

**LORAIN COUNTY COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO**

**TOM ORLANDO, Clerk  
JOURNAL ENTRY  
James L. Miraldi, Judge**

Date 09/29/20

Case No. 20CV201416

FRANCOIS INC  
Plaintiff

JEREMY A TOR  
Plaintiff's Attorney (216)696-3232

VS

THE CINCINNATI INSURANCE COMPANY  
Defendant

SCOTT STEPHENSON  
Defendant's Attorney (-)

This matter came before the Court upon the motion of Defendant Cincinnati Insurance Company to dismiss.

Based upon the briefs, the defendant's 12(b)(6) Motion is denied. Before a court may dismiss an action under Civ. R. 12 (B)(6) for failure to state a claim upon which relief can be granted, it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery. *O'Brien v. University Community Tenants Union*, 42 Ohio St.2d 242, 327 N.E.2d 753 (1975), syllabus. To make this determination, the court is required to interpret all material allegations in the complaint as true and admitted. *Phung v. Waste Management, Inc*, 23 Ohio St.3d 100,102, 491 NE.2d 1114 (1986).

The complaint states claims which arguably fit the terms and conditions of the insurance policy and therefore the claims and defenses need to be developed with a record. The parties should proceed with discovery on liability/coverage while the damages issues are bifurcated. Discovery on damages is held in abeyance until a decision has been made on coverage as the court anticipates Summary Judgment motions will be filed at the conclusion of discovery on the liability/coverage issues. A telephone status call is set for October 27, 2020 at 11:30a.m. Plaintiff shall initiate the telephone conference to all other counsel and then to the court at (440) 328-2393 or (440) 328-2390 at which time the discovery framework and briefing schedule can be determined by agreement.

  
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James L Miraldi, Judge