



The Cincinnati Insurance Company ■ The Cincinnati Indemnity Company  
The Cincinnati Casualty Company ■ The Cincinnati Specialty Underwriters Insurance Company  
The Cincinnati Life Insurance Company

April 12, 2020

**VIA EMAIL AND U.S. MAIL**

Mrs. Cynthia Gardner  
Cynthia's Ristorante  
125 Market House Square  
Paducah, KY 42001  
cynthia.gardner@ymail.com

<b>Re:</b>	<b>Insured:</b>	<b>Yiddle Mister Bill DBA Cynthia's Ristorante</b>
	<b>Policy No.:</b>	<b>EPP 007 57 84</b>
	<b>Claim No.:</b>	<b>3534840</b>
	<b>Date of Loss:</b>	<b>03/15/2020</b>

Dear Mrs. Gardner:

I am the Cincinnati claims professional responsible for your claim. All communications regarding your claim should be directed to my attention. This letter further addresses the above-referenced claim made by Yiddle Mister Bill Inc DBA Cynthia's Ristorante to Cincinnati Insurance Company ("Cincinnati"). As submitted, the claim involves the Novel Coronavirus known as SARS-CoV-2, which causes the viral infection known as COVID-19 ("Coronavirus"). The claim asserts loss of income beginning on March 15<sup>th</sup> due to government shutdown.

Cincinnati will investigate your claim. However, it is important that you understand certain coverage issues that may be implicated by your claim. To that end, certain of your Policy provisions are referred to in this letter. Nevertheless, Cincinnati reserves the right to rely on other Policy provisions should it become appropriate to do so as this investigation progresses. Cincinnati is investigating your claim under a full reservation of rights.

**THE CINCINNATI POLICY**

Cincinnati issued Policy no. EPP 007 57 84 to Yiddle Mister Bill Inc DBA Cynthia's Ristorante (the "Policy"). The Policy's effective dates are from April 21, 2017 – April 21, 2020.

**EXHIBIT 1**

## **RESERVATION OF RIGHTS**

### **A. Direct Physical Loss**

The Policy<sup>1</sup> provides the following coverage:

We will pay for direct physical "loss" to Covered Property at the "premises" caused by or resulting from any Covered Cause of Loss.

(FM 101 04 04 at p. 3.) The Policy defines "loss" as "accidental loss or damage." The Policy defines "premises" as "the Location of Premises described in the Declarations." (FM 101 04 04 at p. 34.)

At the threshold, there must be direct physical loss or damage to Covered Property caused by a covered cause of loss in order for the claim to be covered. Covered Property generally entails your premises and business personal property. Direct physical loss or damage generally means a physical effect on Covered Property, such as a deformation, permanent change in physical appearance or other manifestation of a physical effect. Your notice of claim indicates that your claim involves Coronavirus. However, the fact of the pandemic, without more, is not direct physical loss or damage to property at the premises.

### **B. Business Income and Extra Expense Coverage**

The Policy provides coverage for Business Income and Extra Expense under certain circumstances. This coverage is included in Form FM 101 04 04:

#### **(1) Business Income**

We will 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 physical "loss" to property at a "premises" caused by or resulting from any Covered Cause of Loss. With respect to "loss" to personal property in the open or personal property in a vehicle, the "premises" include the area within 1000 feet of the site at which the "premises" are located.

#### **(2) Extra Expense**

We will pay "Extra Expense" you incur during the "period of restoration":

---

<sup>1</sup> We cite to or quote provisions of the Policy in this letter. In some instances, in the interests of brevity, we quote or cite only portions of the language. Any terms in bold are in bold in the policy and do not denote additional emphasis unless so indicated. Please refer to the Policy for a full reading of all the terms, conditions or other language cited or referenced.



- (a) To avoid or minimize the "suspension" of business and to continue "operations":
  - 1) At the "premises"; or
  - 2) At replacement locations or at temporary locations, including:
    - a) Relocation expenses; and
    - b) Costs to equip and operate the replacement or temporary locations; or
- (b) To minimize the "suspension" of business if you cannot continue "operations".

