

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

ADORN BARBER & BEAUTY LLC,

Plaintiff(s),

v.

THE HARTFORD and TWIN CITY FIRE  
INSURANCE COMPANY

Defendants.

**COMPLAINT FOR INJUNCTIVE  
AND OTHER RELIEF**

**JURY TRIAL DEMANDED**

**Civil Action No. 3:20-cv-418**

Plaintiff, Adorn Barber & Beauty LLC (hereinafter “Adorn” or “Plaintiff”), brings this Complaint against Defendants, The Hartford (Hartford) and Twin City Fire Insurance Company (Twin City) and alleges as follows:

**NATURE OF THE CASE**

1. This is a civil action seeking declaratory relief arising from Plaintiff’s contract of insurance with Defendants.
2. In light of the Coronavirus global pandemic and state and local orders mandating that all non-essential in-store businesses must shut down, and the suffering of physical harm and impact and damages, within Plaintiff’s business premises and/or within the immediate area surrounding and outside its business premises, Plaintiff shut the doors of his business to customers on March 24, 2020.
3. Plaintiff’s insurance policy provides coverage for all non-excluded business losses and thus provides coverage here.
4. As a result, Plaintiff is entitled to declaratory relief that its business is covered for all business losses that have been suffered and sustained, which losses are 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 because there is complete diversity of citizenship between Plaintiff and Defendants. Plaintiff is a salon in Virginia and a citizen of Virginia. Defendants are Connecticut corporations with its principal place of business in Connecticut. Further, Plaintiff has suffered business losses in an amount greater than \$150,000.00. The amount in controversy necessary for diversity jurisdiction over a declaratory judgment action is measured by the value of those business losses. *Id.* § 1332(a).

6. The Court has personal jurisdiction over Defendants because at all relevant times it engaged in substantial business activities in the Commonwealth of Virginia. At all relevant times, Defendants transacted, solicited, and conducted business in Virginia through its employees, agents, and/or sales representatives, and derived substantial revenue from such business in Virginia.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a) because a substantial portion of the wrongful acts upon which this lawsuit is based occurred in this District. Venue is also proper pursuant to 28 U.S.C. § 1391(c) because Defendants are corporations that have substantial, systematic, and continuous contacts in the Commonwealth of Virginia, and as a result is subject to personal jurisdiction in this District.

8. The acts and/or omissions complained of took place, in whole or in part, within the venue of this Court.

### **PARTIES**

9. Plaintiff Adorn operates, manages and owns a hair salon – Adorn Barber & Beauty – located at 2019 East Virginia Street, Unit B, Petersburg, VA 23803 (“Insured Property”). Adorn is a company with its principle place of business in Virginia. Plaintiff is a limited liability company owned by Whitney Thomas and Michael White who are citizens of Virginia.

10. Defendant Hartford is an insurer whose principal place of business is Connecticut. Hartford is headquartered at One Hartford Plaza, Hartford, CT 60115. Defendant is a citizen of Connecticut.

11. Defendant Twin City is an insurer who is a wholly owned subsidiary of Hartford, whose principal place of business is Connecticut. Twin City is headquartered at One Hartford Plaza, Hartford, CT 60115. Defendant is a citizen of Connecticut.

12. At all relevant times, Defendant Hartford and Twin City are corporations doing business in the Commonwealth of Virginia. Defendants issued an insurance policy numbered 65 SBA AA3524 to Plaintiff for the period March 1, 2020, to March 1, 2021. *See* Policy and Declaration, attached hereto as Exhibit 1. Defendants transact the business of insurance in the Commonwealth of Virginia and within the Independent City of Petersburg, and the basis of this suit arises out of such conduct.

## **FACTUAL BACKGROUND**

### **I. Insurance Coverage**

13. Defendants entered into a contract of insurance with Plaintiff, whereby Plaintiff agreed to make payments to Defendants in exchange for Defendants' promise to indemnify Plaintiff for losses including, but not limited to, business income losses at Plaintiff's Insured Property.

14. The Insured Property is covered under a policy issued by Defendants. *See* Ex. 1 (hereinafter "Policy").

15. The Policy provides, among other things property, business personal property, business income and extra expense, contamination coverage, and additional coverages.

16. Plaintiff faithfully paid policy premiums to Defendants, specifically to provide, among other things, additional coverages in the event of business interruption or closures for a variety of reasons, including by order of Civil Authority.

17. Under the Policy, business interruption insurance coverage is extended to apply to, inter alia, the actual loss of business income sustained and the actual, necessary and reasonable extra expenses incurred.

18. The Policy is an all-risk policy, insofar as it provides that covered causes of loss under the policy means direct physical loss or direct physical damage unless the loss is specifically excluded or limited in the Policy.

19. Based on information and belief, Defendants have accepted the policy premiums with no intention of providing any coverage for business losses or the Civil Authority extension due to a loss and shutdown from a virus pandemic. Plaintiff contacted its insurance agent about making a claim under the policy and was told that Defendants would reject the claim.

## **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 the Insured Property would be a direct physical loss requiring remediation to clean the surfaces of the offices and retail store constituting the Insured Property.

21. The virus that causes COVID-19 remains stable and transmittable in 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 that gatherings of more than 10 people must not occur. People in congregate environments, which are places where people live, eat, and sleep in Adorn proximity, face increased danger of contracting COVID-19.

23. The global Coronavirus pandemic<sup>1</sup> 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 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 12, 2020, Virginia Governor Ralph Northam declared a State of Emergency, the first formal recognition of an emergency situation in the Commonwealth as a result of COVID-19. See Exhibit 2.

