

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA**

DR. CLARK THOMAS, PC,)
Individually and on behalf of all)
others similarly situated,)

Plaintiff)

v.)

THE CINCINNATI INSURANCE)
COMPANY,)

Defendant.)

Case No. _____

CLASS ACTION

DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT

COMES NOW, Plaintiff Dr. Clark Thomas, P.C. (“Dr. Thomas”), individually and on behalf of all others similarly situated, by and through its attorneys, and files this Class Action Complaint against Defendant The Cincinnati Insurance Company (“Cincinnati”) and alleges as follows:

NATURE OF THE CASE

1. Plaintiff is a dental practice located in Birmingham, Alabama.
2. To protect its dental practice and the income from operation of the dental practice, Plaintiff purchased commercial property insurance coverage from Defendant with policy number ECP 045 80 60 (the “Policy”).
3. Plaintiff brings this class action on behalf of itself and all other dental practices and dentists in the United States that are insured under policies issued by

Cincinnati or one of Cincinnati's affiliates that offer the same or similar Business Income and Extra Expense coverage and/or Civil Authority coverage as the Policy.

4. Among other types of coverage, the Policy protects Plaintiff against a loss of business income due to a suspension of Plaintiff's operations caused by direct physical loss or damage to property. This type of coverage is often referred to as "Business Income" coverage.

5. The Policy also provides "Extra Expense" coverage under which Defendant promised to pay expenses incurred to minimize the suspension of business.

6. Additionally, the Policy provides "Civil Authority" coverage under which Defendant promised to pay for loss of business income caused by the action of a civil authority prohibiting access to the "premises."

7. Plaintiff duly complied with its obligations under the Policy and paid the requisite premiums.

8. Beginning in March 2020, Plaintiff and Class Members were forced to suspend or significantly reduce their business operations due to the global pandemic caused by the severe acute respiratory syndrome coronavirus 2 ("SARS-CoV-2") and the resulting coronavirus disease ("COVID-19").

9. SARS-CoV-2 is a highly transmissible virus that is spread by respiratory droplets and close contact with an infected person. The virus also spreads through contact with contaminated surfaces and aerosolized particles.

10. The resulting disease, COVID-19, caused by SARS-CoV-2 can cause severe symptoms that can lead to hospitalization and death.

11. The presence of SARS-CoV-2 on, at, or around property owned or leased by Plaintiff and Class Members and insured by Defendant has resulted in “direct ‘loss’ to Covered Property” (as that phrase is used in the Policy).

12. Consistent with health concerns posed by the risk of or actual contamination of business property, including medical and dental offices, the Governor of the State of Alabama declared a Public Health Emergency and issued a series of Executive Orders that limited the operations of most businesses, including Plaintiff, and prohibited the provision of any medically unnecessary, non-urgent, or non-emergency procedure or surgery for a period of time.

13. Plaintiff and Class Members have sustained an actual loss of business income due to the suspension and/or reduction in operations caused by the direct physical loss or damage associated with SARS-CoV-2 and/or actions of civil authorities prohibiting access to and occupancy of the Plaintiff’s and Class Members’ premises.

14. Plaintiff and Class Members have also incurred extra expenses to minimize the suspension of operations as a result of the physical loss or damage associated with SARS-CoV-2.

15. Under the Policy, Defendant promised to cover these losses and expenses and is obligated to pay for them; however, despite the direct physical loss to covered property associated with SARS-CoV-2, which caused closures, suspensions, and interruptions of business and a loss of business income, Defendant has uniformly denied coverage under the Business Income, Extra Expense and Civil Authority provisions of the Policies.

PARTIES, JURISDICTION & VENUE

16. Plaintiff is a professional corporation organized under the laws of Alabama, with its principal place of business located at 721 Montclair Rd, Birmingham, AL 35213.

17. Defendant The Cincinnati Insurance Company (“Cincinnati”) is a corporation organized under the laws of Ohio, with its principal place of business at 6200 S. Gilmore Road, Fairfield, Ohio 45014-5141, and regularly conducts business in this district. Cincinnati may be served via its registered agent, Scott Tyra, at 2001 Park Place North, Suite 200, Birmingham, Alabama 35203.

18. At all times material, Defendant engaged in substantial and not isolated activity on a continuous and systematic basis in the State of Alabama, namely by

issuing and selling insurance policies in Alabama and by contracting to insure property located in Alabama.

19. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332 because there is complete diversity between Defendant and at least one member of each class; there are more than one hundred members of each class; and the amount in controversy exceeds \$5,000,000 exclusive of interest and costs. This Court also has subject matter jurisdiction under 28 U.S.C. §§ 2201 and 2202 and is authorized to grant declaratory relief under these statutes. All other factual conditions precedent necessary to empower this Court with subject matter and personal jurisdiction have been satisfied.

20. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because the Defendant is subject to personal jurisdiction in this district, has a registered agent in this district, a substantial part of property that is subject of the action is situated in this district, and a substantial portion of Defendant's conduct that forms the basis of this action occurred in Alabama, including within the boundaries of this district.

