

**Munley Law, P.C.**  
**227 Penn Avenue**  
**Scranton, PA 18503**

STATE STREET RESTAURANT GROUP, INC.  
114 South State Street  
Clarks Summit, PA 18411  
Plaintiffs

MAURI B. KELLY  
CLERK OF JUDICIAL  
RECORDS CIVIL DIVISION

IN THE COURT OF COMMON PLEAS  
OF LACKAWANNA COUNTY

CIVIL ACTION – LAW

v.

THE CINCINNATI INSURANCE  
COMPANIES  
6200 South Gilmore Road  
Fairfield, OH 45014-5141  
KINCEL & COMPANY, INC.  
1100 Dunham Drive  
Dunmore, PA 18512  
Defendants

JURY TRIAL DEMANDED

No. 20-CV-2000

**COMPLAINT**

**NOW** comes Plaintiff, State Street Restaurant Group, LLC, by and through its undersigned counsel Munley Law, P.C., and avers as follows:

**The Parties**

1. Plaintiff State Street Restaurant Group, Inc., (“Plaintiff”) is a limited liability corporation and/or other business entity organized and existing under the laws of the Commonwealth of Pennsylvania with a principal place of business located at 114 South State Street.

2. Defendant, the Cincinnati Insurance Companies (“Defendant Cincinnati”), upon information and belief, is an insurance company licensed to transact business in the Commonwealth of Pennsylvania, is a Ohio corporation, and has an address for doing business at 6200 South Gilmore Road, Fairfield, Ohio 45014-5141.

3. Defendant Kincel & Company, Inc. (“Defendant Kincel & Company”), upon

information and belief, is a Corporation and/or other business entity organized and existing under the laws of the Commonwealth of Pennsylvania with its principal place of business located at 1100 Dunham Drive, Dunmore, Pennsylvania 18512.

4. It is believed and therefore averred that at all times material hereto, Defendant Cincinnati and Defendant Kincel & Company issued a policy of insurance to Plaintiff.

5. It is believed and therefore averred that at all times material hereto, Defendant Kincel & Company was Plaintiff's insurance agent and was responsible for procuring insurance to cover his business premises.

6. At all times pertinent hereto, upon information and belief, there was a business arrangement between Defendant Cincinnati and Defendant Kincel & Company to their mutual pecuniary benefit, the details of which are unknown to the Plaintiff.

7. Upon information and belief, Defendant Kincel & Company was authorized by Defendant Cincinnati to bind coverage and did bind coverage on behalf of Defendant Cincinnati.

8. Upon information and belief, Defendant Kincel & Company was an agent, ostensible agent, servant and/or employee of Defendant Cincinnati.

9. Upon information and belief, it is alleged that Plaintiff sought commercial property insurance from Defendant Kincel & Company.

10. It is believed and averred that Defendant Cincinnati and Defendant Kincel & Company supervised, directed and controlled the activities with respect to the handling of Plaintiff's business interruption claim and formulated guidelines and policies for handling, adjusting, negotiating and paying claims.

11. Defendant Cincinnati is an insurance company, licensed to do business within the Commonwealth of Pennsylvania, and did in fact conduct business, including but not limited to

selling policies, adjusting claims and accepting premiums, and conducting insurance activities in Lackawanna County.

**Background**

12. Plaintiff incorporates by reference the preceding paragraphs above as if same were more fully set forth herein at length.

13. At all times pertinent hereto, Plaintiff owned and/or operated a restaurant and bar named the “State Street Grill” located at 114 South State Street, Clarks Summit, Pennsylvania 18411, which has been forced, by recent orders issued by the Commonwealth of Pennsylvania, to cease its operations—through no fault of its own—as part of the Commonwealth’s efforts to slow the spread of the COVID-19 global pandemic.

14. In exchange for substantial premiums, Defendant Cincinnati and Defendant Kincel & Company sold a commercial property insurance policy, Policy No. ECP 049 60 04 / EBA 049 60 04, effective 7/19/18 to 7/19/21, for the premise located at 114 South State Street, Clarks Summit, Pennsylvania 18411 (“the Policy”). *See* the Policy, attached hereto as “Exhibit A.”

15. The closures mandated by the below orders present an existential threat to small, local businesses that employ hundreds of Pennsylvania residents. To protect its business from situations like these, which threaten its livelihoods based on factors wholly outside of its control, Plaintiff obtained business interruption insurance from Defendants. In blatant breach of its insurance obligations that it voluntarily undertook in exchange for Plaintiff’s premium payments, Defendant Cincinnati has denied Plaintiff’s claims arising from the State-ordered interruption of its business.

16. As a result, Plaintiff now brings this action against Defendant Cincinnati and

Defendant Kincel & Company for their failure to honor its obligations under a commercial businessowner insurance policy issued to Plaintiff, which provides coverage for losses incurred due to a “necessary suspension” of its operations, including when its business is forced to close due to a government order.

17. On March 6, 2020, during the term of the policy issued by Defendant Cincinnati and Defendant Kincel & Company to Plaintiff, the Governor of the Commonwealth of Pennsylvania, Tom Wolf (“Governor Wolf”), issued a Proclamation of Disaster Emergency due to the emergence of COVID-19 in the United States and the Commonwealth of Pennsylvania. *See* Proclamation, attached hereto as “Exhibit B.”

