

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOSEPH TAMBELLINI, INC. D/B/A  
JOSEPH TAMBELLINI RESTAURANT  
5701 Bryant Street  
Pittsburgh, PA 15206

No.: GD-20-005137

Plaintiff,

**MEMORANDUM OF LAW IN  
SUPPORT OF MOTION TO  
COORDINATE**

vs.

ERIE INSURANCE EXCHANGE  
100 Erie Insurance Place  
Erie, PA 16530,

Defendant.

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Motion Served June 24, 2020

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**IN THE COURT OF COMMON PLEAS OF  
ALLEGHENY COUNTY, PENNSYLVANIA**

JOSEPH TAMBELLINI, INC. D/B/A  
JOSEPH TAMBELLINI RESTAURANT  
5701 Bryant Street  
Pittsburgh, PA 15206,

CIVIL DIVISION

Plaintiff,

No. GD-20-005137

v.

ERIE INSURANCE EXCHANGE  
100 Erie Insurance Place  
Erie, PA 16530,

JURY TRIAL DEMANDED

Defendant.

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HTR RESTAURANTS, INC. D/B/A SIEBS  
PUB, INDIVIDUALLY AND ON BEHALF  
OF A CLASS OF SIMILARLY SITUATED  
PERSONS  
3382 Babcock Boulevard  
Pittsburgh, PA 15327,

CIVIL DIVISION

No. GD-20-006901

Plaintiff,

v.

JURY TRIAL DEMANDED

ERIE INSURANCE EXCHANGE  
100 Erie Insurance Place  
Erie, PA 16530,

Defendant.

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO COORDINATE**

Plaintiffs, Joseph Tambellini, Inc. d/b/a Joseph Tambellini Restaurant (“Tambellini”) and HTR Restaurants, Inc. d/b/a Siebs Pub (“HTR”), individually and on behalf of a class of similarly situated persons (collectively, the “Allegheny County Plaintiffs” and the “Allegheny County Actions”), together with Plaintiffs Capriccio Parkway, LLC d/b/a Capriccio Cafe and Bar at Cret Park, and Capriccio, Inc. d/b/a Capriccio Café at Wills Eye Hospital (“Capriccio”), on

behalf of themselves and all others similarly situated (the “Philadelphia County Plaintiffs” and the “Philadelphia County Action”), and Perfect Pots, LLC (“Perfect Pots”) (the “Lancaster County Plaintiff” and the “Lancaster County Action”), by and through their undersigned counsel, hereby jointly move pursuant to Pa.R.C.P. No. 213.1 for an Order coordinating in this Court the Allegheny County Actions along with the Philadelphia County and Lancaster County Actions, and any other action against defendant Erie Insurance Exchange (“Erie” or “Defendant”) concerning Defendant’s denial of business interruption coverage filed in any county in the Commonwealth of Pennsylvania.

## **I. INTRODUCTION**

The Allegheny County Plaintiffs, Philadelphia County Plaintiffs, and the Lancaster County Plaintiff (collectively, “Plaintiffs”) have commenced separate actions in their respective home counties to remedy the economic harm Erie caused those Plaintiffs (and the proposed classes represented by them) when Erie denied Plaintiffs’ and the class members’ claims for business interruption coverage in the wake of the COVID-19 pandemic.

Because the Allegheny County Actions, the Philadelphia County Action, and the Lancaster County Action involve common questions of fact and law that predominate and are central to the litigations, and because Tambellini filed the first business interruption action against Erie in a Pennsylvania state court, the Court should enter an order coordinating in this Court the Allegheny County Actions, the Philadelphia County Action, the Lancaster County Action, and all other actions filed in Pennsylvania against this Defendant with common facts and questions of law. Coordination of the Allegheny County Actions, the Philadelphia County Action, and the Lancaster County Action in Allegheny County – a Court with a structured case management program for commerce, complex, and class cases designed to provide litigants with

timely resolution of disputes by a judge with expertise and experience in such actions – will promote the efficient utilization of judicial facilities and the just and efficient conduct of the actions.