21. This Court has personal jurisdiction over the Defendant because Plaintiff's claims arise out of, among other things, the Defendant conducting, engaging in, and/or carrying on business in Alabama; Defendant's maintenance of an office in Alabama; Defendant breaching a contract in this State by failing to

perform acts required by contract to be performed in this State; and Defendant contracting to insure property in Alabama, including but not limited to the premises insured under the Policy. Defendant also purposefully availed itself of the opportunity of conducting activities in the State of Alabama by marketing its insurance policies and services within the State, and intentionally developing relationships with brokers, agents, and customers within the State to insure property within the State, all of which resulted in the policies at issue in this action.

COMMON FACTUAL ALLEGATIONS

A. Relevant Policy Provisions

22. Plaintiff and the Class Members are policyholders of insurance policies issued by Defendant that insure against the loss of business income.

23. Plaintiff's Policy has a policy period of October 1, 2018 to October 1, 2021. The insured property is located at 721 Montclair Rd, Birmingham, AL 35213. A true and correct copy of the Policy is attached to this Complaint as Exhibit "A" and incorporated herein by reference.

24. The Policy is an all-risks insurance policy. In an all-risks insurance policy, all risks of loss are covered unless they are specifically excluded or limited.

25. Consistent with the all-risks nature of the Policy, Defendant specifically agreed to pay for all losses caused by "Covered Causes of Loss," defined as "direct 'loss' unless the 'loss' is excluded or limited in this Coverage Part." In the Policy,

Defendant also promised to pay for losses of business income sustained as a result of perils not excluded under the Policy. Specifically, Defendant promised to pay for losses of business income sustained as a result of a suspension of business operations during the period of restoration.

26. The coverage for loss of business income is often called business interruption insurance. This coverage is specifically provided for in a section of the Policy titled “Business Income and Extra Expense.”

27. Pursuant to this section of the Policy, Defendant promised to pay for “the actual loss of ‘Business Income’ and ‘Rental Value’ you sustain due to the necessary ‘suspension’ of your ‘operations’ during the ‘period of restoration’.”

28. Each of the operative terms of this coverage provision is defined as follows.

29. “Business Income” means the net profit that the business would have earned absent the suspension of operations, plus any continuing normal operating expenses, including payroll:

“Business Income” means the:

- a. Net income (Net Profit or Loss before income taxes) that would have been earned or incurred; and
- b. Continuing normal operating expenses sustained, including payroll.

30. “Suspension” means, among other things, a slowdown or cessation of the insured’s business activities:

“Suspension” means:

- a. The slowdown or cessation of your business activities; and
- b. That a part or all of the “premises” is rendered untenable.

31. “Period of Restoration” means the period of time beginning at the time of direct “loss” and ending on the date when the property is repaired or the date when business is resumed at a new location, whichever is earlier:

“Period of restoration” means the period of time that:

- a. Begins at the time of direct “loss”.
- b. Ends on the earlier of:
 - (1) The date when the property at the “premises” should be repaired, rebuilt, or replaced with reasonable speed and similar quality; or
 - (2) The date when business is resumed at a new permanent location.

32. In addition to promising to pay for loss of business income under the Policy, Defendant also promised to pay for certain necessary “Extra Expense.” “Extra Expense” means expenses that the policyholder incurs to, for example, minimize the suspension of business.

33. The Policy also provides “Civil Authority” coverage. Under this type of coverage, Defendant promised to pay for the loss of business income and extra

expense that the Plaintiffs sustained as a result of “action of civil authority that prohibits access to the ‘premises’”:

(3) Civil Authority

When a Covered Cause of Loss causes damage to property other than Covered Property at a “premises”, we will pay for the actual loss of “Business Income” and necessary Extra Expense you sustain caused by action of civil authority that prohibits access to the “premises”, provided that both of the following apply:

- (a) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage; and
- (b) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

This Civil Authority coverage for “Business Income” will begin immediately after the time of that action and will apply for a period of up to 30 days from the date of that action.

This Civil Authority coverage for Extra Expense will begin immediately after the time of that action and will end:

- 1) 30 consecutive days after the time of that action; or
- 2) When your “Business Income” coverage ends;

whichever is later.

34. This civil authority provision is an independent basis for business interruption coverage. That is, it can be triggered even when the standard business interruption coverage is not.

35. The Policy does not expressly exclude loss or damage resulting from a virus.

36. The insurance industry has long recognized that viruses constitute a risk of physical loss or damage. Accordingly, many carriers include a “virus exclusion” in their property damage policies.

37. In 2006, the Insurance Services Office (“ISO”), which provides policy writing services to insurers, announced the submission of an exclusion of loss “due to disease-causing agents such as viruses and bacteria” to state insurance regulatory bodies.

38. The ISO exclusion language was intended to “state[] that there is no coverage for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.”

39. The actual exclusionary language stated, “We will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.”

40. This exclusion drafted by ISO shows that many policies that purport to cover all risks of direct physical loss or damage likely do not exclude loss or damage caused by a virus; thus, to exclude such loss or damage, a policy needs an express exclusion.

41. Neither this exclusionary language nor any similar language applicable to viruses is in the Policies of the Plaintiff or the Class Members.

B. COVID-19 Pandemic

42. SARS-CoV-2 is virus that causes the disease COVID-19.

43. As of the filing of this Complaint, there have been over 2.4 million confirmed cases of COVID-19 in the United States since approximately mid-January 2020, and there have been over 9.2 million confirmed cases of COVID-19 worldwide since December 2019. Those numbers continue to grow.