18. Subsequently, on March 19, 2020, during the term of the policy issued by Defendant Cincinnati and Defendant Kincel & Company to Plaintiff, Governor Wolf issued an Order providing that “[n]o person or entity shall operate a place of business in the Commonwealth that is not a life sustaining business regardless of whether the business is open to members of the public. This prohibition does not apply to virtual or telework operations (e.g., work from home), so long as social distancing and other mitigation measures are followed in such operations.” *See* Order, attached hereto as “Exhibit C.” This Order further provided that “[a]ll restaurants and bars previously have been ordered to close their dine-in facilities to help stop the spread of COVID-19.” *Id.*

19. On that same date, during the term of the policy issued by Defendant Cincinnati and Defendant Kincel & Company to Plaintiff, Secretary of the Pennsylvania Department of Health, Rachel Levine, M.D. (“Secretary of Health, Dr. Levine”), issued an Order that no person or entity shall operate a place of business that is not a life sustaining business regardless of whether the business is open to members of the public. This Order further provided that

restaurants and bars were ordered to close their dine-in facilities to help stop the spread of COVID-19. *See* Order, attached hereto as “Exhibit D.”

20. Recently, the Supreme Court of Pennsylvania in Friends of Danny Devito, et al. v. Tom Wolf, Governor, et al., 68 MM 2020, found that the COVID-19 pandemic triggered Governor Wolf’s authority under the Emergency Code and that as a result of the COVID-19 pandemic, Governor Wolf had the authority under the Emergency Code to declare the entirety of the Commonwealth a disaster area.

21. The Supreme Court of Pennsylvania further found that the COVID-19 pandemic is, by all definitions, a natural disaster and a catastrophe of massive proportions and its presence in and movement through Pennsylvania triggered Governor Wolf’s authority under the Emergency Code.

22. As a result of the Closure Orders and the determination that the entire Commonwealth be considered a disaster area, the Plaintiff has been forced to halt ordinary operations, resulting in substantial lost revenues and forcing the Plaintiff to furlough or lay off the majority of its employees.

23. Despite Defendant Cincinnati’s express promise in its policy to cover the Plaintiff’s business interruption losses when the government forces them to close, Defendant Cincinnati failed to conduct a “reasonable investigation” based on all available information as required under Pennsylvania Law.

24. Defendant Cincinnati’s assertion that Plaintiff’s losses are not covered is based on the following: (1) the claim does not involve direct, physical loss to property at Plaintiff’s premises; (2) coverage would ultimately be excluded under the Pollutants exclusion; and (3) there is no evidence that the subject order was entered because of direct damage to property at

other locations or dangerous physical conditions at other locations nor does the order restrict access to the area immediately surrounding Plaintiff's premises triggering Civil Authority coverage.

25. Moreover, unlike many commercial property policies available in the market, the policy sold by Defendant Cincinnati and Defendant Kincel & Company does not include an exclusion for loss caused by a virus. Thus, Plaintiff reasonably expected that the insurance it purchased from Defendant Cincinnati and Defendant Kincel & Company included coverage for property damage and business interruption losses caused by viruses like the COVID-19 coronavirus.

26. Further, there exists no applicable exclusion in the Policy for pandemic related losses.

27. Thus, Defendant Cincinnati's denial is arbitrary, unreasonable, inconsistent with the facts and plain language of the Policy and inconsistent with Pennsylvania law. This denial appears to be driven by Defendant Cincinnati's desire to preempt its own financial exposure to the economic fallout resulting from the COVID-19 crisis, rather than to initiate, as Defendant Cincinnati is obligated to do, a full and fair investigation of the claims and a careful review of the policy it sold to Plaintiff in exchange for valuable premiums.

28. As a result of Defendant Cincinnati's wrongful denial of coverage, Plaintiff files this action for a declaratory judgment establishing that it is entitled to receive the benefit of the insurance coverage it purchased, for indemnification of the business losses it has sustained, for breach of contract, and for bad faith claims handling under 42 Pa. C.S. §8371.

#### **Factual Allegations**

29. Plaintiff incorporates by reference the preceding paragraphs above as if same

were more fully set forth herein at length.

**A. The Policy**

30. In exchange for substantial premiums, Defendant Cincinnati and Defendant Kincel & Company sold the Policy, Policy No. ECP 049 60 04 / EBA 049 60 04, effective 7/19/18 to 7/19/21, for the premises located at 114 South State Street, Clarks Summit, Pennsylvania 18411, promising to indemnify Plaintiff for losses resulting from occurrences, including the “necessary suspension” of business operations at the insured location caused by a government order, during the relevant time period. *See* the Policy at “Exhibit A.”

31. The Policy is an “all risk” policy that provides broad coverage for losses caused by any cause unless expressly excluded. *Id.*

32. The Policy does not exclude losses from viruses or pandemics. Thus, the all-risk Policy purchased by the Plaintiff covers losses caused by viruses, such as COVID-19.

33. Plaintiff faithfully paid policy premiums to Defendant Cincinnati and Defendant Kincel & Company, specifically to provide additional coverages for “Business Income and Extra Expense Coverage” in the event of business closures by order of Civil Authority.