## **II. BACKGROUND**

### **The Allegheny County and Philadelphia County Actions**

The Allegheny County Plaintiffs commenced their actions when Tambellini and HTR filed separate complaints on April 17, 2020. On June 18, 2020, Tambellini filed an amended complaint (“Tambellini Complaint”), a copy of which was previously attached to Plaintiffs’ Motion to Coordinate as Exhibit “C.” On June 3, 2020, Erie filed a Notice of Removal against the HTR complaint. On June 15, 2020, HTR dismissed its removed complaint and, on June 17, 2020, filed a new complaint in this Court (“HTR Complaint”). A copy of the HTR Complaint is was attached to Plaintiffs’ Motion to Coordinate as Exhibit “D.” The Tambellini and HTR Complaints are referred to herein collectively as the “Allegheny County Complaints.” Another Allegheny County Action was commenced by W & S Vehicles, LLC d/b/a P & W Foreign Car Service on June 10, 2020 at GD-20-006654, against the same defendant for substantially the same claims. Service of that Complaint was effectuated on June 23, 2020.

On May 14, 2020, the Lancaster County Plaintiff commenced the Lancaster County Action by filing a Complaint in the Lancaster County Court of Common Pleas (the “Perfect Pots Complaint”). A copy of the Perfect Pots Complaint was attached to Plaintiffs’ Motion to Coordinate as Exhibit “E.” (Plaintiff in Perfect Pots has since amended their Complaint; the Amended Complaint is attached hereto as Exhibit “1.”

On May 29, 2020, the Philadelphia County Plaintiffs commenced the Philadelphia County Action by filing a Complaint in the Philadelphia County Court of Common Pleas (the

“Capriccio Complaint”). A copy of the Capriccio Complaint was attached to the Motion to Coordinate as Exhibit “F.”

The Allegheny County Complaints, the Capriccio Complaint, and the Perfect Pots Complaint all name Erie as the lone Defendant and effectively make the same factual allegations, i.e., that Erie wrongfully denied Plaintiffs’ and the class members’ valid claims for coverage under the business interruption, civil authority and extra expense provisions in their policies with Erie. In fact, the amended Tambellini Complaint, the new HTR Complaint, the Capriccio Complaint, and the amended Perfect Pots Complaint are virtually identical.

Plaintiffs all allege that, in response to the global COVID-19 pandemic, civil authorities in Pennsylvania and throughout the United States issued orders requiring residents to stay at home, shutting down restaurants and other businesses deemed non-essential, and prohibiting gatherings of large groups. In upholding the executive orders issued by Pennsylvania’s Governor, the Pennsylvania Supreme Court recognized the COVID-19 pandemic as “a natural disaster and a catastrophe of massive proportions” that “involve[s] ‘substantial damage to property, hardship, suffering or possible loss of life.’” Friends of Danny DeVito v. Wolf, No. 68 MM 2020, \_\_\_ A.3d \_\_\_, 2020 WL 1847100, at \*12 (Pa. Apr. 13, 2020) (citations omitted). The Court further explained that given the way the virus spreads, “any location . . . where two or more people can congregate is within the disaster area.” *Id.* at \*13. (Motion to Coordinate Exhibits C, D, and F ¶ 1.)

Plaintiffs all allege that, while necessary to slow the spread of the novel coronavirus, these orders have had a devastating effect on businesses, such as Plaintiffs’, which have been forced to suspend business operations. (*Id.* ¶ 2.)

Plaintiffs all allege that, to protect from losses caused by situations like this, Plaintiffs and the other class members obtained insurance policies from Erie that included business interruption coverage. In breach of the insurance obligations Defendant undertook in exchange for premium payments, which Plaintiffs and class members paid, Defendant has wrongfully denied Plaintiffs' and the other class members' insurance claims arising from the interruption of their businesses. (*Id.* ¶ 3.)

