

RESTAURANTS + BARS

Ferndale restaurant owner sues insurance company for not covering COVID-19 related losses

The owner of M-Brew and Dino's Lounge in Ferndale allege that their business interruption policy with Cincinnati Insurance Company did not have a virus exemption

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The owner of two popular Ferndale restaurants, M-Brew and Dino's Lounge is suing Cincinnati Insurance Company, alleging the company refused to pay claims related to losses stemming from the COVID-19 pandemic.

Dino Drop filed a federal lawsuit in the Eastern District of Michigan this week alleging the Ohio-based Cincinnati Insurance Co. "has refused to honor its promise to provide the protection that plaintiffs purchased."

"Plaintiffs purchased an all-risk commercial property insurance policy ... from defendant to protect the business in the event of property loss and business interruption for the period of August 28, 2019 to August 28, 2020," reads the suit. "Among other coverages, the policy provides coverages for loss to the structures and business personal property as well as business income coverage in the amount of the actual loss sustained over a maximum period of 12 months."

Attached to the complaint is a June 22, 2020 letter from the insurance company to the restaurants' owner Dean Bach explaining the reason for denying the claim and stating "Cincinnati has determined that coverage is unavailable for the claimed loss."

"The Cincinnati policy provides coverage for direct physical loss or damage to Covered Property at the premises," the letter states. "This direct physical loss or direct physical damage must be to property at the covered premises. Cincinnati's investigation has 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."

The Southfield-based attorney for the Ferndale restaurants Lawrence J. Buckfire says there are no virus exclusion in the policy and previous cases in Michigan support that one doesn't need physical damage to property when there's a government shutdown to make a claim.

"What's happened is certain companies like Cincinnati Insurance don't have the virus exclusion and they denied it simply based upon the fact that there was no physical damage to the property," Buckfire told The Detroit News.

"Cincinnati is doing that all over the country so there's been some class actions filed and courts are waiting to determine whether, even our cases, are being sent to class judgement in other states. I think in Michigan the case law is better than in other states. A couple case have previously held that you don't need physical damage to property if there's a government shutdown."

Buckfire says more suits like this between business owners and insurance companies may be filed in the future as more claims are denied.

"We're getting contacted by more and more people after their denials are coming back," he said. "One, they didn't realize they could make a claim and once they realize they can, they submit the claim and it might take the insurance carrier a couple months to get back to them. Now we're fairly far along in that process where people are starting to get denial letters and we're getting more calls.

Buckfire says his office is not just getting inquires from restaurants and bars, but other small business such as dentists' offices.

The claims submitted in the suit are in excess of \$75,000, exclusive of "consequential damages, interest, fees, costs, or other expenses."

The filing also alleges that Cincinnati Insurance breached the contract as it relates to a claim after a fire caused damage at Dino's Lounge, 22740 Woodward on Aug. 18. According to a Ferndale Fire Department incident report attached to the filing, there was an electrical fire possibly caused by an exterior sign.

When reached by email Thursday, a representative for the Cincinnati Insurance Company stated the company does not comment on pending litigation.

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