44. Because of the high number of cases and the threat posed by COVID-19, the World Health Organization (“WHO”) declared a global health emergency on January 30, 2020.

45. On March 13, 2020, Alabama Governor Kay Ivey declared a State of Emergency for Alabama.

46. On March 13, 2020, President Trump declared a national emergency.

47. According to the Centers for Disease Control (CDC), COVID-19 is transmitted by close contact with a person who has COVID-19, by respiratory

droplets from coughing, sneezing, talking, or breathing or through touching a surface or object that has the virus on it. The virus becomes present on surfaces or objects by the release of respiratory droplets or aerosolized particles from infected humans.

48. Research indicates that COVID-19 can be spread through aerosolized particles that can travel much farther than larger droplets from coughing, sneezing, or talking.

49. Researchers have also found that the SARS-CoV-2 virus can remain viable and infectious in aerosols for hours and on surfaces up to days, depending on the surface.

50. These methods of transmission mean that a person can become infected by being exposed to air containing droplets or aerosols or by touching a contaminated surface. Thus, infected air or surfaces pose a significant risk to the safety of any exposed person.

51. Research also indicates that COVID-19 can be spread by pre-symptomatic and asymptomatic people. In other words, people with COVID-19 may be not be exhibiting symptoms and may not know that they have COVID-19, yet they can still transmit the virus to other people who can then become ill.

52. COVID-19 can lead to serious illness, which can require hospitalization, and death.

53. As of the date of filing, Alabama has over 30,400 cases of COVID-19 and 841 resulting deaths. In Jefferson County, there have been over 2,400 cases of COVID-19 and 118 resulting deaths.

54. There have been over 123,000 deaths in the United States and over 477,000 deaths worldwide due to COVID-19.

C. Claims by Plaintiff and Class Members and Cincinnati's Denial of Coverage

55. The presence of SARS-CoV-2 and the public health emergency it has created has prompted actions by civil authorities throughout the United States ("Civil Authority Actions"), including but not limited to civil authorities with jurisdiction over Plaintiff: City of Birmingham, Jefferson County, and the State of Alabama.

56. On March 13, 2020, the Governor of Alabama, Kay Ivey, declared a public health emergency in response to the appearance of COVID-19 in the State of Alabama. *See* STATE OF EMERGENCY: CORONAVIRUS (COVID-19) (March 13, 2020), *available at* <https://governor.alabama.gov/newsroom/2020/03/state-of-emergency-coronavirus-covid-19/>.

57. Effective March 19, 2020, the State Health Officer of Alabama issued a Statewide Order Suspending Certain Public Gatherings Due to Risk of Infection by COVID-19. This Order delayed all elective dental procedures statewide. *See* ORDER OF THE STATE HEALTH OFFICER SUSPENDING CERTAIN PUBLIC GATHERINGS

DUE TO RISK OF INFECTION BY COVID-19 (March 19, 2020), *available at* <https://alabamapublichealth.gov/legal/assets/order-adph-cov-gatherings-031920.pdf>.

58. On March 27, 2020, the State Health Officer of Alabama issued another Statewide Order Suspending Certain Public Gatherings Due to Risk of Infection by COVID-19. This Order postponed until further notice all dental procedures with the exception of procedures necessary to treat an emergency medical condition. *See* ORDER OF THE STATE HEALTH OFFICER SUSPENDING CERTAIN PUBLIC GATHERINGS DUE TO RISK OF INFECTION BY COVID-19 (March 27, 2020), *available at* <https://alabamapublichealth.gov/legal/assets/order-socialdistancing-signed-032720.pdf>.

59. On March 24, 2020, the City of Birmingham issued Ordinance No. 20-48 establishing a “Shelter in Place Order.” Among other things, this Order required businesses within the City of Birmingham to comply with the Order of the Jefferson County Health Officer, requiring the closure of all non-essential businesses, including dental practices. Ordinance No. 20-48 was expressly issued in response to “an emergency of unprecedented size resulting from the natural cause of community spread of a novel human coronavirus disease, COVID-19, [having] occurred in the City of Birmingham.” *See* ORDINANCE NO. 20-48, *available at* <https://www.birminghamal.gov/wp-content/uploads/2020/03/2020.3.24.City-of->

Birmingham.Shelter-In-Place-Ordinance.pdf. Section 1(c) of the Ordinance specifically states:

All public and private gatherings of 10 or more persons or of any size where a consistent distance of at least six feet cannot be maintained are prohibited, except as to those exempted activities further provided in this ordinance. This provision does not apply to gatherings within a single household or living unit.

Id. at p. 3.

60. On April 3, 2020, the State Health Officer signed an Order Suspending Certain Public Gatherings Due to Risk of Infection by COVID-19, as Amended, ordering every person in the State of Alabama “to stay at his or her place of residence except as necessary to perform . . . ‘essential activities’” *See* ORDER OF THE STATE HEALTH OFFICER SUSPENDING CERTAIN PUBLIC GATHERINGS DUE TO RISK OF INFECTION BY COVID-19 (April 3, 2020), *available at* https://governor.alabama.gov/assets/2020/04/2020_04_03_20-Revised-SOE.pdf.

