

FILED
04-15-2020
John Barrett
Clerk of Circuit Court
2020CV002596
Honorable Christopher R. Foley-14
Branch 14

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

PTG LIVE EVENTS, LLC,
d/b/a PABST RIVERSIDE THEATER GROUP,
144 E. Wells Street,
Milwaukee, Wisconsin 53202,

On Behalf of Themselves and All Others Similarly Situated,

Plaintiffs,

v.

Case No. _____
Class Code: 30703

THE CINCINNATI INSURANCE COMPANY,
c/o Registered Agent: Michael Murray,
Kasdorf Lewis & Swietlik, s.c.,
1 Park Plaza 1270 W Park Pl,
5th Floor,
Milwaukee, Wisconsin 53224,

Defendant.

CLASS ACTION SUMMONS

THE STATE OF WISCONSIN: TO EACH PERSON NAMED AS DEFENDANT:

YOU ARE HEREBY NOTIFIED that the plaintiffs named above have filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action. Within forty-five (45) days of receiving this Summons, you must respond with a written Answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an Answer that does not follow the requirements of the Statutes. The Answer must be sent or delivered to the Court whose address is **Milwaukee County Courthouse, 901 N 9th Street, Milwaukee, WI 53233**, and to plaintiff's attorneys, whose address is **Urban & Taylor s.c., The Urban & Taylor Law Building, 4701 N. Port**

Washington Road, Fourth Floor, Milwaukee, Wisconsin 53212. You may have an attorney help or represent you. If you do not provide a proper Answer within forty-five (45) days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you now own or in the future, and may also be enforced by garnishment or seizure of property.

Dated at Milwaukee, Wisconsin on this 15th day of April, 2020.

URBAN & TAYLOR s.c.

Electronically signed by Jay A. Urban

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Defendant.

CLASS ACTION COMPLAINT

NOW COME the plaintiffs, PTG Live Events, LLC, d/b/a Pabst Riverside Theater Group, on behalf of themselves and all others similarly situated (hereinafter "Plaintiffs"), by and through their attorneys, Urban & Taylor s.c. and for their Complaint and allege as follows:

INTRODUCTION

1. Plaintiffs are owners and operators of restaurants and bars and/or event/hospitality services in Milwaukee and its surrounding suburbs who have been forced, by recent orders issued by the State of Wisconsin and Governor Evers, 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. The closures mandated by these orders present an existential threat to these small, local businesses that employ hundreds of residents.

2. To protect their business from situations like these, which threaten their livelihoods based on factors wholly outside of their control, Plaintiffs obtained business interruption insurance from The Cincinnati Insurance Company (“Cincinnati Insurance”). In breach of its insurance obligations that it voluntarily undertook in exchange for Plaintiffs’ premium payments, Cincinnati Insurance denied Plaintiffs’ claims arising from the State-ordered interruption of their businesses.

3. This case challenges the practice of Defendant Cincinnati Insurance’s processing of claims arising from the State-ordered interruption of Plaintiff’s businesses, which insurance policies provide coverage for losses incurred due to a “necessary suspension” of the operations, including when their businesses are forced to close due to a government order.

4. If Cincinnati Insurance had wanted to exclude pandemic-related losses under the Plaintiffs’ policies—as many other insurers have done in other policies—it easily could have attempted to do so on the front-end with an express exclusion. Instead, Cincinnati Insurance waited until after it collected Plaintiffs’ premiums, and after a pandemic and the resulting closure orders caused catastrophic business losses to Plaintiffs, to try to limit its exposure on the back-end through its erroneous assertion that the presence of the coronavirus is not “physical loss” and therefore is not a covered cause of loss under its policies. In fact, Cincinnati Insurance is summarily, and erroneously, refusing to cover claims under its insurance policies for any reason related to coronavirus or the resultant closure orders.