34. Specifically, in addition to property damage losses, Defendant Cincinnati also agreed to “pay for the actual loss of Business Income” sustained by Plaintiff “due to the necessary suspension” of Plaintiff’s operations during the period of business interruption caused by “direct loss to property” at the insured’s premises.

35. With respect to business interruption losses, “suspension” means: (1) “the slowdown or cessation of your business activities”; or (2) “that a part or all of the premises is rendered untenable.”

36. “Business Income” is defined in relevant part under the Policy as “Net Income

(Net Profit or Loss before income taxes) that would have been earned or incurred” plus “continuing normal operating expenses.”

37. The Policy also provides coverage for “Extended Business Income.” The Policy provides that “[i]f the necessary ‘suspension’ of [Plaintiff’s] ‘operations’ produces a ‘Business Income’ ‘loss’ payable...[Defendant] will pay for the actual loss of ‘Business Income’ [Plaintiff] sustain[s] during the period that: (a) Begins on the date property ... is actually repaired, rebuilt or replaced and ‘operations’ are resumed; and (b) Ends on the earlier of: (i) The date you could restore your ‘operations’, with reasonable speed, to the level which would generate the ‘Business Income’ amount that would have existed if no direct ‘loss’ had occurred; or (ii) 60 consecutive days after the date determined in c.(1)(a) above.”

38. Defendant Cincinnati also promised to “pay necessary Extra Expense” Plaintiff incurs during the period of interruption that it “would not have sustained if there had been no direct loss to property” at the described premises.

39. Under the Policy “Extra Expense means necessary expenses [Plaintiff] sustains ... during the ‘period of restoration’ that [Plaintiff] would not have sustained if there had been no direct ‘loss’ to property caused by or resulting from a Covered Cause of Loss.”

40. Defendant Cincinnati’s Policy also includes “Civil Authority” coverage, pursuant to which Defendant promised to pay for the loss of Business Income and necessary Extra Expense sustained by Plaintiff “caused by action of civil authority that prohibits access” to Plaintiff’s insured premises.

41. This Civil Authority coverage is triggered when “(1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage; and (2) 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.”

**B. The Plaintiff's Losses Due to the Coronavirus Pandemic and the Closure Orders.**

42. On March 11, 2020, the World Health Organization declared that the emerging threat from the novel coronavirus—otherwise known as COVID-19—constituted a global pandemic.

43. Emerging research on the virus and recent reports from the Centers for Disease Control and Prevention (“CDC”) indicate that the COVID-19 strains physically infect and can stay alive on surfaces for at least 17 days, a characteristic that renders property exposed to the contagion potentially unsafe and dangerous. Other research indicates that the virus may linger on surfaces for up to four weeks in low temperatures.

44. In response to the pandemic, and the spread of the coronavirus throughout Pennsylvania, on March 6, 2020, Governor Wolf, issued a Proclamation of Disaster Emergency due to the emergence of COVID-19 in the United States and the Commonwealth of Pennsylvania. *See* the Proclamation at “Exhibit B.”

45. Subsequently, on March 19, 2020, during the term of the policy issued by Defendant to Plaintiff, Governor Wolf issued an Order providing that “[n]o person or entity shall operate a place of business in the Commonwealth that is not a life sustaining business regardless of whether the business is open to members of the public. This prohibition does not apply to virtual or telework operations (e.g., work from home), so long as social distancing and other mitigation measures are followed in such operations.” *See* Order at “Exhibit C.” This Order further provided that “[a]ll restaurants and bars previously have been ordered to close their dine-

in facilities to help stop the spread of COVID-19.” *Id.*

46. This Order was entered upon Governor Wolf’s power “to control ingress and egress to and from a disaster area and the movement of persons within it and the occupancy of premises therein.” *Id.*

47. Additionally, on that same date, during the term of the policy issued by Defendant to Plaintiff, Secretary of Health Dr. Levine, issued an Order further providing that all restaurants and bars close their dine-in facilities to help stop the spread of COVID-19 taking effect immediately on that day and continuing until further notice. *See* the Order at “Exhibit D.”

48. Within her Order, Secretary of Health Dr. Levine highlighted how exposure to COVID-19 is possible by touching a surface or object that has the virus on it.” *Id.*

49. Pursuant to these orders, Plaintiff has suffered a physical loss of use of his premises.

50. The continuous presence of the coronavirus on or around Plaintiff’s premises has rendered the premises unsafe and unfit for its intended use and therefore caused property damage or loss under the Policy.

51. The Orders of the Governor of Pennsylvania and the Secretary of the Pennsylvania Department of Health were issued in direct response to these dangerous physical conditions, and prohibited the public from accessing Plaintiff’s restaurant, thereby causing the necessary suspension of its operations and triggering the Civil Authority coverage under the Policy. The Order specifically states, “non-life sustaining businesses present the opportunity for unnecessary gatherings, personal contact and interaction that will increase the risk of transmission and the risk of community spread of COVID-19.”

52. The March 19, 2020 Closure Orders closing all “non-essential” businesses,

including all restaurants and bars, likewise was made in direct response to the continued and increasing presence of the coronavirus on property including property around Plaintiff's premises.

