

Lowell W. Finson (AZ Bar No. 010872)
FINSON LAW FIRM
12777 W. Jefferson Blvd.
Bldg. D, 3rd Floor
Playa Vista, CA 90066
TEL 424-289-2627
FAX 310-425-3278
lowell@finsonlawfirm.com

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

i2i OPTIQUE LLC,

Plaintiff,

v.

CNA,

Defendant.

Case No.:

**COMPLAINT FOR INJUNCTIVE AND
OTHER RELIEF**

Plaintiff, i2i Optique (hereinafter “i2i” or “Plaintiff”), brings this Complaint against Defendant, CNA (“Defendant”) and alleges as follows:

NATURE OF THE CASE

1. This is a civil action seeking declaratory relief arising from Plaintiff’s contract of insurance with Defendant.
2. In light of the Coronavirus global pandemic and state and local orders mandating that all non-essential in-store businesses must shut down, and the suffering of physical harm and impact and damages, within Plaintiff’s business premises and/or within the immediate area surrounding and outside its business premises, Plaintiff shut the doors of his business to customers on March 13, 2020.

3. Plaintiff's insurance policy provides coverage for all non-excluded business losses and thus provides coverage here.

4. As a result, Plaintiff is entitled to declaratory relief that its business is covered for all business losses that have been suffered and sustained, which losses are in an amount greater than \$150,000.00.

JURISDICTION

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between Plaintiff and Defendant. Plaintiff is a business in Arizona and a citizen of Arizona. Defendant is an Illinois corporation with its principal place of business in Illinois. Further, Plaintiff has suffered business losses in an amount greater than \$150,000.00. The amount in controversy necessary for diversity jurisdiction over a declaratory judgment action is measured by the value of those business losses. *Id.* § 1332(a).

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

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

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

PARTIES

9. Plaintiff, i2i operates, manages and owns an optical goods store – i2i Optique – located at 8300 N Hayden Rd B112, Scottsdale, AZ 85258 (“Insured Property”). i2i is a company with its principle place of business in Arizona. Plaintiff is owned by Sabrina Krasnov and Joseph Krasnov, citizens of Arizona.

10. Defendant, CNA is an insurer whose principal place of business is Illinois. Illinois is headquartered at CNA Center, 151 N Franklin St, Chicago, IL 60606. Defendant is a citizen of Illinois.

11. At all relevant times, Defendant CNA is a corporation doing business in the State of Arizona. Defendant issued an insurance policy numbered 6025313905 to Plaintiff for the period August 31, 2019 to August 31, 2020. *See* Declaration, attached hereto as Exhibit 1. Defendant transacts the business of insurance in the State of Arizona and within the County of Armstrong, and the basis of this suit arises out of such conduct.

FACTUAL BACKGROUND

I. Insurance Coverage

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

13. The Insured Property is covered under a policy issued by Defendant. *See* Ex. 1 (hereinafter “Policy”).

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

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

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

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

18. Based on information and belief, Defendant have accepted the policy premiums with no intention of providing any coverage for business losses or the Civil Authority extension due to a loss and shutdown from a virus pandemic.

19. Plaintiff made a claim under the policy on March 24, 2020 and received a denial letter from Defendant dated April 27, 2020. Defendant asserted in its denial that coverage was unavailable because Plaintiff had not suffered “physical loss or damage to,” Plaintiff’s property or the property of dependent properties.

II. The Coronavirus Pandemic

20. The scientific community, and those personally affected by the virus, recognize COVID-19 as a cause of real physical loss and damage. It is clear that contamination of the Insured Property would be a direct physical loss requiring remediation to clean the surfaces of the offices and retail store constituting the Insured Property.

21. The virus that causes COVID-19 remains stable and transmittable in aerosols for up to three hours, up to four hours on copper, up to 24 hours on cardboard and up to two to three

days on plastic and stainless steel. See <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (last visited April 9, 2020).

22. The CDC has issued a guidance that gatherings of more than 10 people must not occur. People in congregate environments, which are places where people live, eat, and sleep in 12i proximity, face increased danger of contracting COVID-19.

23. The global Coronavirus pandemic is exacerbated by the fact that the deadly virus physically infects and stays on surfaces of objects or materials, “fomites,” for up to twenty-eight (28) days.

24. China, Italy, France, and Spain have implemented the cleaning and fumigating of public areas prior to allowing them to re-open publicly due to the intrusion of microbials.

III. Civil Authority

25. On March 11, 2020, Arizona Governor Doug Ducey declared a Public Health Emergency, the first formal recognition of an emergency situation in the State as a result of COVID-19. *See* Exhibit 2.

26. On March 19, 2020, Governor Ducey issued Order 2020-09, limiting the operation of certain businesses, and Order 2020-10, limiting elective surgeries in the state. *See* Exhibit 3.

27. On March 30, 2020, Governor Ducey issued Order 2020-18, mandating that non-essential businesses cease in-person operations. Governor Ducey further ordered that “all individuals in the State of Arizona shall limit their time away from their place of residence or property,” except for certain, life-sustaining activities such as purchasing food. *See* Exhibit 4.

