



**NAILAH K. BYRD**  
**CUYAHOGA COUNTY CLERK OF COURTS**  
1200 Ontario Street  
Cleveland, Ohio 44113

**Court of Common Pleas**

**New Case Electronically Filed: COMPLAINT**  
**April 9, 2020 15:48**

By: NICHOLAS A. DICELLO 0075745

Confirmation Nbr. 1982739

MILLENNIA HOSPITALITY GROUP, LLC ROSE MAR  
LTD DBA

CV 20 931791

vs.

THE CINCINNATI INSURANCE COMPANY

**Judge:** CASSANDRA COLLIER-WILLIAMS

**Pages Filed:** 429

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

MILLENNIA HOSPITALITY GROUP, LLC  
ROSE MAR, LTD dba THE LOCKKEEPERS  
4000 Key Tower  
127 Public Square  
Cleveland, Ohio 44114

Plaintiffs

vs.

THE CINCINNATI INSURANCE COMPANY  
6200 South Gilmore Road  
Fairfield, Ohio 45014-5141

Defendant

CASE NO.:

JUDGE:

**COMPLAINT FOR DECLARATORY  
RELIEF**

(With Jury Demand)

**COMPLAINT AND REQUEST FOR DECLARATORY RELIEF**

1. Plaintiff Millennium Hospitality Group, LLC is a limited liability company organized under Ohio law with its principal place of business in Cleveland, Ohio. Millennium is in the hospitality industry and operates some the finest venues in the country – Lockkeepers, Marble Room, Il Venetian, Marble Sushi Room, Il Venetian Doughnuts and Gelato, and St. Clair Ballroom.

2. Defendant The Cincinnati Insurance Company (“CIC”) is also an Ohio corporation with its principal place of business in Ohio that sells insurance in Cuyahoga County and throughout Ohio.

3. At all times relevant, CIC insured Millennium Hospitality Group, LLC, Rose Mar, LTD dba The Lockkeepers pursuant to an insurance policy drafted by CIC. A copy of the CIC policy at issue, number EPP 056 27 17, is attached as Exhibit 1 (“the Policy”). The remaining

Plaintiffs are all additional named insureds in the Policy, and all Plaintiffs will be collectively referred to as “Millennia.”

4. Defendant CIC delivered the Policy to Plaintiff in Cuyahoga County, the Policy insures Plaintiff’s property, business operations, and potential liabilities in connection with Plaintiff’s business operations, at locations in Cuyahoga County, and the covered losses at issue were incurred by Millennia in Cuyahoga County, making venue appropriate in this Court.

5. The Policy provides coverage for loss of Business Income (“BI”), Extra Expense (“EE”) coverage, and coverage for loss due to the actions of a Civil Authority.

6. Relevant portions of the Policy provide, subject to other Policy terms, that Defendant CIC will:

- a. “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”. The “suspension” must be caused by direct “loss” to property at a “premises” caused by or resulting from any Covered Cause of Loss;” and
- b. “will pay Extra Expense you sustain during the “period of restoration;” and
- c. that “[w]hen a Covered Cause of Loss causes damage to property other than Covered Property at a “premises”, [CIC] 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...”

7. While the Policy was in force, Millennia sustained, and continues to sustain, a loss(es) due to COVID-19 at, in, on, and/or around Millennia’s premises described in the Policy.

8. While the Policy was in force, Millennia sustained, and continues to sustain, a loss(es) due to the spread of COVID-19 in the community (the “Pandemic”).

9. While the Policy was in force, Millennia sustained, and continues to sustain, a loss(es) due to the civil authority orders issued by the Governor of Ohio and the Ohio Department of Health addressing COVID-19 and the Pandemic.

10. COVID-19 is a virus.

11. COVID-19 is a physical substance.

12. COVID-19 is a human pathogen.

13. COVID-19 can be present outside the human body in viral fluid particles.

14. COVID-19 can and does live on and/or remains capable of being transmitted and active on inert physical surfaces.

15. COVID-19 can and does live on and/or remains capable of being transmitted and active on floors, walls, furniture, desks, tables, chairs, countertops, computer keyboards, touch screens, cardboard packages, food items, silverware, plates, serving trays, glasses, straws, menus, pots, pans, kitchen utensils, faucets, refrigerators, freezers, and other items of property for a period of time.

16. COVID-19 can be transmitted by way of human contact with surfaces and items of physical property on which COVID-19 particles are physically present.

17. COVID-19 has been transmitted by way of human contact with surfaces and items of physical property located at premises in Cuyahoga County.

18. COVID-19 can be transmitted by human to human contact and interaction at premises in Cuyahoga County, including places like restaurants.

