

STATE OF INDIANA
IN THE MARION COUNTY SUPERIOR COURT

RALEIGH LIMITED, INC.,

Plaintiff,

v.

THE OHIO SECURITY INSURANCE
COMPANY,

Defendant.

CAUSE NO.

COMPLAINT AND REQUEST FOR JURY TRIAL

Plaintiff Raleigh Limited, Inc. (“Raleigh”), for its complaint against Defendant The Ohio Security Insurance Company (“Ohio Security”), states as follows:

**I.
Introduction**

1. This is an action for declaratory relief and breach of contract concerning insurance against Ohio Security. Raleigh respectfully seeks: (1) declaratory relief, pursuant to Indiana Rule of Trial Procedure 57 and the Indiana Declaratory Judgment Act, Indiana Code § 34-14-1 *et seq.*, to confirm Ohio Security’s obligation to pay Raleigh’s losses under a commercial property insurance policy related to the novel coronavirus, SARS-CoV-2, the COVID-19 pandemic, and the related governmental orders; (2) actual and consequential damages arising from Ohio Security’s breach of the policy; (3) prejudgment and post-judgment interest; and (4) any and all other relief to which it may be entitled.

II.
The Parties

2. Raleigh is an Indiana corporation and owner of the insured location located at 8702 Keystone Xing, Indianapolis, Indiana 46240 (the “Insured Location”) in The Fashion Mall at Keystone at the Crossing (the “Mall”).

3. Ohio Security is a New Hampshire insurance company doing business in Indiana.

III.
Jurisdiction and Venue

4. This Court has jurisdiction over Ohio Security under Trial Rules 4.4(A)(1) and (6) because Ohio Security does business in Indiana and Ohio Security is an insurance company currently licensed to do business in Indiana.

5. Marion County is a preferred venue for this action under Trial Rule 75(A)(10) because Ohio Security is a nonresident organization without a principal office in Indiana and Raleigh’s principal office is located in Marion County.

IV.
Factual Circumstances

6. Raleigh is a family business that operates a retail store known as Raleigh Limited Menswear at the Insured Location. Raleigh sells tailored menswear, made to measure suits, sportswear, footwear, and accessories, including designer collections.

7. In January 2020, the first known case of a U.S. resident infected by the novel SARS-CoV-2 coronavirus was reported in the state of Washington. SARS-CoV-

2 quickly spread across the United States.

8. SARS-CoV-2 is a coronavirus and a physical substance. It is believed to be primarily spread through respiratory droplets and by fomites (objects and surfaces contaminated by the respiratory droplets). Studies have found that SARS-CoV-2 can live outside the body on surfaces for extended periods.

9. SARS-CoV-2 reportedly has an incubation period of 2-12 days, during which time it can be transmitted even before symptoms develop. Symptoms often include fever, cough, shortness of breath, and, in severe cases, pneumonia. The illness caused by SARS-CoV-2 is called COVID-19 (Coronavirus Disease 2019).

10. The presence of people infected with COVID-19 or carrying SARS-CoV-2 particles renders property unsafe and unusable and causes direct physical damage and direct physical loss to property.

11. SARS-CoV-2 has been transmitted in Marion County, Indiana by human-to-human contact and by human contact with physical property.

12. It is likely that Raleigh's customers, employees, and/or other visitors to the Insured Location were infected with COVID-19 and/or carried SARS-CoV-2 particles and infected the Insured Location with SARS-CoV-2.

13. On March 11, 2020, the World Health Organization declared COVID-19 to be a global pandemic.

14. In an attempt to mitigate the spread of COVID-19, national, state, and local leaders have issued various executive "stay at home" orders (collectively, "Orders").

15. On March 6, 2020, Indiana Governor Eric Holcomb issued Executive Order 20-02 declaring the COVID-19 outbreak a disaster emergency for the State of Indiana.

16. On March 13, 2020, the President of the United States declared a national emergency.

17. On March 16, 2020, Indianapolis Mayor Joe Hogsett issued Executive Order No. 1 declaring a local disaster emergency for Indianapolis and Marion County.

18. On March 23, 2020, Director and Chief Medical Officer of the Marion County Public Health Department Virginia A. Cane ordered that all non-essential businesses shall be closed and all individuals living in Indiana shall stay home through April 6, 2020. Dr. Cane subsequently extended the public health order closing non-essential businesses through May 15, 2020.

19. Effective May 15, 2020, Dr. Cane permitted retail locations at shopping malls to reopen at 50% capacity provided they could comply with social distancing guidelines and other restrictions. Common areas and non-retail locations within shopping malls remained closed. Food courts within shopping malls could not permit indoor dining.

20. Retail locations at shopping malls were allowed to reopen at 75% capacity on May 29, 2020 provided similar restrictions could be met. Common areas and in-house dining at food courts within shopping malls were allowed to reopen but limited to 50% capacity. Movie theaters within shopping malls remained closed.

21. On July 9, 2020, retail locations at shopping malls were allowed to temporarily reopen at 100% capacity and food courts within shopping malls were allowed to reopen at 75% capacity, subject to social distancing and air ventilation requirements. But on July 24, 2020, Dr. Cane ordered that retail locations at shopping malls must limit capacity to 75% and common areas and food courts within shopping malls must limit capacity to 50%, among other restrictions. On September 3, 2020, Dr. Cane extended these restrictions.