61. In response to the State Health Officer’s April 3, 2020 Order, the City of Birmingham amended its March 24, 2020 “Shelter In Place Order” (Ordinance No. 20-50) to continue through April 30, 2020. *See* ORDINANCE NO. 20-50 (April 3, 2020), *available at* <https://www.birminghamal.gov/wp-content/uploads/2020/04/Shelter-in-Place-Ordinance-Amended-20-50.pdf>.

62. Because of the spread of COVID-19 and the related health risks, Plaintiff and Class Members closed, suspended, or substantially reduced their operations.

63. Due to COVID-19's highly transmissible nature and its transmission by pre-symptomatic and asymptomatic people, Plaintiff and Class Members likely had, and, but for closing or suspending their operations, certainly would have had, employees or customers who were infected with COVID-19 at their premises.

64. Because COVID-19 can be transmitted through respiratory droplets, close contact, contaminated surfaces, and, likely, aerosolized particles, the physical surfaces and air within Plaintiff and Class Members' insured property likely became contaminated, and, but for closing or suspending their operations, certainly would have become contaminated, with SARS-CoV-2—making the insured property unsafe for occupancy or use by employees or members of the public.

65. As a result, Plaintiff and Class Members lost the ability to use their insured property because of the physical presence of SARS-CoV-2 and the health risks that its presence poses to anyone at or around the premises.

66. The health risks were even more pronounced in March and April 2020 because of a lack of information about the rate of infection and proper treatment methods, an insufficient supply of tests, and a potential for hospitals and other health care facilities to be overwhelmed by COVID-19 patients.

67. There has been a direct physical loss of and/or damage to the covered premises under the Policy by, among other things, damaging the property, denying access to the property, preventing customers from physically occupying the property, causing the property to be physically uninhabitable by customers, causing its function to be nearly eliminated or destroyed, and/or causing a suspension of business operations on the premises.

68. Following their shutdowns or reduced operations, Plaintiff and some Class Members submitted claims to Defendant for the physical loss, including the loss of use, of their property and the resulting loss of business income.

69. Defendant denied Plaintiff's claim and, upon information and belief, has denied or will deny the claims of all Class Members.

70. Defendant has uniformly taken the improper position that the "Business Income" and/or "Extra Expense" coverages in the Policies do not cover the losses of its insureds arising from the interruption of operations caused by the direct physical loss of insured property associated with SARS-CoV-2.

71. This decision to deny coverage conflicts with the all-risks nature of the Policies, the absence of any "virus exclusion" in the Policies, and Defendant's acceptance of premiums from Plaintiff and Class Members.

72. Plaintiff and Class Members have suffered significant, and in some instances complete, losses of revenue over a period of time.

73. In addition, before resuming operations at, in almost all instances, reduced capacity due to continued interruptions associated with SARS-CoV-2, Plaintiff and Class Members have incurred and will likely continue to incur significant expenses to make their property safe for use in order to restore and continue operations.

74. Just as Defendant has rejected Plaintiff and Class Members' claims for loss of business income due to the physical loss, including the loss of use, of their insured property, Defendant has also denied all claims for "extra expenses" incurred to avoid or minimize the suspension of operations.

75. Defendant stated in its coverage denial letter to Plaintiff that it found "no evidence of direct physical loss or damage at your premises. Similarly, there is no evidence of damage to property at other locations, precluding coverage for orders of civil authority."

76. Furthermore, Defendant stated that even if there had been a direct physical loss at the premises, there was no covered cause of loss due to the "Pollution Exclusion" in the Policy. A "Pollutant" is defined in the Policy as "any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, asbestos, chemicals, petroleum, petroleum products and petroleum by-products, and waste."

77. In its denial letter to Plaintiff, Defendant characterized the SARS-CoV-2 virus as “a solid irritant or contaminant” that is “generally . . . harmful to people,” and concluded that coverage for any COVID-19 loss is excluded by the Pollution Exclusion.

78. Defendant’s attempt to re-define “virus” to mean “pollution” in the hopes of taking advantage of a Pollution Exclusion shows Defendant’s glaring lack of good faith in refusing to pay the valid claims of its insureds, including Plaintiff and Class Members.

79. None of the exclusions in the Policy, including the Pollution Exclusion, apply to Plaintiff’s or Class Members’ claims.

80. The presence of SARS-CoV-2 caused a direct physical loss or damage to the insured property and resulted in a loss of use and a suspension or interruption of operations that led to a loss of business income.

81.

82.

83. Defendant’s unreasonable denial of Plaintiff’s claim appears to be consistent with the position Defendant has taken nationwide, even though on its website, Defendant publicly represents:

Cincinnati puts the health and safety of our associates, agents and customers at the top of our priorities. That’s why we’ve put our business continuity plans in action, ensuring we do our part to help prevent the spread of COVID-19 while continuing to deliver the outstanding

service you deserve. *We know it's important to keep our business running, ready to serve you and fulfill the promises we've made to you.*

Ready to Serve, THE CINCINNATI INS. COS., available at <https://www.cinfin.com/covid-19> (emphasis added).

CLASS ACTION ALLEGATIONS

84. The class claims all derive directly from a single course of conduct by Defendant: its systematic and uniform refusal to pay insureds for covered losses and the actions taken by civil authorities to suspend business operations.

