91. Plaintiff has complied with all applicable provisions of the Policy and/or those provisions have been waived by Defendant, or Defendant is estopped

from asserting them, and yet Defendant has abrogated its insurance coverage obligations pursuant to the Policy's clear and unambiguous terms.

92. By denying coverage for any Ingress and Egress expenses incurred by Plaintiff in connection with the SARS-CoV-2 and the COVID-19 Pandemic, Defendant has breached its coverage obligations under the Policy.

93. Defendant agreed that "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 a civil authority that prohibits access to the 'premises'...".

94. By denying coverage for loss of Business Income and necessary Extra Expense sustained by action of a Civil Authority, Defendant has breached its coverage obligations under the Policy.

95. As a result of Defendant's breaches of the Policy, Plaintiff has sustained substantial damages for which Defendant is liable, in an amount to be established at trial.

COUNT II – Breach of The Covenant of Good Faith and Fair Dealing

96. Plaintiff repeats and realleges the preceding paragraphs as though fully set forth herein.

97. In Connecticut, the Defendant is bound by the implied contractual covenant of good faith dealing.

98. The Plaintiff and Defendant are parties to a contract under which the Plaintiff reasonably expected to receive certain benefits; the Defendant engaged

in conduct that injured the Plaintiff's right to receive those benefits; and when committing the acts by which they injured the Plaintiff's rights to receive benefits they reasonably expected to receive under the contract, the Defendant acted in bad faith.

99. The Defendant violated the covenant of good faith and fair dealing by using a predetermined decision not cover any claim; failing to properly inquire into relevant facts supporting their denial; failing to take the appropriate procedures for handling Plaintiff's claim; declining to make clear, and good faith efforts to resolve the contractual relationship between Plaintiff and Defendant.

COUNT III – CUTPA/CUIPA Violation

100. Plaintiff repeats and realleges the preceding paragraphs as if fully set forth herein.

101. Defendant is a "person" and engaged in the business of insurance as defined by C.G.S. § 38a-815.

102. Defendant has a general business practice, when handling business interruption losses caused by the Pandemic, of refusing to pay claims without conducting a reasonable investigation based upon all available information, failing to attempt in good faith to effectuate prompt, fair and equitable settlements of claims in which liability is reasonably clear, and compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amount ultimately recovered in actions brought by such insureds.

103. At least fourteen (14) other policyholders have alleged that Cincinnati has committed unfair practices in the processing of their loss of business income and extra expense claims. Those policyholders are:

North State Deli, LLC d/b/a Lucky's Delicatessen

Mother's & Sons, LLC d/b/a Mothers & Son's Trattoria

Mateo Tapas, LLC d/b/a Mateo Bar DeTapas

Saint James Shellfish, LLC d/b/a Saint James Seafood

Calamari Enterprises, Inc. d/b/a Parizade

Bin 54, LLC d/b/a Bin 54

Arya, Inc. d/b/a City Kitchen and Village Burger

Grasshopper, LLC d/b/a Nasher Café

Verde Café Inc. d/b/a Local 22

Floga, Inc. d/b/a Kipos Greek Taverna

Kuzina, LLC d/b/a Golden Fleece

Vin Rouge, Inc. d/b/a Vin Rouge

Kipos Rose Garden Club, LLC d/b/a Rosewater

Gira Sole, Inc. d/b/a Farm Table and Gatehouse Tavern

104. Those fourteen (14) policyholders have alleged that Cincinnati Financial Corporation, the holding company of Cincinnati Insurance Company, in its April 27, 2020 10-Q report, told investors that it will not honor business interruption claims connected to the COVID-19 virus and has a predetermined strategy to deny all COVID-19 related claims.