53. The March 19, 2020 Closure Orders prohibited the public from accessing Plaintiff's restaurant and bar, thereby causing the necessary suspension of its operations and triggering the Civil Authority coverage under the Policy.

54. The COVID-19 virus, as evidenced by the Closure Orders, causes damages to property, particularly in places of business, such as that of Plaintiff, and other similarly situated persons and organizations, where the operation of the business requires interaction, gatherings and contact in areas where there exists a heightened risk of the COVID-19 virus.

55. As a result of the March 6, 2020 and March 19, 2020 Closure Orders, Plaintiff has suffered substantial Business Income losses and incurred Extra Expense. The covered losses incurred by Plaintiff and owed under the Policy is increasing every day. As a result of these catastrophic losses, the Plaintiff has been forced to furlough its workers.

56. On March 8, 2020, prior to the Closure Orders, Plaintiff sent e-mail correspondence to its insurance agent, Kevin Kincel ("Mr. Kincel"), an agent, ostensible agent, servant and/or employee of Defendant Kincel & Company, acting in the course and scope of his agency and/or employment, inquiring into policy coverage if Plaintiff were mandated to shutdown.

57. On March 9, 2020, Mr. Kincel sent an e-mail correspondence to Plaintiff providing "coverage doesn't get triggered for business income." Mr. Kincel also forwarded Plaintiff a four (4) page article entitled "Coronavirus: What It Means For Your Clients' Insurance Coverage." *See* the article, attached hereto as "Exhibit E."

58. The article forwarded to Plaintiff by Mr. Kincel provides, in relevant part, “[u]nfortunately, it appears that the ISO Business Income and Extra Expense Coverage Form, CP 00 30 10 12, coupled with the Causes of Loss - Special Form, CP 10 30 09 17, will not cover [business interruption] losses.” *Id.*, at p. 2.

59. Following the Closure Orders, on March 18, 2020, the Plaintiff submitted a claim to Defendant Kincel & Company requesting coverage for its business interruption losses promised under the Policy. At that time, Plaintiff further requested copies of the relevant insurance Policy.

60. On that same date, Mr. Kincel sent Plaintiff e-mail correspondence providing that he was reporting the claim to Defendant Cincinnati for Business Income coverage. Within that e-mail, Mr. Kincel provided that Defendant would “likely decline the claim, but [Plaintiff] may need the denial if [he] appl[ies] for a future SBA loan associated with any Government help.”

61. On that same date, Plaintiff’s insurance agent, Jennifer Hlavaty, an agent, ostensible agent, servant and/or employee of Defendant Kincel & Company, acting in the course and scope of her agency and/or employment, forwarded Plaintiff, through e-mail correspondence, a purported copy of Plaintiff’s 2018-2021 term policy along with any endorsements to date.

62. On March 23, 2020, Defendant Cincinnati’s Senior Claims Specialist John Kratz (“Mr. Kratz”) sent Plaintiff a Reservation of Rights letter regarding Plaintiff’s claim asserting business income loss.

63. In the March 23, 2020 letter, Defendant Cincinnati misrepresented the law applicable to Plaintiff’s claims, mislead Plaintiff regarding the coverage limits that were available to it, and misrepresented the terms of the policy.

64. In Defendant Cincinnati's March 23, 2020 letter, it represented to the Plaintiff that in order for coverage to apply, there must be a physical effect on the property such as deformation or permanent change in physical appearance.

65. Defendant Cincinnati's representation is inconsistent and in contrast to the terms of the policy itself and the applicable law of the Commonwealth.

66. As noted in Defendant Cincinnati's letter, the policy provides coverage for direct loss to covered property.

67. The policy defines "loss" as "accidental physical loss or accidental physical damage."

68. Despite this definition contained within the policy, Defendant Cincinnati's letter misrepresents what "loss" is covered by the policy and seeks to redefine the term.

69. While discussing Plaintiff's claim under the Business Income and Extra Expense coverages, Defendant Cincinnati's letter cited to policy language contained on Form FM 101 05 16 which states "The most we will pay for 'loss' in any one occurrence under this 'Business Income' and Extra Expense Coverage Extension is \$25,000.00.

70. At the time Defendant Cincinnati cited this language, it knew that the \$25,000.00 limit which they referenced was inapplicable to Plaintiff's Claims for Business Income and Extra Expense coverage.

71. In fact, Defendant Cincinnati also cited Form FA 213 05 16 which extended business income and extra expense coverage to Plaintiff.

72. This form expressly states that "the most [Defendant Cincinnati] will pay for 'loss' in any one occurrence is the applicable Limit of Insurance Shown in the Declaration." *See* the Policy at "Exhibit A."

73. The Limit of Insurance shown in the Declaration is “12 Months ALS”. *See* the Policy at “Exhibit A.”

74. Despite this obvious and apparent modification of the limits of insurance, Defendant Cincinnati, knowingly and willfully failed to disclose the increased and applicable limits of insurance to its insured.

75. Likewise, Defendant Cincinnati once again misrepresented the applicable limits of insurance to Plaintiff while discussing his claims under the Civil Authority Coverage.