However:

- (a) We will pay "Extra Expense" to repair or replace any property, or to research, replace, or restore the lost information on damaged "valuable papers and records" only to the extent it reduces the amount of "loss" that otherwise would have been payable under this Coverage Part; and
- (b) If any property obtained for temporary use during the "period of restoration" remains after the resumption of normal "operations", the amount we will pay under this Coverage will be reduced by the salvage value of that property.

\* \* \*

The most we will pay for "loss" under this "Business Income" and "Extra Expense" Coverage Extension is \$25,000 in any one occurrence.

(FM 101 04 04 at p. 16.) The Policy defines "Extra Expense" as "necessary expenses you incur during the 'period of restoration' that you would not have incurred if there had been no direct physical 'loss' to property caused by or resulting from a Covered Cause of Loss." (FM 101 04 04 at p. 34.)

The "Business Income" and Extra Expense coverages provided under this form requires that there be direct physical loss caused by a Covered Cause of Loss. This direct physical loss must be to property at the covered premises. Without it, there can be no business income or extra expense coverage. Moreover, as stated, direct physical loss generally means a physical effect on covered property, such as a deformation, permanent change in physical appearance or other manifestation of a physical effect. Your notice of claim indicates that your claim involves Coronavirus. However, the fact of the pandemic, without more, is not direct physical loss to property at the premises. Later in this letter, we ask questions and seek information directed toward these issues.

### **C. Civil Authority**

The Policy provides coverage for an interruption of your business caused by an order from a civil authority. This coverage is included in the main property form in your policy, FM 101 04 04:

We will pay for the actual loss of "Business Income" you sustain and "Extra Expense" you incur caused by action of civil authority that prohibits access to the "premises" due to direct physical "loss" to property, other than at the "premises", caused by or resulting from any Covered Cause of Loss.

This coverage will apply for a period of up to 30 consecutive days from the date of that action.

\* \* \*

The most we will pay for "loss" under this "Business Income" and "Extra Expense" Coverage Extension is \$25,000 in any one occurrence.

(FM 101 04 04 at p. 17.)

A key element of this coverage that is your burden to show to us is damage to property other than your own that was caused by or resulted from a covered cause of loss. Later in this letter, we ask questions and seek information directed toward these issues.

### **CONCLUSION**

This letter addresses certain key, threshold policy provisions that are generally implicated by Coronavirus claims. Other policy provisions may become relevant as our investigation continues. Should that happen, we will supplement this letter to inform you of those policy provisions and to discuss their relationship to your claim.

Cincinnati is conducting its investigation subject to a full reservation of its rights. As part of Cincinnati's investigation, please provide the following documents and information as soon as possible:

- Please describe any direct physical loss or damage to your premises or property at your premises by the Coronavirus. Additionally, please specify these details and supply these documents:
  - The reason or reasons why you believe that there was direct physical loss or damage to your premises or to property at your premises.
  - Copies of all inspection reports and test reports referring or relating to actual or suspected presence of Coronavirus at your premises or property at your premises.



- Documents referring or relating to the presence of Coronavirus at your premises, including among employees, customers or other visitors to the premises.
  - These documents should include any relevant correspondence or emails.
- Please state whether you have been ordered by a civil authority, such as a government official, to close, or restrict access to, your premises. If so, please specify these details and supply these documents:
  - Identify the civil authority that issued the order or orders.
  - Identify the date and nature of the order or orders.
  - Supply a copy of the order or orders.
- Identify any property, other than your own, that suffered direct physical loss or direct physical damage, thereby causing the civil authority order to issue. Additionally, please specify these details and supply these documents:
  - The reason or reasons why you believe that there was direct physical loss or direct physical damage to premises or to property at premises other than your own premises.
    - The reason or reasons why you believe that the presence of Coronavirus at that other premises caused the issuance of the civil authority order involved in your claim.
  - Copies of all inspection reports and test reports referring or relating to direct physical loss or direct physical damage to that other premises.
  - Copies of all inspection reports and test reports referring or relating to actual or suspected presence of the Coronavirus at that other premises or property at that other premises.

\* \* \*

Cincinnati is not waiving any of its rights under the Policy. Cincinnati reserves the right to rely on any other language in the Policy, which may become applicable as circumstances develop. Cincinnati reserves the right to rely on other provisions or terms of the Policy and not just those discussed in this letter.

Please feel free to contact me if you have any questions or would like to discuss this matter.