5. The fact that the insurance industry has created specific exclusions for pandemic-related losses under similar commercial property policies undermines Cincinnati Insurance’s assertion that the presence of a virus, like the coronavirus, does not cause “physical loss or damage” to property. Indeed, if a virus could never result in a “physical loss” to property, there would be no

need for such an exclusion. Moreover, Cincinnati Insurance's assertions ignore the fact that their policies promised to provide coverage for losses incurred due to government actions "taken in response to dangerous physical conditions," even if those dangerous physical conditions cause damage to property at locations other than those insured under their policies.

6. On March 17, 2020, during the term of the policies issued by Cincinnati Insurance, Wisconsin Governor Evers issued an order closing all restaurants, bars and/or event/hospitality services to the public in an effort to address the ongoing COVID-19 pandemic. A few days later, on March 24, 2020, Governor Evers ordered all "non-essential businesses" to close. The March 17 and March 24 orders are hereinafter collectively referred to as the "Closure Orders."

7. As a result of the Closure Orders, Plaintiffs have been forced to halt ordinary operations, resulting in substantial lost revenues and forcing Plaintiffs to furlough or lay off the majority of their employees.

PARTIES AND JURISDICTION

8. Plaintiff PTG Live Events, LLC, d/b/a Pabst Riverside Theater Group (hereinafter "Pabst"), is a Wisconsin limited liability company authorized to do business in the State of Wisconsin.

9. Defendant Cincinnati Insurance is an Ohio insurance company with its registered agent offices at the location set forth in the above caption. Cincinnati Insurance is engaged in the business of writing and selling insurance contracts, and is an insurance corporation organized under Wis. Stat. Chapter 613. Defendant Cincinnati Insurance is licensed to business in the State of Wisconsin and is a proper party.

10. Governor Tony Evers, in his official capacity as Governor of Wisconsin, is the Governor of Wisconsin and issued both Emergency Order #5 on March 17, 2020 and Emergency Order #12 Safer At Home Order on March 24, 2020.

11. This Court has jurisdiction over the subject matter as set forth under the Wisconsin constitution and the parties pursuant to Wis. Stat. § 801.05.

12. Venue is proper in this Court pursuant to Wis. Stat. § 801.50.

FACTS

13. Plaintiffs re-allege and reincorporate any and all preceding paragraphs as though fully restated herein.

14. In exchange for substantial premiums, Cincinnati Insurance sold commercial property insurance policies promising to indemnify 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.

15. Each policy was issued to Plaintiffs at their principle place of business in Wisconsin.

16. The policy is an “all risk” policy that provides broad coverage for losses caused by any cause unless expressly excluded.

17. The Cincinnati Insurance policies do not exclude losses from viruses or pandemics. Thus, the all-risk policies purchased by Plaintiffs cover losses caused by the viruses, such as COVID-19.

18. In addition to property damage losses, Cincinnati Insurance also 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 damage to covered property” at the insured’s premises.

19. With respect to business interruption losses, “suspension” means (1) “the slowdown or cessation of your business activities”; and (2) “that a part or all of the ‘premises’ is rendered untenable.”

20. “Business Income” is defined in relevant part under the Policies as “Net Income (net profit or loss before income taxes) that would have been earned or incurred” if no physical loss or damage had occurred plus “continuing normal operating expenses.”

21. Cincinnati Insurance also promised to “pay necessary Extra Expense” Plaintiffs incur during the period of suspension that they “would not have sustained if there had been no direct loss” or damage to covered property at the described premises.

22. The Cincinnati Insurance Policies also include “Civil Authority” coverage, pursuant to which Cincinnati Insurance promised to pay for the actual loss of Business Income and necessary Extra Expense sustained by Plaintiffs “caused by action of civil authority that prohibits access” to Plaintiffs’ insured premises.

23. This Civil Authority coverage is triggered when any non-excluded cause results in damage to property other than property at the Plaintiffs’ premises, and is intended to cover losses resulting from governmental actions taken in response to dangerous physical conditions.