76. Defendant Cincinnati’s letter once again cited to policy language contained on Form FM 101 05 16 which states “The most we will pay for ‘loss’ in any one occurrence under this ‘Business Income’ and Extra Expense Coverage Extension is \$25,000.00.”

77. At the time Defendant Cincinnati cited this language, it knew that the \$25,000.00 limit which it referenced was inapplicable to Plaintiff’s Claim for Civil Authority coverage. In fact, Defendant Cincinnati also cited Form FA 213 05 16 which provides Civil Authority coverage to Plaintiff.

78. This form once again expressly states that “the most [Defendant Cincinnati] will pay for ‘loss’ in any one occurrence is the applicable Limit of Insurance Shown in the Declaration.” *See* the Policy at “Exhibit A.” The Limit of Insurance shown in the Declaration is “12 Months ALS”. *See* the Policy at “Exhibit A.”

79. Despite this obvious and apparent modification of the limits of insurance, Defendant Cincinnati, knowingly and willfully failed to disclose the increased and applicable limits of insurance to its insured.

80. On April 13, 2020, Plaintiff’s counsel requested an explanation or confirmation regarding Defendant Cincinnati’s position that the maximum coverage available to the Plaintiff

for its business income loss claim is \$25,000.00.

81. Defendant Cincinnati has a statutory obligation to appropriately reply to all pertinent communications from a claimant which reasonably suggest that a response is expected pursuant to 31 Pa. Code. § 146.5(c).

82. Despite this obligation, Defendant Cincinnati has not provided any response to Plaintiff's counsels inquiry.

83. Additionally, despite Defendant Cincinnati's obligation to promptly investigate claims, Defendant Cincinnati's March 23, 2020 letter improperly sought to shift its statutory obligations to the insured.

84. Specifically, Defendant Cincinnati requested that Plaintiff provide an analysis as to the reasons he believes there is coverage for his claim.

85. It is clear from the Defendant Cincinnati's letter in conjunction with their conduct in handling Plaintiff's claim, including, but not limited to, providing a biased and favorable insurance article to Plaintiff through its agent, claiming there is no coverage, that Defendant was attempting to dissuade Plaintiff from making a claim for business income losses, which were due and owned to Plaintiff under the policy.

86. On April 13, 2020, counsel for Plaintiff sent Defendant Cincinnati a letter of representation. Within that correspondence, Plaintiff's counsel requested that Defendant Cincinnati provide the appropriate Proof of Loss form for Plaintiff to complete. Within that correspondence, counsel for Plaintiff further requested a certified copy of the Policy.

87. Defendant never provided Plaintiff with the requested proof of loss form demonstrating that Defendant had already made the decision to deny this claim and had no intention of conducting any meaningful investigation.

88. On April 14, 2020, Defendant Cincinnati sent Plaintiff's counsel correspondence denying Plaintiff's claim for benefits under the Policy. Specifically, Defendant Cincinnati denied coverage providing that to obtain coverage direct physical loss or direct physical damage must be to property at the covered premises.

89. Within the April 14, 2020 correspondence, Defendant Cincinnati further provided that its investigation found no evidence of direct physical loss or damage to the insured premises.

90. Any reasonable investigation of this claim would reveal that Plaintiff sustained direct physical loss and/or direct physical damage to the insured premises.

91. Defendant Cincinnati also provided that there is no evidence of damage to property at other locations, precluding coverage for orders of Civil Authority.

92. Any reasonable investigation of Plaintiff's claim would have revealed evidence of damage to property, other than the insured location, which prompted the civil authority that suspended Plaintiff's business operations resulting in loss of business income.

93. Defendant Cincinnati also denied coverage, relying on the pollutant exclusion.

94. Any reasonable evaluation of the Plaintiff's claim would reveal that the pollutant's exclusion is inapplicable to the claim.

95. Instead of providing coverage to Plaintiff, for which Plaintiff purchased and paid premiums, Defendant Cincinnati and Defendant Kincel & Company instead directed Plaintiff to seek assistance from the U.S. Small Business Administration.

96. Defendant Cincinnati and Defendant Kincel & Company failed to inquire into documentation pertaining to loss of business income related to Plaintiff's business interruption claim.

97. Defendant Cincinnati and Defendant Kincel & Company never intended to fairly



and objectively evaluate Plaintiff's business interruption claim.

98. Defendant Cincinnati and Defendant Kincel & Company's actions forced Plaintiff to retain counsel to obtain benefits that were due and owed under the Policy.