105. The policyholders have further alleged that “[g]iven Cincinnati’s intention to issue categorical denials of all claims arising out of the COVID-19 pandemic, it is no surprise that Cincinnati failed to evaluate each of the Plaintiffs’ claims based on all information that could be gathered from a fair and neutral individualized investigation. Cincinnati further failed to review ample publicly available and easily accessible information regarding the claims and failed to secure an outside counsel opinion on coverage to avoid bias. Cincinnati has made no indication that it has visited or plans to visit any of the covered locations.” Complaint, ¶ 103. The policyholder also alleged that “Cincinnati’s [denial] letters further misstate policy terms and engineer new post-hoc requirements for coverage...[and] Cincinnati’s letter also quotes at length numerous provisions from the Policies themselves, but with no explanation.” *Id.* at ¶ 105. The Policyholders were compelled to institute litigation to recover amounts due under the policies. On October 9, 2020, the Court granted the policyholders’ motion for partial summary judgment on coverage for their business loss and extra expense caused by the COVID-19 pandemic. North State Deli, LLC, et al v. The Cincinnati Insurance Company, Docket No. 20-CVS-2569 (Super. Ct. N.C.).

106. Section 38a-816 of the Connecticut Unfair Insurance Practices Act (hereinafter, CUIPA), prohibits unfair claim settlement practices and provides in part: “6) Unfair claim settlement practices. Committing or performing with such frequency as to indicate a general business practice any of the following: (a) Misrepresenting pertinent facts or insurance policy provisions relating to coverage

at issue; (b) failing to acknowledge and act with reasonable promptness upon communications with respect to claims arising under insurance policies; (c) failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies; (d) refusing to pay claims without conducting a reasonable investigation based upon all available information; (e) failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed; (f) not attempting in good faith to effectuate prompt, fair and equitable settlements of claim in which liability has become reasonably clear; (g) compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds.”

107. Defendant’s actions set forth herein constitute violations of the Connecticut Unfair Practices Act, C.G.S. § 38a-816(6)(c), (d), (f) and (g) and were committed with such frequency as to indicate a general business practice.

108. Defendant is a “person” within the meaning of C.G.S. § 42-110a (3).

109. The conduct of the Defendant alleged herein constitutes a series of deceptive acts and practices within the meaning of Connecticut General Statutes Section 42-110b(a) in the conduct of the trade or business of insurance.

110. As a result of Defendant’s deceptive acts and practices as foresaid within the meaning of Connecticut General Statutes Section 42-110b(a), the Plaintiff failed to receive the coverage and benefits required by the policy of

insurance at issue herein, and otherwise have incurred severe ascertainable losses as a direct and proximate result.

VI. REQUEST FOR RELIEF

WHEREFORE, Plaintiff, individually, respectfully requests that the Court enter judgment in its favor and against Defendant as follows:

- a. For a judgment against Defendant for the causes of action alleged against it;
- b. For compensatory damages in an amount to be proven at trial;
- c. For pre-judgment and post-judgment interest at the maximum rate permitted by law;
- d. For Plaintiff's attorneys' fees;
- e. For Plaintiff's costs incurred;
- f. For punitive damages; and
- g. For such other and further relief as the Court deems just and proper.

VII. DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury on all matters so triable.

**Respectfully submitted,
Attorneys for Plaintiff**

By: /s/ R. Cornelius Danaher, Jr.
R. Cornelius Danaher, Jr. (ct5350)
Calum B. Anderson (ct07611)
Thomas N. Lyons, III (ct26937)
DANAHERLAGNESE, PC
21 Oak Street, Suite 700
Hartford, Connecticut 06106
Telephone: 860-247-3666
Fax: 860-547-1321
Email: ndanaher@danaherlagnese.com
canderson@danaherlagnese.com

J. Tucker Merrigan
SWEENEY MERRIGAN LAW, LLP
268 Summer Street, LL
Boston, MA 02210
Telephone: 617-391-9001

Allan Kanner
Cynthia St. Amant
KANNER & WHITNEY, LLC
701 Camp Street
New Orleans, LA 70130
Telephone: 504-524-5777