

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

COZZINI BROS., INC.,

Plaintiff,

v.

**THE CINCINNATI INSURANCE
COMPANY, INC.,**

Defendant.

Case No. 20-cv-04274

Jury Trial Demanded

COMPLAINT

Plaintiff Cozzini Bros., Inc. states as follows for its complaint against Defendant The Cincinnati Insurance Company, Inc.:

INTRODUCTION

1. This is a breach of contract action brought by Plaintiff Cozzini Bros., Inc. (“Cozzini Bros.” or “Plaintiff”), against its insurer Defendant Cincinnati Insurance Company, Inc. (“Cincinnati Insurance” or “Defendant”), related to Cincinnati Insurance’s failure to provide coverage for Cozzini Bros.’ business interruption losses described herein.

PARTIES

2. Cozzini Bros. is an Illinois corporation with its principal place of business in Des Plaines, Illinois. Cozzini Bros. operates a cutlery service business that began in 1905. As part of its business, Cozzini Bros. rents and sharpens knives and other blades for various businesses, including restaurants, grocery stores and supermarkets, and commercial kitchens, and sells other

commercial kitchen equipment. Cozzini Bros. has thousands of customers in almost every state in the country.

3. Cincinnati Insurance is an insurance company incorporated and headquartered in Ohio.

JURISDICTION AND VENUE

4. This Court has diversity jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(1) because the matter in controversy exceeds the sum of \$75,000, exclusive of interests and costs, and there is complete diversity between Cozzini Bros. and Cincinnati Insurance.

5. This Court has personal jurisdiction over Cincinnati Insurance because Cincinnati Insurance purposely availed itself of the privilege of conducting business in the State of Illinois and sold the policies at issue in this lawsuit in Illinois.

6. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) because this is the district where the contract of insurance that gives rise to the complaint was applied for, issued, and delivered.

FACTS

A. Background Regarding the COVID-19 Pandemic

7. SARS-CoV-2 is a coronavirus that is believed to be primarily spread through respiratory droplets and by fomite—objects and surfaces contaminated by such respiratory droplets. Studies have found that SARS-CoV-2 can survive on surfaces for extended periods.

8. The illness caused by SARS-CoV-2 is called “COVID-19.”

9. In or around the beginning of 2020, COVID-19 erupted into a worldwide pandemic and quickly spread across the United States.

10. Subsequently, a majority of U.S. states and many municipalities and localities implemented orders (“Shutdown Orders”) prohibiting and restricting access to various businesses and facilities because of the actual or potential physical presence of COVID-19 at these locations in an effort to stem the spread of COVID-19.

11. While some of these Shutdown Orders allowed restaurants to offer takeout and delivery, most of these Shutdown Orders prohibited restaurants from allowing their customers to enter or occupy their properties.

B. Cozzini Bros. Suffers Losses

12. A number of employees at Cozzini Bros.’ facilities contracted COVID-19.

13. In addition, many of Cozzini Bros.’ customers reported having employees who contracted COVID-19. Those customers potentially exposed Cozzini Bros.’ employees to the virus during their interactions at those customers’ facilities.

14. As a result of the physical presence of the virus at its facilities and its customers’ facilities, Cozzini Bros. incurred costs to slow and prevent the spread of the virus at its business, including the cost of personal protective equipment and the cost to disinfect their property.

15. Because of the physical presence of the virus at these facilities and at their customer’s places of business, the pandemic’s spread throughout the United States and/or the Shutdown Orders, a significant portion of Cozzini Bros.’ customers cancelled, suspended, or decreased the frequency of their knife rental and sharpening services, which in turn has caused Cozzini Bros. to lose millions of dollars in revenue.

16. This loss continues as COVID-19 remains a pandemic and Shutdown Orders continue in effect throughout the country.

C. Cozzini Bros.’ Policy with Cincinnati Insurance Provides Coverage for Its Losses

17. Cincinnati Insurance insures Cozzini Bros. under a policy, Policy No. COP 233 71 23, COA 233 71 23, with an effective date of May 1, 2019 through May 1, 2020 (the “Policy”). A true and correct copy of the Policy is attached as **Exhibit A**. That policy was renewed in May 2020, was in effect at all relevant times described herein, and remains in effect.

18. The Policy is an all-risk policy that provides coverage for commercial output, including business income losses. *Id.* at EK 211 09 06 at p.1 (p. 157 of Exhibit A).

19. The Policy, in relevant parts, states that it covers risks of “direct physical loss or damage unless the loss or damage is limited by ‘terms’ of this Coverage Part, or caused by a peril that is excluded.” *Id.* at EK 100 09 06 at p. 18 (p. 91 of Exhibit A).

20. Cozzini Bros. specifically contracted with Cincinnati Insurance to provide additional coverages for business interruption losses, including lost earnings and extra expenses incurred while access to “Covered Locations” is denied by order of “Civil Authority.” *Id.* at EK 211 09 06 at pp. 1–3 (pp. 157–59 of Exhibit A).

21. The Policy states that Cincinnati Insurance will provide coverage for lost income due to business interruptions—whether total or partial—“caused by direct physical loss or damage from a covered peril to a building or business personal property at ‘covered locations’” and covers “actual loss of net income (net profit or loss before income taxes) that would have been earned or incurred and continuing operating expenses normally earned or incurred by your ‘business’” *Id.* at EK 211 09 06 at p. 1 (p. 157 of Exhibit A).

22. Under the Policy, “Covered Locations” means “any location or premises where you have buildings, structures, or business personal property to which this Coverage Part applies.” *Id.* at EK 100 09 06 p. 4 (p. 77 of Exhibit A).