19. COVID-19 has been transmitted by human to human contact and interaction at premises in Cuyahoga County.

20. COVID-19 can be transmitted through airborne viral particles emitted into the air at premises.

21. COVID-19 has been transmitted by way of human contact with airborne COVID-19 particles emitted into the air at premises in Cuyahoga County.

22. The presence of any COVID-19 particles renders items of physical property unsafe.

23. The presence of any COVID-19 particles on physical property impairs its value, usefulness and/or normal function.

24. The presence of any COVID-19 particles causes direct physical harm to property.

25. The presence of any COVID-19 particles causes direct physical loss to property.

26. The presence of any COVID-19 particles causes direct physical damage to property.

27. The presence of any COVID-19 particles at premises renders the premises unsafe, thereby impairing the premises' value, usefulness and/or normal function.

28. The presence of people infected with or carrying COVID-19 particles renders physical property in their vicinity unsafe and unusable, resulting in direct physical loss to that property.

29. The presence of people infected with or carrying COVID-19 particles at premises renders the premises, including property located at that premises, unsafe, resulting in direct physical loss to the premises and property.

30. In response to COVID-19 and the Pandemic, the Governor of Ohio has issued multiple executive orders pursuant to the authority vested in him by the Ohio Constitution and the laws of Ohio.

31. In response to COVID-19 and the Pandemic, the Ohio Department of Health, pursuant to its authority under Ohio law, has issued multiple orders, including a Stay At Home Order.

32. The term “civil authority” is not defined in the Policy.

33. The State of Ohio is a civil authority as contemplated by the Policy.

34. The Ohio Department of Health is a civil authority as contemplated by the Policy.

35. The Governor of the State of Ohio is a civil authority as contemplated by the Policy.

36. On March 9, 2020, Ohio Governor Mike DeWine issued Executive Order 2020-01D that declared a state of emergency in response to the physical presence of COVID-19 and the Pandemic.

37. On March 15, 2020, Ohio restricted food and beverage sales to carry-out and delivery only, with no onsite consumption permitted. The stated goal of this order was to slow the spread of COVID-19 by minimizing in-person interaction “in an environment with a multitude of hard surfaces.” The order reiterated that “It may be possible that individuals can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose or eyes.” Also that:

Previously studied human coronaviruses (including SARS, which is very closely related to COVID-19) can survive on paper, wood, glass, plastic up to 4-5 days. *Persistence of coronaviruses on inanimate surfaces and their inactivation with biocidal agents*, The Journal of Hospital Infection, March 2020, Volume 104, Issue 3, Pages 246-251.

38. On March 22, 2020, the Ohio Department of Health issued a Stay At Home Order, effective March 23, 2020, ordering Ohio residents to stay at home. By way of this order the State of Ohio ordered all non-essential businesses in Ohio to cease all activities.

39. Millennia's businesses do not qualify as Essential Businesses and Millennia was required to cease and/or significantly reduce operations at all its locations.

40. The civil authority orders, including, but not limited to the Stay At Home Order, prohibit access to Millennia's premises described in the Policy.

41. The State of Ohio, through the Governor and the Department of Health, have Issued, and continue to issue, authoritative orders governing Ohioans and Ohio businesses, including Millennia, in response to COVID-19 and the Pandemic, the effect of which have required and continue to require Millennia to cease and/or significantly reduce operations at, and that have prohibited and continue to prohibit access to, the premises described in the Policy.

42. State and local governmental authorities, and public health officials around the Country, acknowledge that COVID-19 and the Pandemic cause direct physical loss and damage to property. For example:

- a. The state of Colorado issued a Public Health Order indicating that "COVID-19... physically **contributes to property loss, contamination, and damage...**" (Emphasis added);
- b. The City of New York issued an Emergency Executive Order in response to COVID-19 and the Pandemic, in part "because the virus **physically is causing property loss and damage.**" (Emphasis added);
- c. Broward County, Florida issued an Emergency Order acknowledging that COVID-19 "**is physically causing property damage.**" (Emphasis added);
- d. The State of Washington issued a stay at home Proclamation stating the "COVID-19 pandemic and its progression... remains a public disaster affecting life, health, [and] **property...**" (Emphasis added);
- e. The State of Indiana issued an Executive Order recognizing that COVID-19 has the "propensity to **physically** impact surfaces and personal **property.**" (Emphasis added);
- f. The City of New Orleans issued an order stating "there is reason to believe that COVID-19 may spread amongst the population by various means of exposure, including the propensity to attach to surfaces for prolonged period of time,

thereby spreading from surface to person and *causing property loss and damage* in certain circumstances.” (Emphasis added);

- g. The State of Illinois issued an Executive Order describing COVID-19’s “propensity to *physically* impact surfaces and personal *property*.” (Emphasis added);
- h. The State of New Mexico issued a Public Health Order acknowledging the “threat” COVID-19 “poses” to “*property*.” (Emphasis added);
- i. North Carolina issued a statewide Executive Order in response to the Pandemic not only “to assure adequate protection for lives,” but also to “assure adequate protection of... *property*.” (Emphasis added); and
- j. The City of Los Angeles issued an Order in response to COVID-19 “because, among other reasons, the COVID-19 virus can spread easily from person to person and it is *physically causing property loss or damage* due to its tendency to attach to surfaces for prolonged periods of time.” (Emphasis added).

