

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

EKRAMULLAH DHARAMSI d/b/a
PYRAMID CLEANERS, AMINMOHAMED
DHARAMSI d/b/a SOUTHERN CLEANERS
and NORTEZ INV. INC.

Plaintiffs,

v.

NATIONWIDE MUTUAL INSURANCE
COMPANY,

Defendant.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs Ekramullah Dharamsi d/b/a Pyramid Cleaners, Aminmohamed Dharamsi d/b/a Southern Cleaners and Nortez Inv. Inc. (“Plaintiffs”) bring this Complaint, alleging relief against Defendant Nationwide Mutual Insurance Company and aver as follows:

NATURE OF THE CASE

1. This is a civil action seeking declaratory relief arising from Plaintiffs’ contract of insurance with Defendant.
2. In light of the global coronavirus disease 2019 (“COVID-19”) pandemic and state and local government orders (“Civil Authority Orders”) mandating that all non-essential in-store businesses must shut down on March 28, 2020, Plaintiffs’ dry-cleaning businesses have suffered business loss.
3. Plaintiffs’ insurance policy provides coverage for all non-excluded business losses, and thus provide coverage here.
4. As a result, Plaintiffs are entitled to declaratory relief that its business is covered for all business losses that have been incurred in an amount greater than \$150,000.00.

JURISDICTION

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332. There is complete diversity of citizenship between Plaintiffs, Texas citizens with their principal places of business in Texas, and Defendant, who is incorporated in Ohio with its principal place of business and headquarters in Ohio. Further, the amount in controversy necessary for diversity jurisdiction over a declaratory judgment action is measured by the value of the alleged business losses. *Id.* § 1332(a). Plaintiffs have each suffered business losses in an amount greater than \$150,000.00.
6. This Court has personal jurisdiction over Defendant Nationwide. Defendant's headquarters and principal place of business are located within the State of Ohio. Defendant is subject to general personal jurisdiction of this Court.
7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1) because Defendant is a resident of this District, because Defendant transacts business in this District and because a substantial part of the events giving rise to this claim, including drafting of Defendant's insurance policy language, occurred in this District.

PARTIES

8. Plaintiff Ekramullah Dharamsi owns and operates a dry-cleaning business in the State of Texas. Plaintiff's principal place of business is at 3220 Gus Thomasson Rd, Mesquite, TX ("Mesquite Insured Property"). Plaintiff Ekramullah Dharamsi is a citizen of Texas.
9. Defendant Nationwide is an insurance carrier that provides business interruption insurance to Plaintiffs. Nationwide is headquartered at One Nationwide Plaza, Columbus, OH 43215. Defendant is a citizen of Ohio.

10. At all relevant times, Defendant issued an insurance policy to Plaintiff, Ekramullah Dharamsi (policy number ACP BPSM 5575896375) that includes coverage for business interruption losses incurred by Plaintiffs from November 12, 2019 through November 12, 2020 (“Policy”). *See* Declaration, attached hereto as Exhibit 1.
11. Plaintiff, Aminmohamed Dharamsi d/b/a Southern Cleaners’ property is covered under the Policy at its dry-cleaning location located at 5637 Military Parkway, Dallas, Texas 75227 (“Dallas Insured Property”). Plaintiff, Aminmohamed Dharamsi is a citizen of Texas. Southern Cleaners is covered under the Policy.
12. Plaintiff, Nortez Inv. Inc. is a company whose principal place of business is in Texas. Nortez Inv. Inc. is a citizen of Texas. Nortez Inv. Inc. operates a dry-cleaning business at 6032 Broadway Blvd., Garland, Texas 75043 (“Garland Insured Property”). Nortez Inv. Inc. is covered under the Policy.
13. The Policy, currently in full effect, includes coverage for, among other things, business personal property, business income, special business income, and professional business income loss.
14. Plaintiffs submitted a claim for a date of loss of pursuant to its policy. On June 2, 2020, Defendant rejected Plaintiffs’ coverage finding that the Civil Authority Coverage did not apply because Plaintiffs did not suffer damage to its property. Defendant also denied coverage under the Business Interruption because of lack of damage to the property. Finally, Defendant rejected coverage because of its Virus Exclusion Clause.