Very truly yours,

  
Mike Joseforsky, AIC, AIM  
Senior Claims Specialist  
P.O. Box 4254 Evansville, IN 47724

Gardner  
Page 6  
April 10, 2020

(812) 476-8523  
mike\_joseforsky@cinfin.com

cc: Cindy Davis, cdavis@peelholland.com

**RON R. PARRY**

EMAIL: [RRPARRY@STRAUSSTROY.COM](mailto:RRPARRY@STRAUSSTROY.COM)

WRITER'S DIRECT DIAL NO.: (513) 629-9485

WRITER'S DIRECT FAX: (513) 241-8259

April 29, 2020

Via E-mail

[mike\\_joseforsky@cinfin.com](mailto:mike_joseforsky@cinfin.com)

Mike Joseforsky, AIC, AIM  
Senior Claims Specialist  
The Cincinnati Insurance Company  
P.O Box 4254  
Evansville, Indiana 47724

Re: Insured: Yiddle Mister Bill DBA Cynthia's Ristorante  
Policy No.: EPP 007 57 84  
Claim No.: 3534840  
Date of Loss: 03/15/2020

Dear Mike:

This is to provide the information you requested in your April 12, 2020 letter to Mrs. Cynthia Gardner:

## I.

- Please describe any direct physical loss or damage to your premises or property at your premises by the Coronavirus. Additionally, please specify these details and supply these documents:
  - The reason or reasons why you believe that there was direct physical loss or damage to your premises or to property at your premises.
  - Copies of all inspection reports and test reports referring or relating to actual or suspected presence of Coronavirus at your premises or property at your premises.
  - Documents referring or relating to the presence of Coronavirus at your premises, including among employees, customers or other visitors to the premises.
    - These documents should include any relevant correspondence or emails.

## RESPONSE:

As your third question below indicates, it is not necessary that there be physical loss or damage at our premises or to property at our premises. Pursuant to the coverage relating to loss

of business income resulting from the action of a Civil Authority, it is sufficient that there is physical loss or direct physical damage at any property, including property other than our own.

## II.

- Please state whether you have been ordered by a civil authority, such as a government official, to close, or restrict access to, your premises. If so, please specify these details and supply these documents:
  - Identify the civil authority that issued the order or orders.
  - Identify the date and nature of the order or orders.
  - Supply a copy of the order or orders.

### RESPONSE:

Please see the attached Order from the Kentucky Cabinet for Health and Family Services.

## III.

- Identify any property, other than your own, that suffered direct physical loss or direct physical damage, thereby causing the civil authority order to issue. Additionally, please specify these details and supply these documents:
  - The reason or reasons why you believe that there was direct physical loss or direct physical damage to premises or to property at premises other than your own premises.
    - The reason or reasons why you believe that the presence of Coronavirus at that other premises caused the issuance of the civil authority order involved in your claim.
  - Copies of all inspection reports and test reports referring or relating to direct physical loss or direct physical damage to that other premises.
  - Copies of all inspection reports and test reports referring or relating to actual or suspected presence of the Coronavirus at that other premises or property at that other premises.

### RESPONSE:

We assume that the officials acting on behalf of the Kentucky Cabinet for Health and Family Services had sufficient evidence of the presence of the virus at various premises in the Commonwealth and that evidence served as the basis for the attached Order. See also the following article:

<https://linkprotect.cudasvc.com/url?a=https%3a%2f%2fkyem.maps.arcgis.com%2fapps%2fopsd%2findex.html%23%2f55763d9941ee4408854c6c8db77c8e2d&c=E,1,wQz3H2ZJ3CgOTq7xdFhzATQXoIkzh45y3USZiasAIA2UiTgsE6x-1-ISzbDjUjaYOuHGQPDpBoemROPaPH1PHEeJLW6p-PMd335zEq4UPpY,&typo=1>




We are sure that you are aware of the case law indicating that physical loss or physical damage need not be actual visible destruction of property. The case law supports the proposition that airborne pollutants or diseases can qualify as physical loss or damage.

One additional point that we would make is that we have reviewed other similar policies issued by the Cincinnati Insurance Company. We are aware that one of the available coverages from CIC is "Crisis Event Coverage". We noted that under the Crisis Event Coverage there is a specific exclusion relating to viruses. You have referred to no specific virus exclusion in the coverage for loss of business income arising from the action of a Civil Authority. We think this is significant.