**Facts and Law Common to the Allegheny County Actions, the Philadelphia County Action, and the Lancaster County Action<sup>1</sup>**

On January 31, 2020, United States Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the entire United States to aid the nation's healthcare community in responding to COVID-19. (*Id.* ¶ 11.) On March 13, 2020, the President of the United States issued a proclamation that the COVID-19 outbreak in the United States constitutes a national emergency. (*Id.* ¶ 12.) In Pennsylvania, on March 6, 2020, Governor Tom Wolf issued a Proclamation of Disaster Emergency, calling the COVID-19 pandemic a "threat of imminent disaster and emergency." (*Id.* ¶ 15.) On March 19, 2020, Governor Wolf issued an Executive Order closing all businesses in Pennsylvania deemed to be non-life-sustaining. (*Id.* ¶ 17.)

On March 23, 2020, Governor Wolf issued an Executive Order ordering all individuals residing in Allegheny County, Bucks County, Chester County, Delaware County, Monroe County, Montgomery County, and Philadelphia County to stay at home except as needed to access, support, or provide life sustaining business, emergency, or government services. The Pennsylvania Department of Health issued a similar order the same day. (*Id.* ¶ 19.) On April 1, 2020, Governor Wolf issued an Executive Order and the Pennsylvania Department of Health

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<sup>1</sup> The allegations in this section come directly from the Complaints attached to the Motion to Coordinate as Exhibits C, D and F and from the Amended Complaint in Perfect Pots attached hereto as Exhibit "1."

issued an order extending their respective “stay at home” orders to all counties in Pennsylvania. (*Id.* ¶ 20.)

Defendant issued to Plaintiffs and members of the class the same or materially similar “all-risk” insurance policies (the “Policy”). (*Id.* ¶ 25.; *see also* Policies attached to the Complaints as Exhibit A.) The Policy provides that covered causes of loss mean direct physical loss or direct physical damage unless the loss is specifically excluded or limited in the Policy. (*Id.* ¶ 27.) Among the coverages provided by the Policy is business interruption insurance, which, generally, would indemnify Plaintiffs for lost income and profits in the event that their businesses were shut down. Specifically, the Policy provides for (a) business interruption or “Income Protection” coverage for loss of income and/or rental income Plaintiffs sustain due to partial or total “interruption of business”; (b) “Extra expense” coverage for extra expenses Plaintiffs incur to avoid or minimize the interruption of business; and (c) civil authority coverage for the actual loss of income or rental income Plaintiffs sustain and necessary extra expense caused by an action of a civil authority that prohibits access to Plaintiffs’ premises. (*Id.* ¶¶ 28-32.)

Beginning in March 2020, Plaintiffs and the class members were forced to suspend business operations as a result of the COVID-19 pandemic and the related actions of civil authorities. This suspension, which is ongoing, has caused Plaintiffs and the class members to suffer significant losses and incur significant expenses. (*Id.* ¶ 33.) Plaintiffs and the other class members have suffered a direct physical loss of and damage to their property as a result of the COVID-19 pandemic, “a natural disaster and a catastrophe of massive proportions” that “involve[s] ‘substantial damage to property, hardship, suffering or possible loss of life,’” DeVito, 2020 WL 1847100, at \*12 (Pa. Apr. 13, 2020) (citations omitted), and the orders of civil



authorities enacted in response to this natural disaster. Among other things, Plaintiffs and the other class members have been unable to use their property for its intended purpose, and they have been denied access to their property, causing a suspension of business operations on the premises and the function of their property to be nearly eliminated or destroyed. (*Id.* ¶ 34.)

The interruption of Plaintiffs' and other class members' businesses was not caused by any of the exclusions set forth in the applicable Policy, and Plaintiffs provided notice of their losses to Defendant consistent with the terms and procedures of the Policy. (*Id.* ¶¶ 35-36.)