22. On March 23, 2020, Governor Holcomb issued Executive Order 20-08 which closed all non-essential businesses and ordered all individuals living in Indiana to stay at home through at least April 6, 2020, with limited exceptions. Governor Holcomb extended the stay-home order through May 1, 2020.

23. On May 1, 2020, Governor Holcomb issued Executive Order 20-26 announcing a staggered approach to reopening businesses in the state. Effective May 11, 2020, Executive Order 20-26 allowed retail businesses to open at 50% capacity but limited the number of individuals in shopping mall common areas around retail businesses to no more than 25% capacity. Effective June 1, 2020, Executive Order 20-28 allowed retail businesses to reopen at 75% capacity but limited the number of individuals in shopping mall common areas around retail businesses to no more than 50% capacity.

24. Effective September 26, 2020, Executive Order 20-43 allows all business in Indiana to be fully open. The status of COVID-19 in each Indiana communities will be assessed weekly to determine if restrictions need to be imposed

to mitigate the spread of the disease.

25. SARS-CoV-2 and these Orders have required Raleigh to close its Insured Location and limit its occupancy, causing Raleigh to sustain losses and damages.

26. SARS-CoV-2 and these Orders have required the Mall to close its premises and limit its occupancy, causing Raleigh to sustain losses and damages.

V. The Policy

27. Ohio Security sold Raleigh a commercial insurance policy, Policy No. BZS (20) 55 05 56 77, with an effective date of March 27, 2019 through March 27, 2020 (the “Policy”). A true and accurate copy of the Policy is attached as **Exhibit 1**.

28. Raleigh has paid all required premiums and performed all conditions precedent for obtaining coverage under the Policy and timely notified Ohio Security of the loss on May 27, 2020 under Claim Number 23820746.

29. On May 27, 2020, Ohio Security informed Raleigh that it was denying the claim. A true and accurate copy of Ohio Security’s denial letter is attached as **Exhibit 2**.

30. Ohio Security wrongly denied Raleigh’s claim. The Policy provides several coverages including, but not limited to, Building, Personal Property, Business Income, Extended Business Income, Extra Expense, Civil Authority, and Business Income from Dependent Properties coverages. The Policy provides coverage for the losses suffered by Raleigh associated with SARS-CoV-2 and the Orders.

VI.
Cause of Action

Count 1: Declaratory Relief

31. Raleigh incorporates by reference the averments of Paragraphs 1 through 30 above.

32. An actual controversy exists as to the scope of Raleigh's rights and Ohio Security's obligations under the Policy.

33. Multiple coverage provisions yield coverage for Raleigh's losses under the Policy. For example, the coverage grant of the Business Income portion of the Policy states:

We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The suspension must be caused by direct physical loss of or damage to property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss.

34. Raleigh has suffered a loss of "Business Income," among other losses, that is covered by the terms of the Policy.

35. Ohio Security's refusal to pay these losses has damaged, and will continue to damage, Raleigh as long as the losses continue.

36. This declaratory judgment action is necessary and useful in determining all of the rights and responsibilities of the parties.

37. Pursuant to Indiana Code § 34-14-1-1 and Rule 57 of the Indiana Rules of Trial Procedure, Raleigh is entitled to declaratory relief establishing that the losses suffered by Raleigh are covered by the Policy.

Count 2: Breach of Contract

38. Raleigh incorporates by reference the averments of Paragraphs 1 through 37 above.

39. The Policy obligates Ohio Security to pay for the losses suffered by Raleigh.

40. Ohio Security's denial of Raleigh's claim and refusal to pay these losses is a breach of its obligations to Raleigh under the Policy.

41. As a result of Ohio Security's breach, Raleigh has incurred, and will continue to incur, substantial costs, expenses, and losses related to SARS-CoV-2 and the Orders.

42. Raleigh is entitled to damages equal to the costs that have been, and will be, incurred as a result of the losses, consequential damages arising from Ohio Security's breach, and prejudgment and post-judgment interest on all such costs or expenses.

WHEREFORE, Raleigh requests that the Court enter judgment against Ohio Security and in favor of Raleigh:

A. declaring that Raleigh's losses are covered under the terms of the Policy;

B. ordering Ohio Security to pay Raleigh all amounts owed pursuant to the terms of the Policy;

C. finding Ohio Security in breach of its obligations under the Policy and requiring Ohio Security to pay Raleigh the full amount of its losses, plus

prejudgment and post-judgment interest; and

D. awarding Raleigh all other compensatory, consequential, and other damages to which it may be entitled, including but not limited to the attorneys' fees and expenses incurred in bringing this action, and all other and further relief as this Court may deem proper.

Respectfully submitted,

/s/ Joanne R. Sommers
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REQUEST FOR JURY TRIAL

Pursuant to Rule 38 of the Indiana Rules of Trial Procedure, Plaintiff Raleigh Limited, Inc. requests a trial by jury.

Respectfully submitted,

/s/ Joanne R. Sommers
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