23. The Policy expands the definition of “Covered Locations” to include “Dependent Locations” which includes Cozzini Bros.’ customers’ facilities. *Id.* at EK 408 08 05 at p. 2 (p. 183 of Exhibit A).

24. The Policy defines business interruption as “the slowdown or cessation of your ‘business’” and “that a part or all of the ‘covered location’ is rendered untenable.” *Id.* at EK 100 09 06 at p. 5 (p. 78 of Exhibit A).

25. The Policy defines “business” as “normal business activities occurring at ‘covered locations’ including the tenantability of ‘covered locations.’” *Id.* at EK 100 09 06 at p. 4 (p. 77 of Exhibit A).

26. The Policy states “[w]e extend your coverage for earnings and extra expense to include loss while access to ‘covered locations’ is specifically denied by an order of civil authority. This order must be an [*sic*] result of loss or damage to property other than at ‘covered locations’ and caused by a covered peril.” *Id.* at EK 211 09 06 at p. 3 (p. 159 of Exhibit A).

27. The additional coverages described herein required Cozzini Bros. to pay additional premiums.

D. Cincinnati Insurance Could Have, But Did Not, Exclude Losses Caused by Viruses Under the Policy

28. The Policy does not exclude coverage for loss caused by viruses.

29. If Cincinnati Insurance had intended to exclude coverage under the Policy for loss due to a virus, it could have included an endorsement to the Policy to that effect.

30. Such endorsements were readily available to Cincinnati Insurance (and to all other insurers in the country) when it wrote the Policy it sold to Cozzini Bros.

31. For example, the Insurance Services Office, Inc. (“ISO”) is a company that provides sample policy language and forms to property and casualty insurers, including Cincinnati Insurance. The Policy includes dozens of forms that are the express copyrighted work of the ISO.

32. In or around 2006, in the wake of the Severe Acute Respiratory Syndrome (“SARS”) pandemic, the ISO drafted a new policy endorsement designed to exclude coverage for losses caused by viruses so that insurers could specifically exclude coverage for losses caused by viral pandemic. *See Exhibit B: ISO Virus Exclusion Publication.*

33. Like COVID-19, SARS was caused by a type of coronavirus.

34. ISO provided written explanations for the motivation and proposed use for its new exclusionary language regarding losses caused by viruses.

35. The ISO specifically stated that

“Disease-causing agents may render a product impure (change its quality or substance), or enable the spread of disease *by their presence on interior building surfaces or the surfaces of personal property*. When disease-causing viral or bacterial contamination occurs, potential claims involve the cost of replacement of property (for example, the milk), cost of decontamination (for example, interior building surfaces), *and business interruption (time element) losses.*”

See id. at p. 2 (emphasis added).

36. Subsequently, many property and casualty insurance companies across the country included an endorsement excluding losses caused by viruses in their insurance policies.

37. Cincinnati Insurance, however, did not include any virus exclusion language or endorsements in the Policy it sold to Cozzini Bros.

E. Cincinnati Insurance Company Wrongfully Denies Coverage for Cozzini Bros.’s Claim

38. While the Policy was in force, Cozzini Bros. sustained, and continues to sustain, losses due to the issues created by the physical spread and/or contamination of COVID-19 at, in, on, and/or around its premises and its customers’ premises.

39. While the Policy was in force, Cozzini Bros. sustained, and continues to sustain, losses due to the COVID-19 pandemic.

40. While the Policy was in force, Cozzini Bros. sustained, and continues to sustain, losses due to the Shutdown Orders.

41. Cozzini Bros.' losses constitute direct physical loss of or damage to covered property under the Policy by frustrating and preventing the normal and intended use of that property and by causing a necessary suspension of normal operations.

42. Cozzini Bros.' losses are covered under the Policy.

43. On or about April 14, 2020, Cozzini Bros. timely notified Cincinnati Insurance of its claim under the Policy, claim number 3542716 (the "Claim"), for its losses described herein.

44. Cozzini Bros. has faithfully and timely paid all premiums—an amount in excess of \$800,000—due on the Policy.

45. Cozzini Bros. has performed all conditions precedent for obtaining coverage under the Policy.

46. Because Cozzini Bros.' losses were covered under the Policy, Cincinnati Insurance was obligated to provide benefits, including compensation for business income losses, to Cozzini Bros.

47. On June 23, 2020, Cincinnati Insurance falsely asserted that the Policy did not provide coverage for Cozzini Bros.' losses and wrongfully denied the Claim in breach of their insurance contract with Cozzini Bros.

48. Cincinnati Insurance's denial of the Claim constitutes a breach of contract that has harmed Cozzini Bros. by depriving Cozzini Bros. of the bargained-for insurance benefits under the Policy to compensate for Cozzini Bros.' lost revenue and increased costs.

COUNT I
Breach of Contract

49. Cozzini Bros. incorporates by reference the averments in Paragraphs 1 through 48 above.

50. The Policy constitutes a valid and enforceable contract between the parties.

51. Cozzini Bros. performed all of its obligations under the Policy.

52. Cincinnati Insurance breached its obligations under the Policy by wrongfully denying the Claim.

53. That breach has harmed and continues to cause Cozzini Bros. damages in an amount to be determined at trial, but which already exceeds \$75,000.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Cozzini Bros., Inc. prays that this Court enter judgment against The Cincinnati Insurance Company, Inc. and in favor of Cozzini Bros., Inc. on its breach of contract claim and award Cozzini Bros., Inc. its damages in an amount up to the policy limits less any applicable deductible, plus prejudgment interest, its costs, and all other relief the Court deems just and proper.

Dated: July 21, 2020

/s/ John M. Owen
One of Plaintiff's Attorneys

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