Defendant generally refused to pay Plaintiffs' claims for business interruption losses under the Policy asserting, among other reasons, that there was "no partial or total 'interruption of business' due to direct physical 'loss' or damage to the Covered Property on the premises from a peril insured against," "a Civil Authority did not order that the business be closed due to damage to property within one mile of the premises described in the 'Declarations,' caused by a peril insured against," and based on other exclusions which were not applicable to Plaintiffs' losses. (*Id.* ¶¶ 37.)

The COVID-19 pandemic is physically impacting private commercial property throughout Pennsylvania, threatening the survival of thousands of restaurants, retail establishments, and other businesses that have had their business operations suspended or curtailed indefinitely by order of civil authorities. (*Id.* ¶ 38.)

Erie has refused to pay its insureds under its business income, civil authority, and extra expense coverages for business income losses suffered due to COVID-19, orders by civil authorities that have required the necessary suspension of business, and any efforts to prevent further property damage or to minimize the suspension of business and continue operations. (*Id.* ¶ 39.)

Plaintiffs have brought claims for declaratory relief and breach of contract. (*Id.* ¶¶ 52-110.) Their claims for declaratory relief seek determinations that the business income, civil authority, and extra expense coverages provided in common all-risk commercial property insurance policies applies to the suspension, curtailment, and interruption of business operations resulting from measures put into place by civil authorities is necessary to prevent the Plaintiffs and similarly situated Class members from being denied critical coverage for which they have paid. (*Id.* ¶ 42.)

Because of the common issues of fact and law that predominate in the Allegheny County Actions, the Philadelphia County Actions, and the Lancaster County Action, coordination will promote the efficient utilization of judicial resources and the just and efficient conduct of the actions. Coordination will also avoid the possibility of duplicative or inconsistent rulings, orders, or judgments.

#### **The Allegheny County Court Provides Prompt and Efficient Litigation of Disputes**

The Allegheny County Court of Common Pleas has enacted a case management system designed to promote the prompt and efficient litigation of complex, commercial, and class action disputes. See generally A.C.R.C.P. 249 (1), 249 (3). Under the Allegheny County Local Rules, complex and commercial cases may be assigned to the commerce and complex judges. Class actions are to be automatically assigned to the class action judge. *Id.* Information promulgated by the Allegheny County Court of Common Pleas to effectuate the local rules relating to commerce and complex litigation can be found here:

[https://www.alleghenycourts.us/civil/commerce\\_complex\\_litigation.aspx](https://www.alleghenycourts.us/civil/commerce_complex_litigation.aspx) (last accessed June 23, 2020).

Once a case has been assigned to a complex, commercial, or class judge, “the judge to whom the case is assigned shall actively manage the case by utilizing those case management tools that will, for the particular case, provide an efficient, cost effective, timely, and fair resolution of the case. The judge to whom the case is assigned is responsible for all motions involving the case, including discovery. Additionally, the Allegheny County Local Rules require that the designated judge conduct administrative conferences prior to the assigned trial date – at either the Court’s behest or at the request of any party – at which the designated judge shall become acquainted with the salient facts and issues of the case, shall determine discovery and pretrial motion schedules and shall set dates for further conferences and trial.” See above website.

### **III. QUESTIONS PRESENTED**

Question 1: Should the Court coordinate the Allegheny County Actions, the Philadelphia County Action, the Lancaster County Action, and all other Pennsylvania state court business interruption cases against Erie, for all pre-trial purposes, trial purposes, and full and final resolution of the claims as alleged in all such actions, where the Allegheny County Actions, the Philadelphia County Action, and the Lancaster County Action, and all other Pennsylvania state court business interruption cases against Erie concern common factual and legal issues?

Answer: Yes.

Question 2: Should the Court coordinate all such actions in the Allegheny County Court of Common Pleas Commerce and Complex Litigation Center, where the Allegheny County Court has implemented a case management program designed to provide litigants an efficient and prompt resolution of disputes?

Answer: Yes.