24. Plaintiff and Defendant Cincinnati Insurance entered into a contract of indemnity, whereby Plaintiffs agreed to make cash payments to Cincinnati Insurance in exchange for Cincinnati Insurance’s promise to indemnify the plaintiff for losses including, but not limited to, business income losses at 144 E. Wells Street, Milwaukee, Wisconsin 53202 (hereinafter “insured premises”).

25. Plaintiff's insured premises are the location of Pabst, a well-known centerpiece to Milwaukee's downtown theater district able to accommodate virtually all-performing art forms and provide beverage services throughout shows and performances.

26. Plaintiffs insured premises are covered under policies issued by Cincinnati Insurance.

27. The policies are currently in full effect, providing property, business personal property, business income and extra expense, and ordinance or law coverage.

28. Plaintiffs faithfully paid policy premiums to Cincinnati Insurance to specifically provide all risk coverage, particularly the extension of coverage in the event of the businesses closure by order of Civil Authority.

29. Plaintiffs' policies do not provide exclusion due to losses, business or property, from a virus or global pandemic.

30. Based on information and belief, Cincinnati Insurance has accepted the policy premiums with no intention of providing coverage due to direct physical loss and/or from a civil authority shutdown due to a global pandemic virus.

A. Plaintiffs' Losses Due to the Coronavirus Pandemic and Closure Orders.

31. 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.

32. Emerging research on the virus and recent reports from the CDC indicate that the COVID-19 strains physically infect and can stay alive on surfaces for up to twenty-eight days, a characteristic that renders property exposed to the contagion potentially unsafe and dangerous. The virus particularly lasts in humid areas below eighty-four degrees.

33. While some rogue media outlets have called the 2019-2020 Coronavirus an exaggerated mass hysteria that will unlikely create significant physical damage, the scientific community, and

those personally affected by the virus, recognize the Coronavirus as a cause of real physical loss and damage.

34. The virus and global pandemic is physically impacting public and private property, and physical spaces in cities around the world. Any effort by Cincinnati Insurance to deny the reality that the virus causes physical damage and loss would constitute a false and potentially fraudulent misrepresentation that could endanger policyholders and the public.

35. China, Italy, France, and Spain have implemented the cleaning and fumigating of public areas prior to allowing them to re-open publicly due to the intrusion of microbials.

36. It is clear that contamination of the insured premises by the Coronavirus would be a direct physical loss needing remediation to clean the surfaces of the establishment.

37. An economist and professor at UC Berkley's Goldman School for Public Policy indicated that the challenge for state and federal leaders is to get the aid out fast enough to help the small businesses before they close for good, emptying downtowns overnight.¹

38. Small businesses are not inclined to take on debt just to keep their head above water, but are going to find some other way to cut costs or shut down.²

39. Only about 30 percent of small and medium-sized businesses in the U.S. have policies to cover losses during unexpected shutdowns, Leonard said. What's more, those policies — in addition to the outbreak exclusions — generally require there to be property damage associated with the claim. Even eligible claims usually require a month long waiting period, carry high deductibles and cover just a small percentage of the losses[.]”³

¹ This article is available at <https://www.politico.com/states/california/story/2020/03/24/california-restaurants-plead-for-insurance-help-during-coronavirus-closures-1267873>.

² *Id.*

³ *Id.*

40. Business interruption insurance is intended to protect businesses against income losses as a result of disruptions to their operations and recognizing income losses due to COVID-19 will help sustain America's businesses through these turbulent times, keeping their doors open, and retain employees on the payroll.⁴

41. Sinking feelings are hitting small business owners everywhere as they realize their insurance policies will not help them weather pandemic-related closures. Few insurance policies are written to cover such losses. But their stories have bubbled up to policymakers, raising the possibility of government intervention.⁵

42. Other states, including Massachusetts and New Jersey are considering passing bills that are designed to use the insurance industry as a conduit for a government stimulus bill.⁶

43. In response to the pandemic and the spread of COVID-19 in Milwaukee and throughout Wisconsin, Governor Evers issued Emergency Order #5 on March 17, 2020 requiring all restaurants, bars and/or event/hospitality services to close to the public beginning on Tuesday, March 17, 2020 which is to remain in effect for the duration of the public health emergency or until superseding orders are issued.