We hope that you are now in a position to discuss payment to our client under the terms of the policy. If you are, then we will submit the relevant financial information to you so that you can make the calculations to provide the coverage that you owe. If it is your intention to deny coverage then obviously we will not waste our time in putting together the financial information to support the claim.

Very truly yours,

STRAUSS TROY

  
Ron R. Parry

and

Mark Bryant  
Bryant Law Center, PSC

RRS/klr  
Attachment

13959212\_1.DOC



**CABINET FOR HEALTH AND FAMILY SERVICES  
OFFICE OF LEGAL SERVICES**

**Andy Beshear  
Governor**

275 East Main Street, 5W-B  
Frankfort, KY 40621  
502-564-7905  
502-564-7573  
[www.chfs.ky.gov](http://www.chfs.ky.gov)

**Eric C. Friedlander  
Acting Secretary**

**Wesley W. Duke  
General Counsel**

**ORDER**

March 16, 2020

On March 6, 2020, Governor Andy Beshear signed Executive Order 2020-215, declaring a state of emergency in the Commonwealth due to the outbreak of COVID-19 virus, a public health emergency. Pursuant to the authority in KRS Chapter 39A, including but not limited to KRS 39A.100(1)(f), (h) and (j), KRS 194A.025, KRS 214.020, KRS 241.090, KRS 244.120, and Executive Order 2020-215, the Cabinet for Health and Family Services, Department of Public Health, and the Public Protection Cabinet, Alcoholic Beverage Control, hereby order the following directives until March 30, 2020, to reduce and slow the spread of COVID-19, to ensure that persons and groups disperse from the scene of the emergency, and to promote and secure the safety and protection of the civilian population:

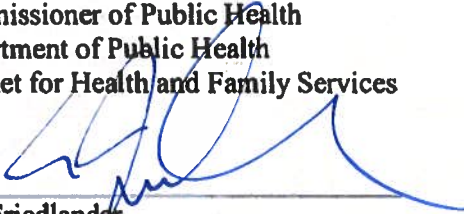
1. By 5:00 p.m. on March 16, 2020, food and beverage sales are restricted to carry-out, delivery and drive-thru only; no onsite consumption is permitted; and
2. This Order does not apply to and/or exempts food service in health care facilities or any congregate living facilities, such as long-term care facilities as defined by KRS 216.510 and similar locations; and
3. Liquor, beer and wine sales in the Commonwealth of Kentucky are restricted to carry-out, delivery and drive-thru services only, to the extent permitted by law. No onsite consumption is permitted; and
4. Establishments offering carry-out, delivery and drive-thru orders shall ensure that patrons and employees engage in appropriate social distancing (staying 6 feet away from each other); and
5. The overriding goal of this Order is to minimize in-person interaction which is the primary means of transmission of COVID-19. The immediate implementation of this Order is necessary as patrons of bars and restaurants gather in large numbers, in close proximity to each other and in enclosed spaces, thereby endangering the health of the staff as well as the patrons; and

6. The Department of Public Health hereby delegates to local health departments the authority to take all necessary measures to implement this Order.

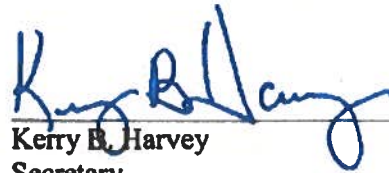
This Order shall remain in effect throughout the State of Emergency under Executive Order 2020-215. The Cabinet for Health and Family Services and the Public Protection Cabinet will monitor these directives continuously and may extend or modify this Order at any time.