#### IV. LEGAL ARGUMENT

Pennsylvania Rule of Civil Procedure 213.1 permits a party to file a motion seeking coordination of actions pending in different counties that involve common questions of law or fact:

In actions pending in different counties which involve a common question of law or fact or which arise from the same transaction or occurrence, any party, with notice to all other parties, may file a motion requesting the court in which a complaint was first filed to order coordination of the actions. Any party may file an answer to the motion and the court may hold a hearing.

Pa.R.C.P. No. 213.1(a).

Rule 213.1 sets forth several factors a court is to consider when determining whether coordination is appropriate and in which court the actions should be coordinated:

- (1) whether the common question of fact or law is predominating and significant to the litigation;
- (2) the convenience of the parties, witnesses and counsel;
- (3) whether coordination will result in unreasonable delay or expense to a party or otherwise prejudice a party in an action which would be subject to coordination;
- (4) the efficient utilization of judicial facilities and personnel and the just and efficient conduct of the actions;
- (5) the disadvantages of duplicative and inconsistent rulings, orders or judgments;
- (6) the likelihood of settlement of the actions without further litigation should coordination be denied.

Pa.R.C.P. No. 213.1(c).

##### A. Coordination is Appropriate Under Rule 213.1.

First, because the Allegheny County Tambellini action was filed prior to the Philadelphia County Action, the Lancaster County Action, or any other business interruption case against Erie in any Pennsylvania state court, this Motion must be brought before this Court. *See Digimatics, Inc. v. ABC Advisors, Inc.*, 2000 Pa. Super. 276, 760 A.2d 390, 392-93 (2000) (reaffirming that coordination motion may only be filed in court in which complaint was first filed).

The Allegheny County Actions, Philadelphia County Action, and Lancaster County Action indisputably involve common questions of fact. Summarily stated, the cases all require that the Court determine:

- a. Whether Plaintiffs (and the class members) suffered a covered loss under the standard commercial property insurance policies Erie issued to them;
- b. Whether Defendant wrongfully denied all claims based on COVID-19;
- c. Whether Defendant's business income coverage applies to a suspension of business caused by COVID-19 and/or related actions of civil authorities taken in response to the presence or threat of COVID-19;
- d. Whether Defendant's civil authority coverage applies to a loss of business income caused by the orders of local, municipal, city, county, and/or state governmental entities requiring the suspension of business during the outbreak of COVID-19 in the United States;
- e. Whether Defendant's extra expense coverage applies to efforts to avoid or minimize a loss caused by COVID-19;
- f. Whether Defendant has breached its standard contracts of insurance through a uniform and blanket denial of all claims for business losses related to COVID-

19 and/or the related actions of civil authorities taken in response to the presence or threat of COVID-19;

g. Whether Plaintiffs (and the class members) suffered damages as a result of Defendant's actions; and

h. Whether Plaintiffs (and the class members) are entitled to an award of reasonable attorneys' fees, interest, and costs.

Thus, the cases meet the threshold requirement for coordination under the Rule.

Coordination of the cases will be convenient for the parties, witnesses, and counsel because the Allegheny County Actions, the Philadelphia County Action, and the Lancaster County Action all involve the exact same causes of action against the exact same Defendant. Moreover, Plaintiffs in these cases are represented by counsel experienced in complex litigation, including class action litigation, and have agreed to work together to promote efficiency and minimize duplication of work. Indeed, rather than hearing dissent from any other counsel representing plaintiffs in these cases, counsel for the Allegheny County Plaintiffs attaches hereto as Exhibit "2" a letter from counsel for another Philadelphia County plaintiff agreeing to coordination of this matter in Allegheny County. Coordination in a single county will allow Plaintiffs to conserve valuable public resources through their coordinated efforts in prosecuting their common claims.

Further, coordination will not cause unreasonable delay and will not prejudice any party. To the contrary, coordination will promote the efficient use of judicial resources while preventing the possibility of duplicative and inconsistent judicial rulings or determinations.