FACTUAL BACKGROUND

I. Insurance Coverage

15. Plaintiffs faithfully paid policy premiums to Defendant, specifically to provide, among other things, additional coverages in the event of business interruption or closures by order of Civil Authority and for business loss for property damage.
16. The terms of the Policy explicitly provide for insurance coverage for actual loss of business income Plaintiffs sustains, along with any actual, necessary and reasonable extra expenses incurred, when access to all of the Insured Properties is specifically prohibited by order of civil authority. This additional coverage is identified as coverage under “Civil Authority.”
17. The Policy is an all-risk policy, insofar as it provides that covered causes of loss under the Policy provides coverage for all covered losses, including but not limited to direct physical loss and/or direct physical damage, unless a loss is specifically excluded or limited in the Policy.
18. The Policy also provides coverage for damages resulting from business interruption when there is property damage.
19. Based on information and belief, Defendant has accepted Plaintiffs’ policy premiums with no intention of providing any coverage for business losses or the Civil Authority extension due to a loss and shutdown and property damage.

II. The Coronavirus Pandemic

20. The scientific community, and those personally affected by the virus, recognize COVID-19 as a cause of real physical loss and damage. It is clear that contamination of all of the Insured Properties would be a direct physical loss requiring remediation to clean the premises and all related equipment.

21. On information and belief, the virus that causes COVID-19 remains stable and transmittable in airborne aerosols for up to three hours, up to four hours on copper, up to 24 hours on cardboard and up to two to three days on plastic and stainless steel. *See* <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (last visited April 9, 2020).
22. The CDC has issued a guidance recommending that gatherings of more than 10 people must not occur. People in congregate environments, which are places where people live, eat, and sleep in proximity, face increased danger of contracting COVID-19.
23. The global COVID-19 pandemic is exacerbated by the fact that the deadly virus physically infects and stays on surfaces of objects or materials, “fomites,” for up to twenty-eight (28) days.
24. China, Italy, France, and Spain have implemented procedures requiring the cleaning and fumigating of public areas prior to allowing them to re-open publicly due to the intrusion of microbials.

III. Civil Authority

25. On March 13, 2020, the State of Texas issued a State of Emergency as a result of the COVID-19 pandemic.
26. On March 19, 2020 the State of Texas issued an order recommending avoiding crowds in excess of 10 people. The order also closed all non-essential businesses. The staffing for other businesses was limited to essential employees who could not work remotely.
27. On March 22, 2020, Dallas County issued a shelter in place order. The order states all residents must stay in their residence except to perform essential activities or essential services.

28. On March 31, 2020 the State of Texas issued an order that no one was entitled to leave their house except for essential activities as a result of COVID-19. The order defined laundromats, dry cleaners, and laundry service providers as essential retail.
29. Plaintiff Ekramullah Dharamsi learned that employees of his business were in contact with an individual who contracted the coronavirus. As Plaintiffs recognized “[t]he COVID-19 virus causes property loss or damage due to its ability to attach to surfaces for prolonged periods of time.” Therefore, in good conscience and with respect to his employees and his customers, Plaintiff was unable to operate the business because it was necessary to quarantine his employees.
30. Plaintiff, Ekramullah Dharamsi was no longer able to provide dry cleaning services to Plaintiff, Nortez Inv. Inc. and Aminmohamed Dharamsi. Plaintiffs, Nortez Inv. Inc. and Aminmohamed Dharamsi utilize Plaintiff Dharamsi’s business to dry clean their customers’ clothes. When Plaintiff, Ekramullah Dharamsi was no longer capable of doing so, Plaintiffs, Nortez Inv. Inc. and Aminmohamed Dharamsi were no longer able to perform dry-cleaning operations to their customers.
31. Plaintiffs reopened their businesses on May 5, 2020.
32. Further, on April 10, 2020, President Trump seemed to support insurance coverage for business loss like that suffered by the Plaintiffs.