Steven J. Stack, M.D.  
Commissioner of Public Health  
Department of Public Health  
Cabinet for Health and Family Services



Eric Friedlander  
Acting Secretary  
Governor's Designee



Kerry B. Harvey  
Secretary  
Public Protection Cabinet





The Cincinnati Insurance Company ■ The Cincinnati Indemnity Company  
The Cincinnati Casualty Company ■ The Cincinnati Specialty Underwriters Insurance Company  
The Cincinnati Life Insurance Company

**Michael Joseforsky**  
Senior Claims Specialist

April 29, 2020

**VIA EMAIL AND U.S. MAIL**

Mrs. Cynthia Gardner  
Cynthia's Ristorante  
125 Market House Square  
Paducah, KY 42001  
Cynthia.gardner@ymail.com

<b>Re:</b>	<b>Insured:</b>	<b>Yiddle Mister Bill DBA Cynthia's Ristorante</b>
	<b>Policy No.:</b>	<b>EPP 007 57 84</b>
	<b>Claim No.:</b>	<b>3534840</b>
	<b>Date of Loss:</b>	<b>03/15/2020</b>

Dear Mrs. Gardner:

This letter provides Cincinnati Insurance Company's ("Cincinnati") coverage decision for the above-referenced claim made by Yiddle Mister Bill DBA Cynthia's Ristorante ("you" or "Cynthia's"). As submitted, the claim involves the Novel Coronavirus known as SARS-CoV-2, which causes the viral infection known as COVID-19 ("Coronavirus"). The claim asserts loss of income beginning on March 15, 2020 due to government shutdown. Cincinnati has determined that coverage is unavailable for the claimed loss. Cincinnati regrets that this decision is necessary and wants to describe the basis for its decision. Should you have any disagreement with the basis for this decision, Cincinnati invites you to state the reasons for your disagreement in writing, including by submitting any additional information or documentation. Cincinnati will consider any further information or documents you may supply.

**I. SUMMARY**

The Cincinnati policy provides coverage for direct physical loss or damage to Covered Property at the premises. 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.

Nothing in this letter is a waiver of any rights available to Cincinnati under the policy or applicable law. Cincinnati reserves the right to rely on additional rights and/or language in the policy whether or not discussed in this letter.

## **II. THE CINCINNATI POLICY**

Cincinnati issued policy number EPP 007 57 84 to Yiddle Mister Bill DBA Cynthia's Ristorante (the "Policy"). The Policy's effective dates are from April 21, 2017 to April 21, 2020. The Commercial Property Coverage provides limits of insurance for Building of \$408,396, for Business Personal Property of \$110,000 and for Business Income with Extra Expense of \$100,000.

## **III. BACKGROUND**

It is our understanding that Cynthia's was subject to subject to the Cabinet for Health and Family Services Office of Legal Services Order of March 16, 2020. A Business Income claim was presented to the Cincinnati Insurance Company on April 10, 2020 and our telephone conversation of that date confirmed you were limited to only take out services. The reservation of rights letter was issued on April 12, 2020 and you indicated on April 20, 2020 having received and reviewed the same. Your email of April 21, 2020 contained the above-mentioned order and therein you described trying to clean your building as best you could and were having difficulty locating cleaning supplies.

## **IV. NO COVERAGE UNDER THE POLICY FOR LOSS OF INCOME DUE TO CORONAVIRUS**

### **A. No Direct Physical Loss**

The Policy<sup>1</sup> provides the following coverage:

We will pay for direct physical "loss" to Covered Property at the "premises" caused by or resulting from any Covered Cause of Loss.

(FM 101 04 04 at p. 3.) The Policy defines "loss" as "accidental loss or damage." (FM 101 04 04 at p. 34.) The Policy defines "premises" as "the Location of Premises described in the Declarations." (FM 101 04 04 at p. 35.)

This claim does not satisfy the Policy's insuring agreement. The claim does not involve direct, physical loss to property at your premises caused by a Covered Cause of Loss.

Although you have asserted that Coronavirus was present at your premises, evidenced by your cleaning and further attempts to locate supplies, that presence alone is not direct physical loss to property. You have not shown any direct physical loss to

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<sup>1</sup> We cite to or quote provisions of the Policy in this letter. In some instances, in the interests of brevity, we quote or cite only portions of the language. Any terms in bold are in bold in the policy and do not denote additional emphasis unless so indicated. Please refer to the Policy for a full reading of all the terms, conditions or other language cited or referenced.



property, as required by the Policy. Accordingly, the Policy's insuring agreement is not met and coverage is unavailable under the Policy.