43. COVID-19 and the Pandemic are physically impacting public and private property in Ohio and throughout the country.

44. COVID-19 and the Pandemic have caused and continue to cause direct physical loss and damage to property.

45. People in Cuyahoga County have been diagnosed with COVID-19.

46. People in Cuyahoga County have, and have had, COVID-19 disease but have not been diagnosed.

47. People in Cuyahoga County have COVID-19 particles on or about their person and personal property.

48. Properties and premises throughout Cuyahoga County contain the presence of COVID-19 particles on surfaces and items of property.

49. It is probable that COVID-19 particles have been physically present at Millennia’s premises described in the Policy during the Policy period.



50. It is probable that COVID-19 particles have been physically present on surfaces and items of property located at Millennia's premises described in the Policy during the Policy period.

51. It is probable that airborne COVID-19 particles have been physically present at Millennia's premises described in the Policy during the Policy period.

52. It is probable that people carrying COVID-19 particles in, on or about their person have been present at Millennia's premises described in the Complaint during the Policy period.

53. It is probable that airborne COVID-19 particles have been physically present at Millennia's premises described in the Policy during the Policy period.

54. Millennia has sustained direct physical loss and damage to items of property located at its premises and direct physical loss and damage to its premises described in the Policy as a result of the presence of COVID-19 particles and/or the Pandemic.

55. Millennia submitted a timely insurance claim to Defendant CIC.

56. Defendant CIC responded with a reservation of rights letter.

57. There is a dispute about whether Millennia is entitled to coverage under the Policy for its loss(es) sustained and to be sustained in the future. Accordingly, Millennia is entitled to declaratory relief from this Court pursuant to Ohio Civil Rule 57 and R.C. §§2721.01 to 2721.15.

58. Millennia is entitled to and demands a declaration that:

(1) Millennia sustained direct physical loss or damage to property at its premises described in the Policy as a result of COVID-19 and/or the Pandemic;

(2) COVID-19 is a covered cause of loss under the Policy;

(3) the Pandemic is a covered cause of loss under the Policy;

(4) the losses incurred by Millennia as the result of the orders issued by the Governor of Ohio and the Ohio Department of Health are covered losses under the Policy;

(5) Defendant CIC has not and cannot prove the application of any exclusion or limitation to the coverage for Millennia's losses alleged herein;

(6) Millennia is entitled to coverage for its past and future Business Income loss(es) and Extra Expense resulting from COVID-19 and/or the Pandemic for the time period set forth in the Policy;

(7) Millennia is entitled to coverage for loss(es) due to the actions of Ohio's civil authorities, including the Governor of Ohio and the Ohio Department of Health;

(8) Millennia has coverage for any substantially similar civil authority order in the future that limits or restricts the access to Millennia's places of business and/or its operations; and

(9) any other issue that may arise during the course of litigation that is a proper issue on which to grant declaratory relief.

59. Millennia does not seek a determination of its damages resulting from the coronavirus pandemic. If there is a dispute between the parties as to the amount of the loss, the Policy provides that such a dispute should be resolved by **Appraisal**:

### **Appraisal**

If we and you disagree on the amount of "Business Income" or Extra Expense "loss", either may make written demand for an appraisal of the "loss". In this event, each party will select a competent and impartial appraiser.

The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of "Business Income" or Extra Expense "loss". If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding.

Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we still retain our right to deny the claim. (FA 213 0516, pages 4-5 of 9)

60. Millennia prays for declaratory relief from the Court that Defendant CIC must resolve any dispute about the amount of loss via Appraisal. Millennia also requests the Court to appoint the umpire if the appraisers cannot agree.

61. Millennia prays for any further relief the Court deems proper, including attorney fees, interest, and costs as allowed by law or in the exercise of the Court's equitable jurisdiction.

WHEREFORE, Plaintiffs seek judgment against Defendant CIC, as set forth above, plus interest, costs, and attorney fees as allowed by law.

Respectfully submitted,

/s/ Robert P. Rutter

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**JURY DEMAND**

Plaintiff hereby requests, pursuant to Civil Rule 38(B), a trial by jury of any of the issues in the within lawsuit that are properly triable to a jury.

*/s/ Robert P. Rutter*  
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ROBERT P. RUTTER  
Attorney for Plaintiffs