

CASE NO. 20-CI-7121

JEFFERSON CIRCUIT COURT  
DIVISION 10  
JUDGE \_\_\_\_\_

KEN COMBS RUNNING STORE, INC.

PLAINTIFF

v. **COMPLAINT AND PETITION FOR DECLARATORY JUDGMENT**

AUTO-OWNERS INSURANCE COMPANY  
Corporate Office  
6101 Anacapi Blvd.  
Lansing, MI 48917

DEFENDANTS

Serve: CT Corporation System,  
Registered Agent for Service of Process  
306 W. Main Street, Suite 512  
Frankfort, KY 40601

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Comes the Plaintiff, Ken Combs Running Store, Inc., by and through counsel, and for its  
Complaint and Petition for Declaratory Judgment states as follows:

**PARTIES, JURISDICTION, VENUE**

1. Plaintiff is a Kentucky corporation in the business of operating a retail store known as Ken Combs Running Store. Its principal office is located at 108 Blackburn Avenue, Louisville, Kentucky 40206.

2. Defendant Auto-Owners Insurance Company is a Michigan Corporation licensed to provide insurance products, including business and commercial insurance policies, in the Commonwealth of Kentucky. Defendant's principal place of business is located at 6101 Anacapi Blvd., Lansing, MI, 48917, and Defendant may be served through its registered agent for service of process, CT Corporation System, 306 W. Main St., Suite 512, Frankfort, KY 40601.

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3. Because Defendant is a Kentucky-licensed provider of insurance products and because this case arises out of an insurance contract between Defendant and a Kentucky resident, this Court has personal jurisdiction of the Defendant.

4. Subject matter jurisdiction, and venue are appropriate in this Court because, among other things, the amount-in-controversy exceeds \$5,000 exclusive of interest and costs, and the dispute arises out of a contract that was to be performed in Jefferson County, Kentucky.

**FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

5. Plaintiff operates a retail specialty-sports store in Louisville, Kentucky.

6. To insure its operations, Plaintiff purchased commercial insurance policy No. 50-398084-00, effective July 3, 2019 to July 3, 2020 (the "Policy"), from Defendant.

7. The Policy included Businessowners Liability Coverage and Property Coverage. The Policy's Property Coverage provisions are attached hereto as **Exhibit A** (the "Property Coverage") and incorporated by reference as if set forth at length herein.

8. Pursuant to Section A(5)(f) (the "Business Interruption Coverage") of the Property Coverage, Defendant agreed to "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 of or damage to property at the described premises ... caused by or resulting from any Covered Cause of Loss."

9. Section A(3) of the Policy's Property Coverage defines "Covered Causes of Loss" to include all "RISKS OF DIRECT PHYSICAL LOSS" other than those excluded by Section B. Exclusions or limited in Paragraph A.4, Limitations.

10. The Policy does not further define "RISKS OF DIRECT PHYSICAL LOSS," but, as evidenced by the limitation contained in Paragraph A(4)(d), the "physical loss" of property includes acts that deprive the insured of the subject property, such as "loss or damage by theft."

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11. On March 25, 2020, in response to the novel coronavirus, COVID-19, Kentucky Governor Andy Beshear issued Executive Order No. 2020-257 (the "Stay-At-Home Order") which stated, "All businesses that are not life-sustaining shall cease operations effective Thursday, March 26, 2020 at 8:00 p.m., except as needed to conduct Minimum Basic Operations."

12. At the time, the Stay-At-Home Order did not have a fixed end date. However, the Stay-At-Home Order has since concluded as of June 29, 2020.

13. Between March 25, 2020 and June 29, 2020, Plaintiff suffered the physical loss of its business premises as a result of the Stay-At-Home Order.

14. Between March 25, 2020 and June 29, 2020, Plaintiff sustained a loss of income due to the necessary suspension of its operations caused by the physical loss of its business premises.

15. Plaintiff filed a claim for business income loss with Defendant Auto-Owners, Claim No. 300-0094499-2020.

16. Defendant Auto-Owners denied Plaintiff's claim by letter dated April 15, 2020.

#### **COUNT 1- DECLARATION OF RIGHTS-DEFENDANT AUTO-OWNERS**

17. Plaintiff adopts and incorporates the allegations contained in Paragraphs 1-16 of the Complaint and Petition for Declaration of Rights as if fully restated herein.

18. An actual case or controversy exists as to the interpretation of the Policy.

19. The COVID-19 pandemic and resulting Stay-At-Home Order deprived the Plaintiff of its property and therefore constituted a direct physical loss of property.

20. The operations of Plaintiff at the covered premises were suspended as a result of the COVID-19 pandemic and the Stay-At-Home Order and, as a result, Plaintiff sustained substantial and continuing business incomes losses covered by the Policy.

21. For the foregoing reasons, pursuant to KRS § 418.075, Plaintiff is entitled to a declaration of rights that coverage exists for business income losses under the Policy.

**COUNT 2- BREACH OF CONTRACT-DEFENDANT AUTO-OWNERS**

22. Plaintiff adopts and incorporates the allegations contained in Paragraphs 1-21 of this Complaint and Petition for Declaration of Rights as if fully restated herein.

23. The Policy is a valid, binding, and enforceable contract requiring Defendant to provide Business Interruption Coverage.

24. Plaintiff has fully complied with its obligations under the Policy.

25. By virtue of its actions described herein, Defendant has breached the Policy.

26. Plaintiff has suffered damages as a result of the Defendant Auto-Owners's breach of the contract in an amount exceeding the minimum jurisdictional requirements of this Court.

**COUNT 3 – UNJUST ENRICHMENT**

27. Plaintiff adopts and incorporates the allegations contained in Paragraphs 1-26 of this Complaint and Petition for Declaration of Rights as if fully restated herein.

28. In the event the Court determines that Business Interruption Coverage does not exist, then the Defendant has offered and charged premiums for coverage that Plaintiff did not require.

29. Under these circumstances, the Defendant has been unjustly enriched at the Plaintiff's expense, and Plaintiff is entitled to a judgment in its favor against the Defendant for unjust enrichment in an amount to be determined by the evidence.

**WHEREFORE**, Plaintiff respectfully demands the following relief:

1. A declaration of rights that coverage exists for the Plaintiff's claim of loss under the Policy;

2. Actual and compensatory monetary damages according to the proof at trial, plus interest;
3. Trial by jury on any issues so triable;
4. Reasonable attorney's fees and costs; and
5. All other relief available in law or equity as this Court may deem just and proper.

Respectfully submitted,

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Presiding Judge: HON. ANGELA MCCORMICK, BISIG (630326)

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