Coordination will not have any adverse effect on the possibility of settlement. In fact, and as set forth below, coordination of the actions in Allegheny County would create a better vehicle to foster settlement.

**B. The Cases Should be Coordinated in Allegheny County**

As the Court with the first-filed business interruption action against Erie, this is appropriately the Court that makes the decision whether to coordinate the Allegheny County Actions, Philadelphia County Action, Lancaster County Action, and all other business interruption actions filed and to be filed against Erie in a Pennsylvania state court; and, if so, whether to keep them here. Coordinating all such actions in this Court is appropriate because it is much closer to Erie's headquarters in Erie, Pennsylvania than either of the other two jurisdictions (Lancaster County or Philadelphia County), the first filed business interruption case against Erie (the Tambellini Action) was filed in this Court, Lancaster County does not have any mechanism for designating cases complex, Allegheny County has a less voluminous caseload per judge than Philadelphia County.<sup>2</sup> Given the more voluminous caseload in Philadelphia County, it is appropriate not to add one more complex case to the load there.

In 2018, the most recent year for which statistics are available, 39,483 new civil cases were filed in Philadelphia County, and 1,431 cases were pending before the Commerce Court (see <https://www.courts.phila.gov/pdf/report/2018-First-Judicial-District-Annual-Report.pdf> p. 25, last accessed June 30, 2020). This means 477 cases are assigned to each of the three Commerce Court Judges. In contrast, in Allegheny County in the same year, 12,319 new cases were filed (see

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<sup>2</sup> While both Allegheny and Philadelphia Counties have complex and commercial courts, and although the Allegheny County center has two judges assigned to it while Philadelphia's has three, we demonstrate below that the complex litigation caseload per judge is lower by half in Allegheny County.

[https://www.alleghencourts.us/annual\\_reports/Default.aspx?show=/9HRAzHVy45Caut9+Z577](https://www.alleghencourts.us/annual_reports/Default.aspx?show=/9HRAzHVy45Caut9+Z577)

w p. 19, last accessed June 30, 2020). The County did not report the number of cases in the Commerce and Complex Litigation Center. Allegheny County had 31% of the new filed cases in 2018 compared to Philadelphia County. If it has a similar percentage of commerce and complex cases, there would be approximately 444 of these cases in Allegheny County, or 222 for each of the two judges who handle these types of cases, fewer by almost half than their counterparts in Philadelphia.

It is clear that the volume of cases in Allegheny County is much lower, and it must be conceded that the volume of commerce and complex cases is significantly lower as well. This Court has a rigorous case management system designed to foster prompt and efficient litigation and resolution of commerce, complex, and class disputes. These cases fall into all three categories. A.C.R.C.P. 249(1) (“Commerce and Complex Litigation Center”), 249(3) (“Class Action Judge”). Furthermore, the assignment of these cases to one judge in the Commerce and Complex Litigation Center who will oversee the cases from beginning to end, actively manage the case, and hear all motions relating to the case will effectuate speedier resolution of these claims for all parties.

Accordingly, because the Allegheny County Court is well equipped to provide prompt and efficient resolution of this case, Allegheny County is the appropriate forum for coordination. Pa. Mfrs.’ Ass’n Ins. Co. v. Pa. State Univ., 2013 PA Super 29; 63 A.3d 792, 795 (2013) (affirming trial court’s order coordinating actions where case management program created more efficient forum for litigation).



**C. Coordination Should Be for All Purposes.**

Rule 213.1(d)(2) authorizes the Court to “stay any or all of the proceedings in any action subject to the [coordination] order,” while Rule 213.1(d)(3) gives the Court broad discretion and flexibility to enter “any other appropriate order” in connection with implementing coordination of actions.” Pa.R.C.P. No. 213(d).

The comment to Rule 213.1 states that the purpose of part (d) is to give the court “an opportunity for creative judicial management.” Pa.R.C.P. No. 213.1, *comment*. The comment further suggest that a Court may order coordination for pretrial proceedings only, both pretrial and trial proceedings, or “for determination of specified issues of law or fact.” *Id*.