99. Immediately after Plaintiff submitted its claim to Defendant, Defendant engaged in conduct with the intention of denying coverage rather than objectively evaluating the claims with the goal of providing coverage to Plaintiff, its insured, as required under the Pennsylvania Insurance Regulations

100. The conduct of Defendant Cincinnati includes, but is not limited to, the following:

- a. Unreasonably delaying and providing policy information and other information requested by Plaintiff;
- b. Misrepresenting the coverage available to Plaintiff;
- c. Failing to investigate and process Plaintiff's claim;
- d. Withholding information and/or documents pertaining to coverage under the Policy;
- e. Asserting frivolous defenses;
- f. Asserting defenses in coverage which Defendant knew or should have known have no foundation in fact or law;
- g. Asserting defenses and offering evidence which may be false and fraudulent;
- h. Certifying policy information containing inaccurate and/or incomplete information;
- i. Misleading Plaintiff as to the coverage and policy information;
- j. Denying coverage of the Plaintiff's claim;

- k. Defendant knew or recklessly disregarded, the lack of reasonable basis to contest coverage;
- l. Failing to conduct a prompt, thorough and timely investigation regarding coverage under the Policy;
- m. Forcing Plaintiff to file a Complaint to obtain the benefits that are due and owed to it;
- n. Engaging in actions designed to delay ultimate payment of the claim;
- o. Ignoring clear legal precedent;
- p. Misinterpreting its own Policy;
- q. Knowing and/or recklessly disregarding the lack of a reasonable basis in denying Plaintiff's claim;
- r. Failing to give equal consideration to provide coverage to Plaintiff under the Policy;
- s. Failing to objectively and fairly evaluate Plaintiff's claim;
- t. Failing to timely investigate, evaluate and pay Plaintiff's claim;
- u. Dilatory and abusive claims handling;
- v. Failing to make coverage determinations when the claim was presented or in a timely manner thereafter;
- w. Failing to promptly and/or properly advise Plaintiff of the basis of Defendant's denial of Plaintiff's claim;
- x. Misrepresenting the applicable coverage;
- y. Conducting an unfair, unreasonable and untimely investigation of Plaintiff's claims and/or coverage issues;

- z. Assuming a fiduciary obligation and failing to carry out the same in good faith;
- aa. Forcing Plaintiff to retain counsel and the expenses associated therewith to secure payment of monies that otherwise should have been volunteered;
- bb. Unreasonably and unfairly withholding policy benefits justly due and owed to Plaintiff;
- cc. Failing to maintain a full, complete and accurate claims file as required by Pa law, specifically 31 Pa Code 146.3;
- dd. Failing to timely complete its investigation and keep Plaintiff apprised of the status of its investigation including coverage/denial issues, in violation of 31 Pa Code 146.6;
- ee. Violation of the standards for prompt, fair and equitable settlements applicable to insures as set forth in 31 Pa Code 146.7;
- ff. Failing to fully disclose and/or misrepresenting the coverage available to Plaintiff's claims;
- gg. Misrepresenting the benefits, conditions and terms of the applicable insurance policy and limits and/or pertinent facts or policy or contract provisions relating to coverages at issue in violation of 40 P.S. § 1171.5;
- hh. Failing to acknowledge and act promptly upon written and oral communications with respect to claims arising under its policy in violation of 40 P.S. § 1171.5;
- ii. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under its insurance policies including

- coverage determinations in violation of 40 P.S. §1171.5;
- jj. Refusing to pay claims without conducting a reasonable investigation based upon all information available in violation of 40 P.S. §1171.5;
  - kk. Failing to affirm or deny coverage of claims within a reasonable time after the claim was submitted by Plaintiff and communicated to the company or its representative in violation of 40 P.S. §1171.5;
  - ll. Compelling Plaintiff to institute litigation and recover amounts due under the insurance policy in violation of 40 P.S. § II 71.5;
  - mm. Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of the claim in violation of 40 P.S. §1171.5;
  - nn. Making false or fraudulent statements or representations on or relative to an application for insurance policy for the purpose of obtaining a fee, commission, money or other benefit in violation of 40 P.S. § 1171.5;
  - oo. Failing to fully disclose to Plaintiff pertinent benefits, coverages or other provisions of the insurance policy or insurance contract under which a claim is presented in violation of 31 Pa Code 146.4;
  - pp. Failing to fully disclose to Plaintiff benefits, coverages or other provisions of an insurance policy or insurance contract when the benefits, coverages or other provisions are pertinent to a claim in violation of 31 Pa Code 146.4;
  - qq. Failing to properly advise the acceptance or denial of the claim pursuant to 31 Pa Code 146.7;

- rr. Breaching its fiduciary duty of good faith and fair dealing;
- ss. Placing its interest over the interest of its insured;
- tt. Unnecessarily requiring the insured to incur the time and expense associated with filing a claim when Defendant knew or should have known they had no good faith basis to deny coverage of the claim;
- uu. Failing to disclose and/or acknowledge the true coverage;
- vv. Improperly certifying the Policy;
- ww. Failing to honestly, fairly, intelligently and objectively evaluate the coverage issue;
- xx. Failing to accurately assess the strength or weaknesses of the evidence as a whole;
- yy. Refusing to make settlement offer;
- zz. Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services in violation of 73 P.S. 201-2 et seq;
- aaa. Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another in violation of 73 P.S. 201-2 et seq; have in violation of 73 P.S. 201-2 et seq;
- bbb. Advertising goods or services with the intent not to sell them as advertised in violation of 73 P.S. 201-2 et seq;
- ccc. Failing to comply with the terms of a written guarantee or warranty given to a buyer, at, prior to or after a contract for the purchase of goods or services in violation of 73 P.S. 201-2 et seq;

- ddd. Engaging in fraudulent or deceptive conduct which created a likelihood of confusion or of misunderstanding in violation of 73 P.S. 201-2 et seq; and
- eee. Representing that goods or services have sponsorship, approval, characteristics, benefits or quantities that they do not have or that a person has sponsorship, approval, status, affiliation or connection that he does not

101. The conduct of Defendant Cincinnati evidences a reckless disregard and indifference to the rights of its insureds.

102. As a result of the conduct described above, Plaintiff has not been reimbursed for its loss in business income, which has unnecessarily forced Plaintiff to incur legal fees, costs, and lost interest otherwise available together with related economical loss, emotional discomfort and humiliation, financial hardship and financial losses associated with Defendant Cincinnati and Defendant Kincel and Company's failure to honor the appropriate limits of coverage and delaying in processing and payment of Plaintiff's claim.