85. Plaintiff brings this action pursuant to Rules 23(a), 23(b)(1), 23(b)(2), and/or 23(b)(3), as well as 23(c)(4), of the Federal Rules of Civil Procedure, individually and on behalf of all others similarly situated. This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

86. Plaintiff seeks to represent a nationwide class of dental practices and dentists defined as:

- a. All dental practices and dentists with Business Income coverage and/or Extended Business Income coverage under a property insurance policy issued by Defendant that suffered a suspension of business operations and for which Defendant has either actually denied or stated it will deny a claim for the losses or has otherwise failed to acknowledge, accept as

a covered loss, or pay for the covered losses (“the Business Income Coverage Class”).

- b. All dental practices and dentists with Extra Expense coverage under a property insurance policy issued by Defendant that suffered a suspension of business operations and for which Defendant has either actually denied or stated it will deny a claim for the expenses or has otherwise failed to acknowledge, accept as a covered expense, or pay for the covered expenses (“the Extra Expense Coverage Class”).
- c. All dental practices and dentists with Civil Authority coverage under a property insurance policy issued by Defendant that suffered an actual loss of Business Income and/or Extra Expense caused by an action of a civil authority that prohibited access to the premises, and for which Defendant has either actually denied or stated it will deny a claim for the losses or has otherwise failed to acknowledge, accept as a covered loss, or pay for the covered losses (“the Civil Authority Coverage Class”).

87. Excluded from each defined proposed Class are Defendant and any of its members, affiliates, parents, subsidiaries, officers, directors, employees, successors, or assigns; governmental entities; Class Counsel and their employees;

and the judicial officers and Court staff assigned to this case and their immediate family members.

88. Plaintiff reserves the right to modify, expand, or amend the definitions of the proposed Classes, as appropriate, during the course of this litigation.

89. This action has been brought and may properly be maintained on behalf of each Class proposed herein under the criteria of Rule 23 of the Federal Rules of Civil Procedure.

90. **Numerosity.** This action satisfies the requirements of FED. R. CIV. P. 23(a)(1). The members of each proposed Class are so numerous that individual joinder of all Class members is impracticable. There are likely thousands of members of each proposed Class, and these individuals and entities are spread across the United States.

91. **Ascertainability.** The identity of Class Members is ascertainable, as the names and addresses of all Class Members can be identified in Defendant's or its agents' books and records. Class Members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, internet postings, and/or published notice.

92. **Commonality.** This action satisfies the requirements of FED. R. CIV. P. 23(a)(2) and 23(b)(3) because this action involves common questions of law and fact that predominate over any questions affecting only individual Class Members.

Defendant issued all-risks policies to all of the members of each proposed Class in exchange for payment of premiums by Class Members. The questions of law and fact affecting all Class Members include, without limitation, the following:

- a. Whether Plaintiff and Class Members suffered a covered loss under the policies issued to members of the Class;
- b. Whether Defendant wrongfully denied all claims based on the facts set forth herein;
- c. Whether Defendant's business income coverage applies based on the facts set forth herein;
- d. Whether Defendant's civil authority coverage applies based on the facts set forth herein;
- e. Whether Defendant's extra expense coverage applies to efforts to avoid or minimize a loss caused by the suspension of business based on the facts set forth herein;
- f. Whether Defendant breached its contracts of insurance through a uniform and blanket denial of all claims for business losses based on the facts set forth herein;
- g. Whether Plaintiff and Class Members suffered damages as a result of Defendant's actions; and

h. Whether Plaintiff and Class Members are entitled to an award of reasonable attorneys' fees, interest, and costs.

93. **Typicality.** This action satisfies the requirements of FED. R. CIV. P. 23(a)(3) because Plaintiff's claims are typical of the claims of Class Members and arise from the same course of conduct by Defendant. Plaintiff and Class Members are all dental professionals and dental practices that are similarly affected by Defendant's refusal to pay under their property insurance policies. Plaintiff's claims are based upon the same legal theories as those of Class Members. Plaintiff and Class Members sustained damages as a direct and proximate result of the same wrongful practices in which Defendant engaged. The relief Plaintiff seek is typical of the relief sought for the absent Class Members.

94. **Adequacy of Representation.** This action satisfies the requirements of FED. R. CIV. P. 23(a)(4) because Plaintiff will fairly and adequately represent and protect the interests of Class Members. Plaintiff has retained counsel with substantial experience in prosecuting complex class action litigation.

95. Plaintiff and its counsel are committed to vigorously prosecuting this action on behalf of Class Members and have the financial resources to do so. Neither Plaintiff nor their counsel have interests adverse to those of Class Members.

96. **Inconsistent or Varying Adjudications and the Risk of Impediments to Other Class Members' Interests.** This action satisfies the

requirements of FED. R. CIV. P. 23(b)(1). Plaintiff seeks class-wide adjudication as to the interpretation and scope of Defendant's property insurance policies that use the same language and terms as the Policy. The prosecution of separate actions by individual members of the proposed Classes would create an imminent risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendant.

97. Final Injunctive and/or Corresponding Declaratory Relief with Respect to the Classes Is Appropriate. This action satisfies the requirements of FED. R. CIV. P. 23(b)(2) because Defendant acted or refused to act on grounds generally applicable to Plaintiff and the members of the proposed Classes, thereby making appropriate final injunctive and/or corresponding declaratory relief with respect to Class Members. The class claims all derive directly from Defendant's systematic and uniform refusal to pay insureds for losses suffered due to actions taken by civil authorities to suspend or interrupt business operations in response to the COVID-19 pandemic. Defendant's actions, or refusal to act, are grounded upon the same generally applicable legal theories.