28. On April 29, 2020, Governor Ducey amended his Stay Home, Stay Healthy, Stay Connected order, allowing non-essential businesses to reopen on May 8, 2020, pursuant to restrictive guidelines designed to prevent the spread of the virus. *See* Exhibit 5.

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

REPORTER: Mr. President may I ask you about credit and debt as well. Many CNA individuals, families, have had to tap their credit cards during this period of time. And businesses have had to draw down their credit lines. Are you concerned Mr. President that that may hobble the U.S. economy, all of that debt number one? And number two, would you suggest to credit card companies to reduce their fees during this time?

PRESIDENT TRUMP: Well it's something that we've already suggested, we're talking to them. **Business interruption insurance**, I'd like to see these insurance companies—you know you have people that have paid. When I was in private I had business interruption. When my business was interrupted through a hurricane or whatever it may be, I'd have business where I had it, I didn't always have it, sometimes I had it, sometimes, I had a lot of different companies. **But if I had it I'd expect to be paid.** You have people. I speak mostly to the restaurateurs, where they have a restaurant, they've been paying for 25, 30, 35 years, business interruption. They've never needed it. All of a sudden they need it. And I'm very good at reading language. I did very well in these subjects, OK. And I don't see the word pandemic mentioned. Now in some cases it is, it's an exclusion. But in a lot of cases I don't see it. I don't see it referenced. And they don't want to pay up. I would like to see the insurance companies pay if they need to pay, if it's fair. And they know what's fair, and I know what's fair, I can tell you very quickly. But business interruption insurance, that's getting a lot money to a lot of people. And they've been paying for years, sometimes they just started paying, but you have people that have never asked for business interruption insurance, and they've been paying a lot of money for a lot of years for the privilege of having it, and then when they finally need it, the insurance company says 'we're not going to give it.' We can't let that happen.

https://youtu.be/_cMeG5C9TjU (last visited on April 17, 2020) (emphasis added).

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

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

IV. Impact to Plaintiff

32. As a result of the Orders referenced herein, Plaintiff and its building was required to suspend and shut its business to customers as of March 17, 2020.

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

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

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

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

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

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

CAUSE OF ACTION

DECLARATORY RELIEF

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

40. The Declaratory Judgment Act, 28 U.S.C. § 2201(a), provides that in "a case of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a); *see also Principal Life Ins. Co. v. Minder*, No. CIV A 08-5899, 2009 WL 1917096 (E.D. Pa. July 1, 2009); *Miller v. I2i Mut. Grp.*, 97 F. Supp. 2d 672 (W.D. Pa. 2000).

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

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

42. Plaintiff seeks a Declaratory Judgment to determine whether the Orders constitute a prohibition of access to Plaintiff's Insured Property.

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

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff herein prays as follows:

- a. For a declaration that the Orders constitute a prohibition of access to Plaintiff's Insured Property.
- b. For a declaration that the prohibition of access by the Orders is specifically prohibited access as defined in the Policy.
- c. For a declaration that the Orders trigger coverage under the Policy.
- d. For a declaration that the Policy provides coverage to Plaintiff for any current, future and continued closures of non-essential businesses due to physical loss or damage directly or indirectly from the Coronavirus.
- e. For a declaration that the Policy provides business income coverage in the event that Coronavirus has directly or indirectly caused a loss or damage at the Plaintiff's Insured Property or the immediate area of the Plaintiff's Insured Property.
- f. For such other relief as the Court may deem proper.

TRIAL BY JURY IS DEMANDED

The Plaintiff hereby demands a trial by jury.

Dated: June 25, 2020

Respectfully submitted,

/s/ Lowell W. Finson

Lowell W. Finson (AZ Bar No. 010872)

FINSON LAW FIRM

12777 W. Jefferson Blvd.

Bldg. D, 3rd Floor

Playa Vista, CA 90066

TEL 424-289-2627

FAX 310-425-3278

lowell@finsonlawfirm.com

Arnold Levin, Esq.

Laurence Berman, Esq.

Frederick Longer, Esq.

Daniel Levin, Esq.

LEVIN SEDRAN & BERMAN LLP

510 Walnut Street, Suite 500

Philadelphia, PA 19106-3697

Telephone: (215) 592-1500

alevin@lfsblaw.com

flonger@lfsblaw.com

dlevin@lfsblaw.com

Richard M. Golomb, Esq.
Kenneth J. Grunfeld, Esq.
GOLOMB & HONIK, P.C.
1835 Market Street, Suite 2900
Philadelphia, PA 19103
Telephone: (215) 985-9177
Facsimile: (215) 985-4169
rgolomb@golombhonik.com
kgrunfeld@golombhonik.com

Aaron Rihn, Esq.
ROBERT PEIRCE & ASSOCIATES
707 Grant Street, Suite 125
Pittsburgh, PA 15219
Telephone: (412) 281-7229
Facsimile: (412) 281-4229

W. Daniel "Dee" Miles, III
Rachel N. Boyd
Paul W. Evans
**BEASLEY, ALLEN, CROW, METHVIN,
PORTIS & MILES, P.C.**
P.O. Box 4160
Montgomery, AL 36103
Telephone: (334) 269-2343
Facsimile: (334) 954-7555

Counsel for Plaintiff