

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

THE NAIL NOOK, INC.,)
c/o Taubman Law)
1826 West 25th)
Cleveland, Ohio 44113)

Plaintiff,)

v.)

HISCOX INSURANCE COMPANY,)
INC.,)
c/o Steve Langan, CEO)
520 Madison Avenue)
32nd Floor)
New York, New York 10022)

and)

David I. Schonbrun)
Hiscox)
1133 Westchester Avenue, Suite S-231)
White Plains, NY 10604)

Defendant.)

CASE No:

JUDGE:

**COMPLAINT FOR DECLARATORY
JUDGMENT AND BREACH OF
CONTRACT**

(Jury Demanded)

For its Complaint against Defendant Hiscox Insurance Company Inc., Plaintiff The Nail Nook, Inc., alleges and states the following:

1. This suit arises out of Defendants' denial of Plaintiff's claim for their loss of business personal property, business income, and business interruption and extra expense coverage through its policy with Defendant resulting from or caused by the coronavirus. Plaintiff has sued for declaratory judgment and breach of contract.

2. Plaintiff is an Ohio limited liability company with its principal place of business in Bratenahl, Ohio. Plaintiff owns and operates a nail salon.

3. Defendant Hiscox insures Plaintiff's nail salon. Defendant is headquartered in New York, New York, but operates in Ohio (and in all 50 states), including providing insurance policies to businesses.

4. Plaintiff suffered the breach of contract and the harm of the business losses in Cuyahoga County, Ohio.

5. The common law claim of breach of contract is being sought in an amount over \$25,000.

GENERAL ALLEGATIONS

6. Plaintiff is insured by Defendant.

7. While the policy was in place, Plaintiff suffered damage to their personal business property, loss to their business income, incurred extra expenses, and had their business interrupted, all due to the coronavirus.

8. The Plaintiff's policy is ambiguous in multiple areas about circumstances that may be covered under the policy, including whether or not the coronavirus would qualify as a covered circumstance.

9. The Plaintiff's policy covers the loss or damage of the business' personal property. The policy is unclear on whether a virus would not qualify as damage under this section.

10. The Plaintiff's policy covers the loss of income and extra expenses Plaintiff loses/incurs due to an interruption of their business due to damage to the insured equipment. The policy is unclear as to whether losses and damage due to a virus would not be a valid claim for coverage under this section.

11. The Plaintiff's policy provides for many specific circumstances where Defendant will not provide coverage—like volcanoes, earthquakes, or a computer virus—but *does not* explicitly exclude circumstances due to other “acts of God,” like viruses spreading in a community.

12. Additionally, there is no *force majeure* clause in the policy that limits Defendant's obligation to perform their contractual duty to provide insurance to Plaintiff.

13. While the policy was in force, Plaintiff sustained losses due to coronavirus.

14. It has been widely reported that the coronavirus is able to live on many different surfaces.

15. It has not been fully ascertained how long the coronavirus is able to live on different surfaces.

16. It has also been widely reported that the coronavirus is able to live in the air for certain periods of time.

17. On March 9, 2020 Ohio's governor issued Executive Order 2020-01D, declaring a state of emergency relating to the safety of its citizens from the effects of the coronavirus.

18. In the above-mentioned Executive Order, Governor DeWine stated that it may be possible to contract the coronavirus through touching a surface or object that has the virus on it, and then subsequently touching their face.

19. The coronavirus can cause direct physical harm and property damage. The virus is physically impacting property in Ohio.

20. As of May 31, 2020 Ohio has 31, 408 cases of the coronavirus and 1,956 people in Ohio have died because of the coronavirus.

21. As of March 15, 2020 Cuyahoga County Ohio has 4,444 cases of coronavirus and has had 226 deaths. Cuyahoga County is one of the most impacted by the coronavirus counties in Ohio.

22. Cuyahoga County is one of the most impacted counties in Ohio from the coronavirus.

23. The coronavirus has caused and continues to cause significant personal property damage to those in Cuyahoga County, including the Plaintiff.

24. Plaintiff suffered damage to its property and equipment from the coronavirus, making it so the business was unable to operate.

25. Because of the property damage caused by the coronavirus, the Plaintiff is entitled to business personal property, business income, and business interruption and extra expense coverage under their insurance policy with Defendant.

COUNT ONE
(Declaratory Judgment)

26. Plaintiff hereby adopts and incorporates as if fully re-written here all the allegations set forth in paragraph 1 through 25 of this Complaint.

27. Plaintiff submitted a timely insurance request to Defendant.

28. Defendant denied that request, stating that Plaintiff's losses were not covered by the policy.

29. Plaintiff contends that these losses are covered by the insurance policy issued by Defendant and therefore entitled to payment by the Defendant.

30. Since there is a dispute about whether or not the losses are covered by the insurance policy issued to Plaintiff by Defendant, Plaintiff is entitled to declaratory relief under Ohio Civil Rule 57, and R.C. §§ 2721.01-.15.

COUNT TWO
(Breach of Contract)

31. Plaintiff hereby adopts and incorporates as if fully re-written here all the allegations set forth in paragraphs 1 through 30 of this Complaint.

32. Plaintiff has performed all required conditions under his insurance policy.

33. Defendant has refused to provide business personal property, business income, and business interruption and extra expense coverage, as required by Plaintiff's insurance policy.

34. By denying such coverage as outlined in their policies, Defendants have breached the insurance contract with the Plaintiff.

35. As a direct and proximate result of Defendant's breach of the insurance policy, Plaintiff has suffered damages in an amount in excess of \$25,000.00, the exact amount to be proven at trial.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that judgment be granted in their favor against Defendants as follows:

1. With respect to Count One: a declaration that, (1) Plaintiff sustained direct physical loss or damage as the result of the coronavirus pandemic; (2) the policy covers the losses sustained by Plaintiff due to the coronavirus; (3) the losses incurred by Plaintiff due to the orders from the government of Ohio are covered losses under the policy; (4) Defendants cannot prove any exclusion or limitation to the coverage; (5) Plaintiff is entitled to recover from under its income protection, extra expense, and contingent business interruption coverage; (6) Plaintiff is entitled to coverage for losses due to the government of Ohio's orders; and (7) Plaintiff shall receive coverage for any future government orders that are substantially similar and that restrict access to Plaintiff's restaurant and property.
2. With respect to Count Two: an amount in excess of \$25,000, the exact amount to be proven at trial.
3. That Plaintiffs be granted the equitable relief sought herein.
4. That the Court award to Plaintiffs the costs and disbursements of the action, along with reasonable attorneys' fees, including fees and expenses.
5. That the Court grant all such other relief as it deems just and proper.

Respectfully submitted,

/s/ Bruce Taubman

Bruce Taubman

Attorney for Plaintiffs

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Attorney for Plaintiff

JURY DEMAND

A trial by jury is hereby demanded on all issues of the within action.

/s/ Bruce Taubman

Bruce Taubman

Attorney for Plaintiff