98. Superiority. This action satisfies the requirements of FED. R. CIV. P. 23(b)(3) because a class action is superior to other available methods for the fair and efficient group-wide adjudication of this controversy. The common questions of law and fact regarding Defendant's conduct and the interpretation of the common

language in its property insurance policies predominate over any questions affecting only individual Class Members.

99. Because the damages suffered by certain individual Class Members may be relatively small, the expense and burden of individual litigation would make it very difficult for all individual Class Members to redress the wrongs done to each of them individually, such that many Class Members would have no rational economic interest in individually controlling the prosecution of specific actions, and the burden imposed on the judicial system by individual litigation by even a small fraction of the Class would be enormous, making class adjudication the superior alternative under FED. R. CIV. P. 23(b)(3)(A).

100. The conduct of this action as a class action presents far fewer management difficulties, far better conserves judicial resources and the parties' resources, and far more effectively protects the rights of each Class Member than would piecemeal litigation. Compared to the expense, burdens, inconsistencies, economic infeasibility, and inefficiencies of individualized litigation, the challenges of managing this action as a class action are substantially outweighed by the benefits to the legitimate interests of the parties, the Court, and the public of class treatment in this Court, making class adjudication superior to other alternatives, under FED. R. CIV. P. 23(b)(3)(D).

101. Plaintiff is not aware of any obstacles likely to be encountered in the management of this action that would preclude its maintenance as a class action. Rule 23 provides the Court with authority and flexibility to maximize the efficiencies and benefits of the class mechanism and reduce management challenges. The Court may, on motion of Plaintiff or on its own determination, certify nationwide, statewide and/or multistate classes for claims sharing common legal questions; utilize the provisions of Rule 23(c)(4) to certify any particular claims, issues, or common questions of fact or law for class-wide adjudication; certify and adjudicate bellwether class claims; and utilize Rule 23(c)(5) to divide any Class into subclasses.

COUNT I – BREACH OF CONTRACT
(On behalf of the Business Income Coverage Class)

102. Plaintiff incorporates by reference and realleges each and every allegation above as if fully set forth herein.

103. Plaintiff brings this Count both individually and on behalf of the other members of the Business Income Coverage Class.

104. Plaintiff's Policy, as well as the policies of the other Business Income Coverage Class members, are insurance contracts under which Defendant was paid premiums in exchange for promises to pay Plaintiff's and Class Members' losses for claims covered by their policies.

105. In the Policy and other Class Members' policies, Defendant promised to pay for losses of business income incurred as a result of perils not excluded under

their policies. Specifically, Defendant promised to pay for losses of “business income” sustained as a result of a “suspension” of “business operations” during the “period of restoration.”

106. Plaintiff and Class Members suffered a direct physical loss of and damage to Plaintiff’s dental practice and other Class Members’ insured premises as a result of interruptions or suspensions of business operations at these premises. These interruptions and suspensions caused Plaintiff and Class Members to suffer losses of business income.

107. These losses triggered business income coverage under Plaintiff’s Policy and other Class Members’ policies.

108. Plaintiff and the other Class Members have complied with all applicable provisions of their respective policies, including payment of premiums.

109. Defendant, without justification and in bad faith, denied coverage and refused performance under the Policy and other Class Members’ policies by denying coverage for these losses and expenses. Accordingly, Defendant is in breach of the Policy and other Class Members’ policies.

110. As a result of Defendant’s breaches of the Policy and other Class Members’ policies, Plaintiff and Class Members have suffered actual and substantial damages for which Defendant is liable.

WHEREFORE, Plaintiff, both individually and on behalf of the Class Members, seeks compensatory damages resulting from Defendant's breaches of the Policy and other Class Members' policies and seeks all other relief deemed appropriate by this Court.

COUNT II – DECLARATORY JUDGMENT
(On behalf of the Business Income Coverage Class)

111. Plaintiff incorporates by reference and realleges each and every allegation above as if fully set forth herein.

112. Plaintiff brings this Count both individually and on behalf of the other members of the Business Income Coverage Class.

113. Under 28 U.S.C. §§ 2201 & 2202, this Court has jurisdiction to declare the rights and other legal relations of the parties in dispute.

114. Plaintiff's Policy, as well as the policies of other Business Income Coverage Class members, are insurance contracts under which Defendant was paid premiums in exchange for promises to pay Plaintiff's and Class Members' losses for claims covered by their policies.

115. In the Policy and other Class Members' policies, Defendant promised to pay for losses of business income sustained as a result of perils not excluded under their policies. Specifically, Defendant promised to pay for losses of "business income" sustained as a result of a "suspension" of "business operations" during the "period of restoration."

116. Plaintiff and Class Members suffered direct physical loss of and damage to Plaintiff's dental practice and other Class Members' insured premises, resulting in interruptions or suspensions of business operations at their premises. These interruptions and suspensions caused Plaintiff and Class Members to suffer losses of business income.

117. These suspensions and interruptions, and the resulting losses, triggered business income coverage under the Policy and other Class Members' policies.

118. Plaintiff and the other Class Members complied with all applicable provisions of their respective policies, including payment of premiums.