REPORTER: Mr. President may I ask you about credit and debt as well. Many American individuals, families, have had to tap their credit cards during this period. And businesses have had to draw down their credit lines. Are you concerned Mr. President that that may hobble the U.S. economy, all that debt number one? And number two, would you suggest to credit card companies to reduce their fees during this time?

PRESIDENT TRUMP: Well it’s something that we’ve already suggested, we’re talking to them. ***Business interruption insurance***, I’d like to see these insurance companies—you know you have

people that have paid. When I was in private, I had business interruption. When my business was interrupted through a hurricane or whatever it may be, I'd have business where I had it, I didn't always have it, sometimes I had it, sometimes, I had a lot of different companies. *But if I had it I'd expect to be paid.* You have people. I speak mostly to the restaurateurs, where they have a restaurant, they've been paying for 25, 30, 35 years, business interruption. They've never needed it. All of a sudden they need it. And I'm very good at reading language. I did very well in these subjects, OK. And I don't see the word pandemic mentioned. Now in some cases it is, it's an exclusion. But in a lot of cases I don't see it. I don't see it referenced. And they don't want to pay up. I would like to see the insurance companies pay if they need to pay, if it's fair. And they know what's fair, and I know what's fair, I can tell you very quickly. But business interruption insurance, that's getting a lot of money to a lot of people. And they've been paying for years, sometimes they just started paying, but you have people that have never asked for business interruption insurance, and they've been paying a lot of money for a lot of years for the privilege of having it, and then when they finally need it, the insurance company says 'we're not going to give it.' We can't let that happen.

<https://youtu.be/cMeG5C9TjU> (last visited on April 17, 2020) (emphasis added).

33. The President is articulating a few core points:

- a. Business interruption is a common type of insurance.
- b. Businesses pay in premiums for this coverage and should reasonably expect they'll receive the benefit of the coverage.
- c. The COVID-19 pandemic should be covered unless there is a specific exclusion for "pandemics."
- d. If insurers deny business loss coverage due to the COVID-19 pandemic, they would be acting in bad faith.

34. The Government Authority Orders and proclamations, as they relate to the closure of all "non-life- sustaining businesses," evidence an awareness on the part of both state and local governments that COVID-19 causes damage to property. This is particularly true for businesses such as Plaintiffs', where customer or client interaction and personal contact results in a heightened risk of the property becoming contaminated.

IV. Impact on Plaintiffs

35. Plaintiff, Ekramullah Dharamsi was required to shut his doors and cease operation of his dry-cleaning business at Mesquite Insured Property because of the impact of the coronavirus.
36. Initially, Plaintiff, Ekramullah Dharamsi's business loss occurred when Dallas County issued its March 22, 2020 Shelter-In-Place Order, directing all "non-essential" businesses to cease operations at physical locations and prohibiting the gatherings of "non-essential" individuals. Plaintiffs suffered a sharp decline in customers requiring dry-cleaning because the customers were impacted by the stay at home orders.
37. Second, On March 25, 2020, Plaintiffs learned that employees of the business were in contact with an individual who contracted the coronavirus. Therefore, on March 28, 2020 in good conscience and with respect to their employees and customers, Plaintiffs were unable to operate the business because it was necessary to quarantine his employees.
38. Plaintiffs, Nortez Inv. Inc. and Aminmohamed Dharamsi were unable to dry clean their customers clothes because they relied on Ekramullah Dharamsi to perform that function.
39. Plaintiffs suffered business loss when one of his employees came into contact with an individual who had the coronavirus. Plaintiffs' business is not a closed environment, and people – staff, customers, community members, and others – constantly cycle in and out of the business. Accordingly, there was an ever-present risk that the Mesquite Insured Property was contaminated and would continue to be contaminated. Plaintiffs was not able to reopen his business until May 5, 2020.