**B. No Business Income and Extra Expense Coverage**

The Policy's Coverage Extensions section contains provisions for Business Income and Extra Expense coverage, included in Form FM 101 04 04:

**(1) Business Income**

We will 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 physical "loss" to property at a "premises" caused by or resulting from any Covered Cause of Loss. With respect to "loss" to personal property in the open or personal property in a vehicle, the "premises" include the area within 1000 feet of the site at which the "premises" are located.

**(2) Extra Expense**

We will pay "Extra Expense" you incur during the "period of restoration":

- (a) To avoid or minimize the "suspension" of business and to continue "operations":
  - 1) At the "premises"; or
  - 2) At replacement locations or at temporary locations, including:
    - a) Relocation expenses; and
    - b) Costs to equip and operate the replacement or temporary locations; or
- (b) To minimize the "suspension" of business if you cannot continue "operations".

However:

- (a) We will pay "Extra Expense" to repair or replace any property, or to research, replace, or restore the lost information on damaged "valuable papers and records" only to the extent it reduces the amount of "loss" that otherwise would have been payable under this Coverage Part; and
- (b) If any property obtained for temporary use during the "period of restoration" remains after the resumption of normal "operations", the amount we will pay under this Coverage will be reduced by the salvage value of that property.



(FM 101 04 04 at p. 16-17.)

Additionally, the Policy at Form FA 213 04 04 provides separate Business Income and Extra Expense coverage provisions:

**1. Business Income**

- a. We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical "loss" to property at a "premises" which is described in the Declarations and for which a Business Income Limit of Insurance is shown in the Declarations. The "loss" must be caused by or result from a Covered Cause of Loss. With respect to "loss" to personal property in the open or personal property in a vehicle, the "premises" include the area within 1,000 feet of the site at which the "premises" are located.
- b. 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 incurred, including payroll.
  - c. If you are a tenant and occupy only part of the site at which the "premises" are located, for the purposes of this Coverage Part only, your "premises" is the portion of the building which you rent, lease or occupy, including:
    - (1) Any area within the building or on the site at which the "premises" are located if that area services or is used to gain access to the described "premises".
    - (2) Your personal property in the open (or in a vehicle) within 1,000 feet.

**2. Extra Expense**

- a. We will pay the actual and necessary Extra Expense you incur due to direct physical "loss" to property at a "premises" which is described in the Declarations and for which an Extra Expense Limit of Insurance is shown in the Declarations. The "loss" must be caused by or result from a Covered Cause of Loss. With respect to "loss" to personal property in the open or personal property in a vehicle, the "premises" include the area within 1,000 feet of the site at which the "premises" are located.
- b. Extra Expense means necessary expenses you incur during the "period of restoration" that you would not have incurred if there had

been no direct physical "loss" to property caused by or resulting from a Covered Cause of Loss. Coverage pertains to expenses incurred (other than the expense to repair or replace property) to:

- (1) Avoid or minimize the "suspension" of business and to continue "operations":
  - (a) At the "premises"; or
  - (b) At replacement locations or at temporary locations, including:
    - 1) Relocation expenses; and
    - 2) Costs to equip and operate the replacement or temporary locations.
- (2) Minimize the "suspension" of business if you cannot continue "operations".
  - (3) To the extent it reduces the amount of "loss" that otherwise would have been payable under this Coverage Part, we will pay any Extra Expense to:
    - (a) Repair or replace any. property; Or
    - (b) Research, replace or restore the lost information on damaged "valuable papers and records".

However, if any property obtained for temporary use during the "period of restoration" remains after the resumption of normal "operations", the amount we will pay under this Coverage will be reduced by the salvage value of that property.

- c. If you are a tenant and occupy only part of the site at which the "premises" are located, for the purposes of this Coverage Part only, your "premises" is the portion of the building which you rent, lease or occupy, including:
  - (1) Any area within the building or on the site at which the "premises" are located if that area services or is used to gain access to the described "premises".
  - (2) Your personal property in the open (or in a vehicle) within 1,000 feet.

(FA 213 04 04 at pp.1-2.)

Like the Policy's insuring agreement, the Business Income and Extra Expense coverages require that there be direct physical loss or damage to Covered Property at the premises or within 1,000 feet of those premises. There is no evidence of any such physical loss or damage. Accordingly, the Business Income and Extra Expense requirements are not satisfied and coverage is unavailable under the Policy.