103. At all times mentioned in this complaint, Defendant Cincinnati acted by and through its actual or apparent authorized agents, servants, workmen, employees or ostensible agents, acting under the direction and/or control of Defendant. Defendant Cincinnati is therefore vicariously liable for the grossly negligent, reckless, intentional, fraudulent, and deceitful conduct of those agents, servants, employees, ostensible agents who at all times, were furthering Defendant Cincinnati's interests within the aforesaid enterprise and were acting within the scope of their actual or ostensible agency and/or employment.

104. Alternatively, at all times material hereto, Defendant Cincinnati authorized, acquiesced and otherwise the conduct and activities of its agents, employees, servants and/or ostensible agents with regard to the handling of this claim. Accordingly, Defendant Cincinnati

accepted and retained the benefits of the wrongful and tortious conduct and acts of its agents. Defendant Cincinnati is therefore vicariously liable for said conduct.

**COUNT I**

**State Street Restaurant Group, LLC, v. The Cincinnati Insurance Companies  
Declaratory Judgment**

105. Plaintiff incorporates by reference all of the allegations contained in the preceding paragraphs above as if same were more fully set forth herein at length.

106. The Policy is an insurance contract under which Defendant Cincinnati was paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the Policy, such as business losses incurred as a result of the government orders forcing it to close its business.

107. Plaintiff has complied with all applicable provisions of the Policy, including payment of the premiums in exchange for coverage under the Policy.

108. Defendant Cincinnati has arbitrarily and without justification refused to reimburse Plaintiff for any losses incurred by Plaintiff in connection with the covered business losses related to the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic.

109. An actual case or controversy exists regarding Plaintiff's rights and Defendant Cincinnati's obligations under the Policies to reimburse Plaintiff for the full amount of losses incurred by Plaintiff in connection with Closure Orders and the necessary interruption of its business stemming from the COVID-19 pandemic.

110. Pursuant to 42 Pa. C.S.A. § 7532, Plaintiff seeks a declaratory judgment from this Court declaring the following:

a) Plaintiff's losses incurred in connection with the Closure Orders and the and the

necessary interruption of their businesses stemming from the COVID-19 pandemic are insured losses under the Policy; and

- b) Defendant Cincinnati is obligated to pay Plaintiff for the full amount of the losses incurred and to be incurred in connection with the covered business losses related to the Closure Orders.

**WHEREFORE**, Plaintiff State Street Restaurant Group, Inc., demands judgment against Defendant The Cincinnati Insurance Companies in an amount in excess of \$50,000.00 plus interests, costs, and other such relief as this Court deems appropriate.

**COUNT II**

**State Street Restaurant Group, LLC, v. The Cincinnati Insurance Companies  
Breach of Contract**

111. Plaintiff incorporates by reference all of the allegations contained in the preceding paragraphs above as if same were more fully set forth herein at length.

112. The Policy is an insurance contract under which Defendant Cincinnati was paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the Policy, such as business losses incurred as a result of the government orders forcing it to close its business.

113. Plaintiff has complied with all applicable provisions of the Policy, including payment of the premiums in exchange for coverage under the Policy, and yet Defendant Cincinnati has abrogated its insurance coverage obligations pursuant to the Policy's clear and unambiguous terms.

114. By denying coverage for any business losses incurred by Plaintiff in connection with the Closure Orders and the COVID-19 pandemic, Defendant Cincinnati has breached its coverage obligations under the Policy.



115. The conduct described in this Complaint by Defendant Cincinnati constitutes breach of the contract of insurance with Plaintiff in failing to honor Plaintiff's claim and denying coverage under the policy in violation of Pennsylvania statutes and applicable case law.

116. The foregoing conduct of Defendant Cincinnati also constitutes a breach of the Policy's implied covenant of good faith and fair dealing.

117. Plaintiff has satisfied all of its obligations under the policy, including but not limited to all conditions precedent and all conditions subsequent.

118. As a consequence of Defendant Cincinnati's breach of contract, Defendant is liable to Plaintiff for actual and consequential damages.

**WHEREFORE**, Plaintiff State Street Restaurant Group, Inc., demands judgment against Defendant The Cincinnati Insurance Companies in an amount in excess of \$50,000.00 plus interests, costs, and other such relief as this Court deems appropriate.

**COUNT III**

**State Street Restaurant Group, LLC, v. The Cincinnati Insurance Companies  
Bad Faith 42 Pa. C.S. §8371.**

119. Plaintiff incorporates by reference all of the allegations contained in the preceding paragraphs above as if same were more fully set forth herein at length.