44. The continuous presence of coronavirus on or around Plaintiffs' premises has rendered the premises unsafe and unfit for the intended use and therefore caused physical property damage or loss under the Policies.

45. Emergency Order #5 was issued in direct response to these dangerous physical conditions, and prohibited the public from accessing Plaintiffs' restaurants, bars and/or

⁴ This article is available at <https://www.covid19businessguidance.com/2020/03/potential-insurance-coverage-for-coronavirus-based-business-interruption-claims>.

⁵ This article is available at <https://www.politico.com/states/california/story/2020/03/24/california-restaurants-plead-for-insurance-help-during-coronavirus-closures-1267873>.

⁶ This article is available at <https://boston.eater.com/2020/4/1/21201447/insurance-companies-massachusetts-business-interruption-bacterial-viral-outbreaks>.

event/hospitality services, thereby causing the necessary suspension of their operations and triggering the Civil Authority coverage under the Policies.

46. Governor Evers Emergency Order #12 issued on March 24, 2020 closing all “non-essential” businesses in Wisconsin, including all restaurants, bars and/or event/hospitality services likewise was made in direct response to the continued and increasing presence of the coronavirus on property or around Plaintiffs’ premises.

47. Like the March 17, 2020 Order, the March 24, 2020 Order prohibited the public from accessing Plaintiffs’ restaurants, bars and/or event/hospitality services, thereby causing the necessary suspension of their operations and triggering the Civil Authority coverage under the Policies.

48. As a result of the Closure Orders, Plaintiffs have each suffered substantial Business Income losses and incurred Extra Expense. The covered losses incurred by Plaintiffs and owed under the Policies are increasing every day. As a result of these catastrophic losses, many of the plaintiffs have been forced to furlough their workers and may have to close some or all of their locations permanently.

49. Following the Closure Orders, Plaintiffs each submitted claims to Cincinnati Insurance requesting coverage for their business interruption losses promised under the Policies (collectively, the “Closure Order Claims”).

50. Cincinnati Insurance has denied the Closure Order Claims, either verbally or in writing.

CLASS DEFINITIONS

51. Plaintiffs re-allege and incorporate the above stated paragraphs as though full restated herein.

52. Plaintiffs bring this class action on their own behalf and on behalf of a putative Class

defined as follows:

All restaurants, bars and/or event/hospitality services domiciled, and conducting business, in the State of Wisconsin that have incurred losses and business interruptions due to the Closure Orders that are insured by Cincinnati Insurance and have either (a) made a claim through Cincinnati Insurance and been denied coverage for any and all losses due to the Closure Orders and the global pandemic of coronavirus or (b) have not made a claim for such losses under their Cincinnati Insurance policy but are similarly situated as those that have made a claim and for which claim denial is expected based on Cincinnati Insurance's practice of summarily denying such claims.

CLASS ACTION ALLEGATIONS

53. Plaintiffs re-allege and incorporate the above stated paragraphs as though full restated herein.

54. Despite Cincinnati Insurance's contractual promise to pay actual loss of "Business Income" to or on behalf of its insured, Cincinnati Insurance has denied all claims made to them for any and all losses due to the Coronavirus pandemic.

55. Plaintiffs bring claims against the Defendants on their own behalf and on behalf of the Class to order Defendants to pay all Class members' actual loss of "Business Income" in compliance with the terms of the insurance policies.

56. Plaintiffs bring this action on behalf of themselves and all others similarly situated, pursuant to Wis. Stat. § 803.08.