119. Defendant, without justification, disputes that the Policy and other Class Members' policies provides coverage for the losses.

120. Plaintiff seeks a Declaratory Judgment that its Policy and the other Class Members' policies provide coverage for the losses of business income attributable to the facts set forth above.

121. An actual case or controversy exists regarding Plaintiff's and other Class Members' rights and Defendant's obligations to reimburse Plaintiff and other Class Members for the full amount of these losses. Accordingly, the Declaratory Judgment sought is justiciable.

WHEREFORE, Plaintiff, both individually and on behalf of the Class Members, requests that this Court enter a Declaratory Judgment declaring that the

Policy and other Class Members' policies provide coverage for Plaintiff's and Class Members' losses of business income.

COUNT III – BREACH OF CONTRACT
(On behalf of the Extra Expense Coverage Class)

122. Plaintiff incorporates by reference and realleges each and every allegation above as if fully set forth herein.

123. Plaintiff brings this Count both individually and on behalf of the other members of the Extra Expense Coverage Class.

124. Plaintiff's Policy, as well as the policies of the other Extra Expense Coverage Class members, are insurance contracts under which Defendant was paid premiums in exchange for promises to pay Plaintiff's and Class Members' losses for claims covered by their policies.

125. In the Policy and other Class Members' policies, Defendant promised to pay for "Extra Expense[s]" incurred by Plaintiff and other Class Members during the "period of restoration" that the insureds would not have incurred if there had been no loss or damage to the insured premises. These "Extra Expense[s]" include expenses to avoid or minimize the "suspension" of business, continue "operations," and to repair or replace property.

126. Plaintiff and Class Members suffered a direct physical loss of and damage to Plaintiff's dental practice and other Class Members' insured premises, resulting in suspensions and interruptions of business operations at these premises.

These suspensions and interruptions have caused Plaintiff and Class Members to incur “Extra Expense[s].”

127. These expenses triggered the “Extra Expense” coverage under the Policy and other Class Members’ policies.

128. Plaintiff and the other Class Members have complied with all applicable provisions of their respective policies, including payment of premiums.

129. Defendant, without justification and in bad faith, denied coverage and refused performance under the Policy and other Class Members’ policies by denying coverage for these “Extra Expense[s]”. Accordingly, Defendant is in breach of the Policy and other Class Members’ policies.

130. As a result of Defendant’s breaches of the Policy and other Class Members’ policies, Plaintiff and Class Members have suffered actual and substantial damages for which Defendant is liable.

WHEREFORE, Plaintiff, both individually and on behalf of the Class Members, seeks compensatory damages resulting from Defendant’s breaches of the Policy and other Class Members’ policies and seeks all other relief deemed appropriate by this Court.

COUNT IV – DECLARATORY JUDGMENT
(On behalf of the Extra Expense Coverage Class)

131. Plaintiff incorporates by reference and realleges each and every allegation above as if fully set forth herein.

132. Plaintiff brings this Count both individually and on behalf of the other members of the Extra Expense Coverage Class.

133. Under 28 U.S.C. §§ 2201 & 2202, this Court has jurisdiction to declare the rights and other legal relations of the parties in dispute.

134. Plaintiff's Policy, as well as the policies of other Extra Expense Coverage Class members, are insurance contracts under which Defendant was paid premiums in exchange for promises to pay Plaintiff's and Class Members' losses for claims covered by their policies.

135. In the Policy and other Class Members' policies, Defendant promised to pay for "Extra Expense[s]" incurred by Plaintiff and other Class Members during the "period of restoration" that the insureds would not have incurred if there had been no loss or damage to the insured premises. These "Extra Expense[s]" include expenses to avoid or minimize the "suspension" of business, continue "operations," and to repair or replace property.

136. Plaintiff and Class Members suffered direct physical loss of and damage to Plaintiff's dental practice and other Class Members' insured premises, resulting in interruptions or suspensions of business operations at their premises. As a result, Plaintiff and other Class Members have incurred "Extra Expense[s]", as defined in the Policy and other Class Members' policies.

137. These expenses triggered “Extra Expense” coverage under the Policy and other Class Members’ policies.

138. Plaintiff and the other Class Members complied with all applicable provisions of their respective policies, including payment of premiums.

139. Defendant, without justification, disputes that the Policy and other Class Members’ policies provides coverage for the “Extra Expense[s]”.

140. Plaintiff, both individually and on behalf of the other members of the Extra Expense Coverage Class, seeks a Declaratory Judgment that its Policy and the other Extra Expense Coverage Class members’ policies provide coverage for these “Extra Expense[s].”

141. An actual case or controversy exists regarding Plaintiff’s and other Class Members’ rights and Defendant’s obligations under the Policy and Class Members’ policies to reimburse Plaintiff and other Class Members for these “Extra Expense[s].” Accordingly, the Declaratory Judgment sought is justiciable.

WHEREFORE, Plaintiff, both individually and on behalf of the Class Members, requests that this Court enter a Declaratory Judgment declaring that the Policy and other Class Members’ policies provide coverage for Plaintiff’s and Class Members’ “Extra Expense[s].”

COUNT V – BREACH OF CONTRACT
(On behalf of the Civil Authority Coverage Class)

142. Plaintiff incorporates by reference and realleges each and every allegation above as if fully set forth herein.

143. Plaintiff brings this Count both individually and on behalf of the other members of the Civil Authority Coverage Class.