Coordinating the Allegheny County Actions, Philadelphia County Action, Lancaster County Action, and all other Pennsylvania business interruption actions against Erie for all matters, including discovery, is appropriate because there is significant overlap between the matters subject to discovery. Washington v. FedEx Ground Package Sys., 2010 PA Super 98, \*P24, 995 A.2d 1271, 1279 (Pa. Super. 2010) (coordination was proper where there were overlapping of factual and legal issues and coordination would avoid duplicative discovery). Further, because determination of whether Defendant’s blanket denial of Plaintiffs’ (and the class members’) coverage claims creates liability to all Plaintiffs is a matter common to all actions and *does not* require the resolution of issues unique to either the Allegheny County Actions, Philadelphia County Action, or the Lancaster County Action.

**V. CONCLUSION**

For the forgoing reasons, Plaintiffs respectfully request that this Honorable Court enter an Order granting their Motion for Coordination.

Respectfully submitted,

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*Attorneys for Plaintiffs*

Dated: July \_\_, 2020

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the within **Memorandum of Law in Support of Motion to Coordinate** has been served upon all parties either individually or through counsel by:

- Hand-Delivery
- First-Class Mail, Postage Pre-Paid
- Certified Mail – Return Receipt Requested
- Express Mail/Federal Express
- Facsimile
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Dated: 7/1, 2020

  
\_\_\_\_\_  
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Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY  
PENNSYLVANIA

LAURA LAPP D/B/A :  
PERFECT POTS, LLC :  
745 Strasburg Pike :  
Strasburg, PA 17579 :  
:  
vs. :  
:  
No. CI-20-03612 :  
ERIE INSURANCE EXCHANGE :  
100 Erie Insurance Place :  
Erie, PA 16530 :

**AMENDED COMPLAINT IN CIVIL ACTION**

Plaintiff Laura Lapp d/b/a Perfect Pots, LLC, by and through their counsel, hereby complain and allege as follows:

**Introduction**

1. In response to the global COVID-19 pandemic, civil authorities in Pennsylvania and throughout the United States issued orders requiring residents to stay at home, shutting down restaurants and other businesses deemed non-essential, and prohibiting gatherings of large groups. In upholding the executive orders issued by Pennsylvania's Governor, the Pennsylvania Supreme Court recognized the COVID-19 pandemic as "a natural disaster and a catastrophe of massive proportions" that "involve[s] 'substantial damage to property, hardship, suffering or possible loss of life.'" *Friends of Danny DeVito v. Wolf*, No. 68 MM 2020, \_\_\_ A.3d \_\_\_, 2020 WL 1847100, at \*12 (Pa. Apr. 13, 2020) (citations omitted). The Court further explained that given the way the virus spreads, "any location . . . where two or more people can congregate is within the disaster area." *Id.* at \*13.



2. While necessary to slow the spread of the novel coronavirus, these orders have had a devastating effect on businesses, such as Plaintiff, which have been forced to suspend business operations.

3. To protect from losses caused by situations like this, Plaintiff and other similarly situated businesses obtained insurance policies from Defendant that included business interruption coverage. In breach of the insurance obligations Defendant undertook in exchange for premium payments, which Plaintiff paid, Defendant has wrongfully denied Plaintiff's insurance claims arising from the interruption of Plaintiff's business.

#### **Parties**

4. Plaintiff, Laura Lapp d/b/a Perfect Pots, LLC, ("Perfect Pots" or "Plaintiff") is a business entity organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal place of business located at 745 Strasburg Pike, Lancaster, PA 17579; as such, Plaintiff is a citizen of the Commonwealth of Pennsylvania.