### **C. Pollution Exclusion**

For the reasons stated above, there is no coverage here because there was no direct physical loss at the premises. But even assuming that there was direct physical loss, there was no covered cause of loss. This is because the Policy's Exclusions section at FM 101 04 04 excludes from coverage any "loss" caused by or resulting from:

#### **(I) Pollutants**

Discharge, dispersal, seepage, migration, release, escape or emission of "pollutants" unless the discharge, dispersal, seepage, migration, release, escape or emission is itself caused by any of the "specified causes of loss". But if the discharge, dispersal, seepage, migration, release, escape or emission of "pollutants" results in a "specified cause of loss", we will pay for the "loss" caused by that "specified cause of loss".

(FM 101 04 04 at pp. 7, 9.)

The Policy defines "pollutants" as

any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, petroleum and petroleum by-products, and waste. . . . "Pollutants" include but are not limited to substances which are generally recognized in industry or government to be harmful or toxic to persons, property, or the environment regardless of whether injury or damage is caused directly or indirectly by the "pollutants" . . . .

(FM 101 04 04 at p. 34.)

The Coronavirus is a solid irritant or contaminant. Moreover, the government generally recognizes the Coronavirus as harmful to people. Accordingly, to the extent the Policy's insuring agreement was otherwise satisfied, coverage would ultimately be excluded because under the Pollutants exclusion there was no covered cause of loss.

### **D. No Civil Authority Coverage**

The Policy's Coverage Extensions section contains provisions for Civil Authority coverage, included in Form FM 101 04 04:

We will pay for the actual loss of "Business Income" you sustain and "Extra Expense" you incur caused by action of civil authority that prohibits access to the "premises" due to direct physical "loss" to



property, other than at the "premises", caused by or resulting from any Covered Cause of Loss.

This coverage will apply for a period of up to 30 consecutive days from the date of that action.

(FM 101 04 04 at p. 17.)

Additionally, the Policy at Form FA 213 04 04 provides separate Civil Authority coverage provisions:

We will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the "premises" due to direct physical "loss" to property, other than at the "premises", caused by or resulting from any Covered Cause of Loss.

This 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 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.

(FA 213 04 04 at p. 2.)

Although you closed your business in response to a governmental order, there is no evidence that the order was entered because of direct damage to property at other locations or dangerous physical conditions at other locations. Moreover, the order does not restrict access to the area immediately surrounding your premises. Because these requisite elements of the Civil Authority coverage are not present here, coverage is unavailable under the Policy.

## **V. CONCLUSION**

For the reasons discussed above, Cincinnati has concluded that the Policy provides no coverage for your claim. Cincinnati therefore cannot indemnify Yiddle Mister Bill DBA Cynthia's Ristorante for any loss of business income from Coronavirus.

You should note that the U.S. Small Business Administration ("SBA") may be providing assistance for citizens in your circumstances. I understand that the SBA's contact information is:

Gardner  
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April 28, 2020

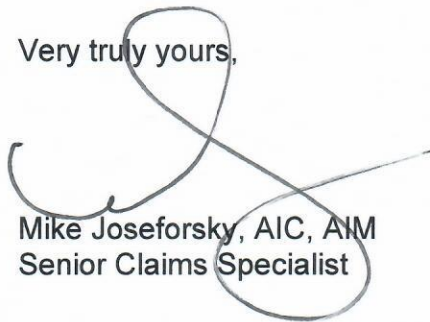
Website: <https://www.sba.gov/funding-programs/disaster-assistance>  
Phone: 1-800-659-2955

This letter is not intended to be a limitation or waiver of any rights available to Cincinnati. Cincinnati's position is based on the information available to date. Cincinnati reserves all of its rights under the Policy and the applicable law. Cincinnati reserves the right to rely on any and all provisions of the Policy whether or not addressed in this letter.

If you have any information that you believe may impact any of the issues raised in this letter, please forward it to us as soon as possible. If you believe that we have misunderstood the facts or are in error regarding any of the statements set forth above, please notify us as soon as possible.

Please feel free to contact me if you have any questions or would like to discuss this matter.

Very truly yours,



Mike Joseforsky, AIC, AIM  
Senior Claims Specialist

cc: Cindy Davis, [cdavis@peelholland.com](mailto:cdavis@peelholland.com)