26. On March 23, 2020, Governor Northam issued Order 53, requiring all non-essential businesses in Commonwealth to cease operations and close all physical locations. Businesses that were to close explicitly included, “Beauty salons, barber shops, spas, massage parlors, tanning salons, tattoo shops, and any other location where personal care or personal grooming services are performed that would not allow compliance with social distancing guidelines to remain six feet apart.” See Exhibit 3.

27. Governor Northam further ordered on March 30, 2020, that “[a]ll individuals in Virginia shall remain at their place of residence,” except for certain, life-sustaining activities such as purchasing food. See Exhibit 4.

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<sup>1</sup> On March 11, 2020 the World Health Organization (“WHO”) made the assessment that COVID-19 shall be characterized as a pandemic. See <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

28. On May 4, 2020, Governor Northam extended the March 23, 2020 Temporary Restrictions on Businesses until May 14. *See* Exhibit 5.

29. Further, on April 10, 2020, President Trump seemed to support insurance coverage for business loss like that suffered by the Plaintiff:

REPORTER: Mr. President may I ask you about credit and debt as well. Many Hartford individuals, families, have had to tap their credit cards during this period of time. And businesses have had to draw down their credit lines. Are you concerned Mr. President that that may hobble the U.S. economy, all of 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 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).]

30. The President is articulating a few core points:

- a. Business interruption is a common type of insurance. It applies to a variety of business establishments, including hair salons as the Plaintiff's.
- b. Businesses pay in premiums for this coverage and should reasonably expect they'll receive the benefit of the coverage.
- c. This pandemic should be covered unless there is a specific exclusion for pandemics.
- d. If insurers deny coverage, they would be acting in bad faith.

31. These Orders, as they relate to the closure of all non-essential businesses, evidence an awareness on the part of both state and local governments that COVID-19 causes damage to property. This is particularly true in places where business is conducted, such as Plaintiff's, as the requisite contact and interaction causes a heightened risk of the property becoming contaminated.

#### **IV. Impact to Plaintiff**

32. As a result of the Orders referenced herein, Plaintiff and its building was required to suspend and shut its business to customers as of March 24, 2020.

33. As a further direct and proximate result of the Orders, Plaintiff has been forced to lay off part-time employees and expects to reduce the salaries of full-time employees.

34. Plaintiff's business is not a closed environment, and because people – staff, customers, family of customers, community members, and others – constantly cycle in and out of the building, there is an ever-present risk that the Insured Property are contaminated and would continue to be contaminated.

35. A hair salon that exists in a building, like Plaintiff's is more susceptible to being or becoming contaminated, as both respiratory droplets and fomites are more likely to be retained on the Insured Property and remain viable for far longer as compared to a facility with open-air ventilation.

36. Plaintiff's business is also highly susceptible to rapid person-to-property transmission of the virus, and vice-versa, because the service nature of the business places staff and customers in close proximity to the property and to one another.

37. The virus is physically impacting the hair salon business. Any effort by Defendants to deny the reality that the virus causes physical loss and damage would constitute a false and potentially fraudulent misrepresentation that could endanger Plaintiff and the public.

38. Plaintiff could not use its property for its intended purpose. Therefore, the novel coronavirus has caused “direct physical loss of or damage to” Plaintiff’s property insured under the policy.

39. A declaratory judgment is necessary that determines that coverage exists under the Policy. Such a declaratory judgment will prevent Plaintiff from being left without vital coverage that was paid for and acquired to ensure the survival of the hair salon business due to the shutdown caused by the civil authorities’ response. As a result of the “shut down” Orders entered by the civil authorities, Plaintiff has incurred, and continues to incur, among other things, a substantial loss of business income and additional expenses covered under the Policy.

### **CAUSE OF ACTION**

### **DECLARATORY RELIEF**

40. Plaintiff re-alleges and incorporates by reference into this cause of action each and every allegation set forth in each and every paragraph of this Complaint.

41. 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); *see also Principal Life Ins. Co. v. Minder*, No. CIV A 08-5899, 2009 WL 1917096 (E.D. Pa. July 1, 2009); *Miller v. Adorn Mut. Grp.*, 97 F. Supp. 2d 672 (W.D. Pa. 2000).

42. An actual controversy has arisen between Plaintiff and Defendants as to the rights, duties, responsibilities and obligations of the parties under the Policy in that Plaintiff contends and, on information and belief, Defendants dispute and denies, *inter alia*, that:

- a. The Orders constitute a prohibition of access to Plaintiff's Insured Property;
- b. The prohibition of access by the Orders has specifically prohibited access as defined in the Policy;
- c. The Orders trigger coverage;
- d. The Policy provides coverage to Plaintiff for any current and future closures in Clark County due to physical loss or damage directly or indirectly from the Coronavirus and/or pandemic circumstance under the Civil Authority coverage parameters;
- e. The Policy provides business income coverage in the event that Coronavirus has directly or indirectly caused a loss or damage at the insured premises or immediate area of the Insured Property;
- f. A pandemic triggers coverage under the Policy; and
- g. Resolution of the duties, responsibilities and obligation of the parties is necessary as no adequate remedy at law exists and a Plaintiff seeks a Declaratory Judgment to determine whether the Orders constitute a prohibition of access to Plaintiff's Insured Property.

43. Plaintiff further seeks a Declaratory Judgment to affirm that the Orders trigger coverage.

44. Plaintiff further seeks a Declaratory Judgment to affirm that the Policy provides coverage to Plaintiff for any current and future closures of businesses such as Plaintiff's due to physical loss or damage from the Coronavirus and/or the pandemic and the policy provides business income coverage in the event that Coronavirus has caused a loss or damage at the Insured Property.

45. Plaintiff does not seek any determination of whether the Coronavirus is physically in or at the Insured Property, amount of damages, or any other remedy other than declaratory relief.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff herein prays as follows:



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