40. Businesses like the Plaintiffs' dry-cleaning business is also more susceptible to being or becoming contaminated, as both respiratory droplets and fomites are more likely to be retained on the Insured Properties and remain viable for far longer.
41. Plaintiffs' business is also highly susceptible to rapid person-to-property transmission of the COVID-19 virus, and vice-versa, because the service nature of the business places staff and customers in close proximity to business property and to one another and because the nature of the school's activities results in high level of respiratory droplets and fomites being released into the business property's air.
42. The virus is physically impacting Plaintiffs. Any effort by Defendant to deny the reality that the virus has caused Plaintiffs physical loss and damage would constitute a false and potentially fraudulent misrepresentation that could endanger Plaintiffs and the public.
43. A declaratory judgment determining that the coverage provided under the Policy exists and is necessary so as to prevent Plaintiffs from being left without bargained-for insurance coverage required to ensure the survival of the business during and after the shutdown of the business caused by the Civil Authority Orders. As a result of these Orders, Plaintiffs have incurred, and continues to incur, among other things, a substantial loss of business income and additional expenses, which losses are covered under the terms of the Policy.

CAUSE OF ACTION

DECLARATORY RELIEF

44. Plaintiffs reallege and incorporates by reference into this cause of action each allegation set forth in each and every paragraph of this Complaint.

45. The Declaratory Judgment Act, 28 U.S.C. § 2201(a), provides that in “a case of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.” 28 U.S.C. § 2201(a).

46. An actual controversy has arisen between Plaintiffs and Defendant as to the rights, duties, responsibilities and obligations of the parties under the terms of the Policy in that Plaintiffs contends, and on information and belief, Defendant dispute and deny, that:

- a. The Civil Authority Orders constitute a prohibition of access to Plaintiffs’ Insured Properties;
- b. The prohibition of access by the Orders has specifically prohibited access as defined in the Policy;
- c. The Policy’s Exclusion of Loss Due to Virus or Bacteria does not apply to the business losses incurred by Plaintiffs here that are proximately caused by the Civil Authority Orders issued in response to the COVID-19 pandemic.
- d. The Orders trigger coverage under the terms of the Policy;
- e. The Policy provides coverage to Plaintiffs for any current and future civil authority closures of its business in Texas due to physical loss\or damage directly or indirectly from the COVID-19 under the Civil Authority coverage parameters;
- f. The Policy provides business income coverage in the event that COVID-19 has directly or indirectly caused a loss or damage at the insured premises or immediate area of the Insured Properties; and
- g. Resolution of the duties, responsibilities and obligation of the parties is necessary as no adequate remedy at law exists and a declaration of the Court is needed to resolve the dispute and controversy.

47. Plaintiffs seek a Declaratory Judgment to determine whether the Orders constitute a prohibition of access to Plaintiffs’ Insured Properties as Civil Authority as defined in the Policy.

48. Plaintiffs further seek a Declaratory Judgment to affirm that the Order triggers coverage.

49. Plaintiffs further seek a Declaratory Judgment to affirm that the Policy provides coverage to Plaintiffs for any current and future loss of Business Income sustained and any Extra Expense incurred as a result of Civil Authority orders requiring closures of insured businesses property in the State of Texas due to physical loss or damage caused by COVID-19.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs herein prays as follows:

- a. For a declaration that the Civil Authority Orders constitute a prohibition of access to Plaintiffs' Insured Properties.
- b. For a declaration that the prohibition of access by the Civil Authority Orders constitutes they type of prohibited access as defined in the Policy.
- c. For a declaration that the Civil Authority Orders trigger coverage under the Policy.
- d. For a declaration that the Policy provides coverage to Plaintiffs for any current, future and continued Civil Authority closures of its businesses in Texas due to physical loss or damage directly or indirectly from COVID-19 under the Civil Authority coverage parameters.
- e. For a declaration that the Policy provides business income coverage in the event that COVID-19 has directly or indirectly caused a loss or damage at the Plaintiffs' Insured Properties or the immediate area of the Plaintiffs' Insured Properties.
- f. For such other relief as the Court may deem proper.

TRIAL BY JURY IS DEMANDED

Plaintiffs hereby demands trial by jury.

Dated: June 10, 2020

Respectfully submitted,

/s/ Andrew S. Baker

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