120. On or about February 7, 1990, the Governor of Pennsylvania signed into law 42 Pa.C.S.A. §8371, effective July 1, 1990, entitled "Action Insurance Policies" which provides a private cause of action for bad faith against an insurance company as follows:

"In an action arising under an insurance policy, if the Court finds that an insurer has acted in bad faith toward the insured, the Court may take all of the following actions:

- (1) Award interest on the amount of the claims when the basic claim was made by the insured in an amount equal to the prime rate of interest plus 3%;
- (2) Award punitive damages against an insurer;
- (3) Assess Court costs and attorney's fees against the insurer."

121. Defendant has engaged in a pattern of conduct against its insured, the Plaintiff in this case as set forth above.

122. By virtue of its conduct, outlined at length above, Defendant knew or should have known it lacked a reasonable basis to deny coverage of the business interruption claim made by Plaintiff and recklessly disregarded its lack of reasonable basis by a course of conduct that denied or delayed Plaintiff's entitlement to business interruption income benefits.

123. The action and conduct of Defendant Cincinnati constitutes bad faith in violation of 42 Pa. C.S.A. §8371.

124. Pursuant to 42 Pa C.S.A. §8371, Plaintiff is entitled to the following damages as a result of Defendant's bad faith conduct: Interest on the claims for the date the claims were made in an amount equal to the prime rate of interest plus 3%, costs and attorney's fees for this action, punitive damages, and such other compensatory and/or consequential damages allowed by law.

**WHEREFORE**, Plaintiff State Street Restaurant Group, Inc., demands judgment against Defendant The Cincinnati Insurance Companies in an amount in excess of \$50,000.00 plus interests, costs, and other such relief as this Court deems appropriate.

**COUNT IV**  
**State Street Restaurant Group, LLC, v. Kincel & Company, Inc.**  
**Declaratory Judgment**

125. Plaintiff incorporates by reference all of the allegations contained in the preceding paragraphs above as if same were more fully set forth herein at length.

126. The Policy is an insurance contract under which Defendant Kincel & Company was paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the Policy, such as business losses incurred as a result of the government orders forcing it to close its business.

127. Plaintiff has complied with all applicable provisions of the Policy, including payment of the premiums in exchange for coverage under the Policy.

128. Defendant Kincel and Company has arbitrarily and without justification refused to reimburse Plaintiff for any losses incurred by Plaintiff in connection with the covered business losses related to the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic.

129. An actual case or controversy exists regarding Plaintiff's rights and Defendant Kincel & Company's obligations under the Policies to reimburse Plaintiff for the full amount of losses incurred by Plaintiff in connection with Closure Orders and the necessary interruption of its business stemming from the COVID-19 pandemic.

130. Pursuant to 42 Pa. C.S.A. § 7532, Plaintiff seeks a declaratory judgment from this Court declaring the following:

- c) Plaintiff's losses incurred in connection with the Closure Orders and the and the necessary interruption of their businesses stemming from the COVID-19 pandemic are insured losses under the Policy; and
- d) Defendant Kincel & Company is obligated to pay Plaintiff for the full amount of the losses incurred and to be incurred in connection with the covered business losses related to the Closure Orders

**WHEREFORE**, Plaintiff State Street Restaurant Group, Inc., demands judgment against Defendant Kincel & Company, Inc., in an amount in excess of \$50,000.00 plus interests, costs, and other such relief as this Court deems appropriate.

**COUNT V**  
**State Street Restaurant Group, LLC, v. Kincel & Company, Inc.**  
**Breach of Contract**

131. Plaintiff incorporates by reference all of the allegations contained in the preceding paragraphs above as if same were more fully set forth herein at length.

132. The Policy is an insurance contract under which Defendant Kincel & Company was paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the Policy, such as business losses incurred as a result of the government orders forcing it to close its business.

133. Plaintiff has complied with all applicable provisions of the Policy, including payment of the premiums in exchange for coverage under the Policy, and yet Defendant Kincel & Company has abrogated its insurance coverage obligations pursuant to the Policy's clear and unambiguous terms.

134. By denying coverage for any business losses incurred by Plaintiff in connection with the Closure Orders and the COVID-19 pandemic, Defendant Kincel has breached its coverage obligations under the Policy.

135. The conduct described in this Complaint by Defendant Kincel & Company constitutes breach of the contract of insurance with Plaintiff in failing to honor Plaintiff's claim and denying coverage under the policy in violation of Pennsylvania statutes and applicable case law.

136. The foregoing conduct of Defendant Kincel & Company also constitutes a breach of the Policy's implied covenant of good faith and fair dealing.

137. Plaintiff has satisfied all of its obligations under the policy, including but not limited to all conditions precedent and all conditions subsequent.

138. As a consequence of Defendant Kincel & Company breach of contract, Defendant is liable to Plaintiff for actual and consequential damages.

**WHEREFORE**, Plaintiff State Street Restaurant Group, Inc., demands judgment against Defendant Kincel & Company, Inc., in an amount in excess of \$50,000.00 plus interests, costs, and other such relief as this Court deems appropriate.

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