144. Plaintiff's Policy, as well as the policies of the other Civil Authority Coverage Class members, are insurance contracts under which Defendant was paid premiums in exchange for promises to pay Plaintiff's and Class Members' losses and expenses covered by the policies.

145. In the Policy and other Class Members' policies, Defendant promised to pay for losses of business income sustained and extra expenses incurred when a "Covered Cause of Loss" causes damage to property near the insured premises, the civil authority prohibits access to property near the insured premises, and the civil authority action is taken in response to dangerous physical conditions.

146. Plaintiff and Class Members suffered losses and incurred expenses as a result of action of civil authorities that prohibited access to insured premises under the Policy and Class Members' policies.

147. These losses satisfied all requirements to trigger civil authority coverage under the Policy and other Class Members' policies.

148. Plaintiff and the other Class Members have complied with all applicable provisions of their respective policies, including payment of premiums.

149. Defendant, without justification and in bad faith, has denied coverage and refused performance under the Policy and other Class Members' policies by denying coverage for these losses and expenses. Accordingly, Defendant is in breach of the Policy and other Class Members' policies.

150. As a result of Defendant's breaches of the Policy and other Class Members' policies, Plaintiff and Class Members have suffered actual and substantial damages for which Defendant is liable.

WHEREFORE, Plaintiff, both individually and on behalf of the Class Members, seeks compensatory damages resulting from Defendant's breaches of the Policy and other Class Members' policies and seeks all other relief deemed appropriate by this Court.

COUNT VI – DECLARATORY JUDGMENT
(On behalf of the Civil Authority Coverage Class)

151. Plaintiff incorporates by reference and realleges each and every allegation above as if fully set forth herein.

152. Plaintiff brings this Count both individually and on behalf of the other members of the Civil Authority Coverage Class.

153. Under 28 U.S.C. §§ 2201 & 2202, this Court has jurisdiction to declare the rights and other legal relations of the parties in dispute.

154. Plaintiff's Policy, as well as the policies of other Civil Authority Coverage Class members, are insurance contracts under which Defendant was paid premiums in exchange for promises to pay Plaintiff's and Class Members' losses for claims covered by their policies.

155. In the Policy and other Class Members' policies, Defendant promised to pay for losses of business income sustained and extra expenses incurred when, among other things, a "Covered Cause of Loss" causes damage to property near the insured premises, the civil authority prohibits access to property near the insured premises, and the civil authority action is taken in response to dangerous physical conditions.

156. Plaintiff and Class Members suffered losses and incurred expenses as a result of actions of civil authorities that prohibited access to insured premises under the Policy and Class Members' policies.

157. These losses satisfied all requirements to trigger civil authority coverage under the Policy and other Class Members' policies.

158. Plaintiff and the other Class Members complied with all applicable provisions of their respective policies, including payment of premiums.

159. Defendant, without justification, disputes that the Policy and other Class Members' policies provide coverage for these losses.

160. Plaintiff, both individually and on behalf of the other members of the Civil Authority Coverage Class, seeks a Declaratory Judgment that its Policy and the other Civil Authority Coverage Class members' policies provide coverage for the losses that Class Members have sustained and extra expenses they have incurred caused by actions of civil authorities.

161. An actual case or controversy exists regarding Plaintiff's and other Class Members' rights and Defendant's obligations under the Policy and Class Members' policies to reimburse Plaintiff and other Class Members for these losses and extra expenses. Accordingly, the Declaratory Judgment sought is justiciable.

WHEREFORE, Plaintiff, both individually and on behalf of other Class Members, requests that this Court enter a Declaratory Judgment declaring that the Policy and other Class Members' policies provide civil authority coverage for the losses and extra expenses incurred by Plaintiff and Class Members.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in its favor and against Defendant, as follows:

- a. Entering an order certifying the proposed Classes, designating Plaintiff as Class representative, and appointing Plaintiff's undersigned attorneys as Counsel for the Classes;

- b. Entering judgments on Counts I, III, and V (Breach of Contract) in favor of Plaintiff and the members of the Business Income Coverage Class, Extra Expense Coverage Class, and Civil Authority Coverage Class, and awarding damages for breach of contract in an amount to be determined at trial;
- c. Entering declaratory judgments on Counts II, IV, and VI (Declaratory Judgment) in favor of Plaintiff and the members of the Business Income Coverage Class, Extra Expense Coverage Class, and Civil Authority Coverage Class as follows:
 - i. That all business income, civil authority, and extra expense losses and expenses incurred and sustained based on the facts and circumstances set forth above are insured and covered losses and expenses under Plaintiff's Policy and Class Members' policies; and
 - ii. Defendant The Cincinnati Insurance Company is obligated to pay for the full amount of the business income, civil authority, and extra expense losses and expenses sustained and incurred, and to be sustained and incurred, based on the facts and circumstances set forth above.
- d. An order requiring Defendant to pay both pre- and post-judgment interest on any amounts awarded;

- e. An award of costs and attorneys' fees; and
- f. Such other or further relief as may be appropriate.

DEMAND FOR JURY TRIAL

Plaintiff hereby requests a trial by jury of all issues so triable.

Dated: June 24, 2020

/s/ Brannon J. Buck
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