57. The requirements of Wis. Stat. § 803.08 are that:

- a. The class is so numerous that joinder of all members is impracticable. Plaintiff does not know the exact size of the class, since such information is still coming about.

b. There are questions of fact and law common to the class, which common questions predominate over any questions affecting only individual members. Those common questions include:

i. Whether Cincinnati Insurance breached its duties and obligations to the class members or breached the standard form provisions of its contracts (policies) with class members by its practice of denying any and all claims related to the current global pandemic, coronavirus;

ii. Whether Cincinnati Insurance policies impose an obligation to pay reasonable expense for actual loss of “Business Income;”

iii. Whether Plaintiffs and other members of the Class sustained damages as a result of Cincinnati Insurance’s conduct and the proper measure of those damages.

c. Plaintiffs can and will fairly and adequately represent and protect the interests of the class and has no interests that conflict with or are antagonistic to the interests of the class. Plaintiffs have retained attorneys who are experienced and competent in class action litigation. No conflict exists between Plaintiffs and class members because:

i. All of the questions of law and fact regarding liability of Cincinnati Insurance are common to the class and predominate over any individual issues that may exist, such that by prevailing on their own claims, Plaintiffs necessarily will establish Cincinnati Insurance’s liability to all class members;

ii. Without representation provided by Plaintiffs, virtually no class member would receive legal redress or representation for their damages; and

- iii. Plaintiffs and their counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiffs' counsel are aware of their fiduciary responsibilities to the class members and are determined to diligently discharge those duties by vigorously seeking the maximum possible recovery for the Class.
 - iv. All class members have the same legal rights to, and interests in, the fair treatment by Cincinnati Insurance, and the proper interpretation and implementation of the Policy.
- d. The class action is an appropriate method for the fair and efficient adjudication of the controversy given the following:
- i. Common questions of law and/or fact predominate over any individual questions that may arise, such that there would be enormous economies to the courts and the parties in litigating the common issues on a classwide instead of repetitive individual basis;
 - ii. Class members' individual damages claims are too small to make individual litigation an economically viable alternative;
 - iii. Class treatment is required for optimal deterrence and compensation and for limiting the court-awarded reasonable legal expenses incurred by class members;
 - iv. Despite the relatively small size of individual class members' claims, their aggregate volume, coupled with the economies of scale inherent in litigating similar claims on a common basis, will enable this case to be litigated as a class

action on a cost-effective basis, especially when compared with repetitive individual litigation; and

v. No unusual difficulties are likely to be encountered in the management of this class action in that all questions of law or fact to be litigated at the liability stage are common to the class.

e. Class certification is fair and efficient because prosecution of separate actions would create a risk of adjudications with respect to individual members of the class, which may be dispositive of the interests of other members not parties to the adjudication or substantially impair or impede their ability to protect their interests.

58. Class certification is appropriate under Wisconsin law because Cincinnati Insurance has acted on grounds generally applicable to the class.

FIRST CLAIM FOR RELIEF - DECLARATORY JUDGMENT

59. Plaintiffs re-allege and incorporate the above stated paragraphs as though full restated herein.

60. A declaratory judgment determining that the coverage provided under the policy will prevent the plaintiffs from being left without vital coverage acquired to ensure the survival of their business should operations cease due to a global pandemic virus and civil authorities' response.

61. Each Policy is an insurance contract under which Cincinnati Insurance was paid premiums in exchange for its promise to pay Plaintiffs' losses for claims covered by the Policy, such as business losses incurred as a result of the government orders forcing them to close their businesses.

62. Plaintiffs have complied with all applicable provisions of the Policies, including payment

of the premiums in exchange for coverage under the Policies.

63. Cincinnati Insurance 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 and/or suspension of their businesses stemming from the COVID-19 pandemic.

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

65. Plaintiffs seek a Declaratory Judgment to declare that 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 Policies.

66. Plaintiffs further seek a Declaratory Judgment to declare that Cincinnati Insurance are obligated to pay Plaintiffs for the full amount of the losses incurred in connection with the covered business losses related to the Closure Orders and the necessary interruption and/or suspension of their businesses stemming from the COVID-19 pandemic.

67. Plaintiffs ask the Court to affirm that because the policy provided by Cincinnati Insurance does not contain exclusions for a viral pandemic, the policy provides coverage to Plaintiffs for any future civil authority shutdowns of restaurants, bars and/or event/hospitality services in the Milwaukee and surrounding areas due to physical loss from Coronavirus contamination and that the policy provides business income coverage in the event that the coronavirus has contaminated the insured premises.

68. Plaintiffs do not seek any determination of whether the Coronavirus is physically in the insured premises, amount of damages, or any other remedy besides the declaratory relief.

SECOND CLAIM FOR RELIEF – BREACH OF CONTRACT

69. Plaintiffs re-allege and incorporate the above stated paragraphs as though full restated herein.

70. Each Policy is an insurance contract under which Cincinnati Insurance was paid premiums in exchange for its promise to pay Plaintiffs' losses for claims covered by the Policy, such as business losses incurred as a result of the government orders forcing them to close their businesses.

71. Plaintiffs have complied with all applicable provisions of the Policies, including payment of the premiums in exchange for coverage under the Policies, and yet Cincinnati Insurance has abrogated its insurance coverage obligations pursuant to the Policies' clear and unambiguous terms.

72. Defendants Cincinnati Insurance and its agents have unreasonably and in bad faith breached the contract of insurance between the parties.

73. By denying coverage for any business losses incurred by Plaintiffs in connection with the Closure Orders and the COVID-19 pandemic, Cincinnati Insurance has breached its coverage obligations under the Policies.

74. As a result of Cincinnati Insurance's breach of the Policies, Plaintiffs have sustained substantial compensatory damages for which Cincinnati Insurance is liable, in an amount to be established at trial.

THIRD CLAIM – BAD FAITH

75. Plaintiffs re-allege and incorporate the above stated paragraphs as though full restated herein.

76. Defendants Cincinnati Insurance and its agents have acted in an arbitrary and intentional manner and have refused to pay the proceeds rightfully due to Plaintiffs and the members of the Class. This refusal is unreasonable, unjustified, has no basis in fact or law and constitutes bad faith.

77. Cincinnati Insurance's bad faith conduct consists of, but is not limited to:

- a. Failing to fully, fairly, and promptly investigate Plaintiffs' claims;
- b. Unreasonably denying and/or withholding payments under the policies;
- c. Engaging in a pattern and practice of illicit claim practices; and
- d. Failure to provide a reasonable explanation and accurate explanation of the basis of the denials.

78. As a result of Cincinnati Insurance's bad faith, Plaintiffs have sustained substantial compensatory damages for which Cincinnati Insurance is liable, in an amount to be established at trial.

WHEREFORE, Plaintiffs demand judgment against the Defendants as follows:

- a. Certifying the Class, as set forth in the complaint, and appointing the individual Plaintiffs herein as Class representatives;
- b. Declaring that the Defendants have breached the terms of their insurance policies and awarding unpaid benefits to the Plaintiffs and members of the Class, as well as awarding injunctive and declaratory relief to prevent Defendant's continuing action detailed herein in violation of Wisconsin law;
- c. Ordering the Defendants to issue unpaid "Business Income" and "Extra

Expenses” to the Plaintiffs and the members of the Class, with statutory interest;

- d. Awarding costs, disbursements, reasonable attorney’s fees; and
- e. Granting such other relief as the Court deems just and equitable.

PLAINTIFFS DEMAND A TRIAL BY JURY

Dated at Milwaukee, Wisconsin on this 15th day of April, 2020.

URBAN & TAYLOR s.c.

Electronically signed by Jay A. Urban

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