5. Plaintiff owns and operates a garden center known as Perfect Pots, LLC in Lancaster, Pennsylvania.

6. Defendant, Erie Insurance Exchange ("Erie") is a reciprocal insurance exchange organized and existing in the Commonwealth of Pennsylvania with its principal place of business in Erie, Pennsylvania, being duly authorized to and regularly and routinely conducting business in Lancaster County; as such, Defendant is a citizen of the Commonwealth of Pennsylvania.

### **Jurisdiction and Venue**

7. This Court has jurisdiction over the subject matter of this action pursuant to 42 Pa.C.S. § 931 and over Erie pursuant to 42 Pa.C.S. § 5301 as Erie is organized under the laws of Pennsylvania, carries on a continuous and systematic part of its general business within Pennsylvania, and has directed its wrongful conduct at this jurisdiction.

8. Venue is proper in this Court under Pennsylvania Rules of Civil Procedure 1006 and 2179(b) because the insured property is located in Lancaster County and Erie regularly conducts business in Lancaster County.

### **Factual Allegations**

#### ***The COVID-19 Pandemic***

1. In December 2019, a novel (new) coronavirus known as SARS-CoV-2 was first detected in Wuhan, Hubei Province, China, and which caused an outbreak of a disease now known as COVID-19.

2. The coronavirus causing COVID-19 is thought to spread mainly from person to person, primarily through respiratory droplets produced when an infected person coughs or sneezes.<sup>1</sup>

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<sup>1</sup> See generally CDC Coronavirus Disease 2019 (COVID-19), <https://www.cdc.gov/coronavirus/2019-ncov/faq.html> (last visited May 27, 2020).



3. The coronavirus spread globally, and on January 30, 2020, the World Health Organization designated the COVID-19 outbreak as a Public Health Emergency of International Concern.<sup>2</sup>

4. On January 31, 2020, United States Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the entire United States to aid the nation's healthcare community in responding to COVID-19.<sup>3</sup>

5. On March 13, 2020, the President of the United States issued a proclamation that the COVID-19 outbreak in the United States constitutes a national emergency.<sup>4</sup>

6. To date, there have been more than 1.6 million confirmed cases of COVID-19 in the United States, including more than 72,000 in Pennsylvania and more than 21,000 in the City of Philadelphia.<sup>5</sup>

#### ***Closure Orders Issued by Civil Authorities in Response to the COVID-19 Pandemic***

7. In response to this public health crisis, every state made an emergency declaration by March 16, 2020. Moreover, civil authorities in nearly every state also ordered some form of

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<sup>2</sup> [https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-\(2019-ncov\)](https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov)).

<sup>3</sup> Press Release, Secretary Azar Declares Public Health Emergency for United States for 2019 Novel Coronavirus (Jan. 31, 2020), available at <https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html>.

<sup>4</sup> <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

<sup>5</sup> See Johns Hopkins Coronavirus Resource Center, available at <https://coronavirus.jhu.edu/map.html> (last visited May 27, 2020).

social distancing measures, including stay-at-home orders (ordered by all but six states), restrictions on large gatherings (ordered by all but three states), and orders closing or restricting service at restaurants and bars except for takeout and delivery (ordered by all but one state).<sup>6</sup>

8. In Pennsylvania, on March 6, 2020, Governor Tom Wolf issued a Proclamation of Disaster Emergency, calling the COVID-19 pandemic a “threat of imminent disaster and emergency.”<sup>7</sup>

9. On March 19, 2020, Governor Wolf issued an Executive Order, closing all businesses in Pennsylvania deemed to be non-life-sustaining.<sup>8</sup>

10. On March 23, 2020, Governor Wolf issued an Executive Order ordering all individuals residing in Allegheny County, Bucks County, Chester County, Delaware County, Monroe County, Montgomery County, and Philadelphia County to stay at home except as needed to access, support, or provide life sustaining business, emergency, or government services.<sup>9</sup> The Pennsylvania Department of Health issued a similar order the same day.<sup>10</sup>

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<sup>6</sup> Kaiser Family Foundation, *State Data and Policy Actions to Address Coronavirus*, available at <https://www.kff.org/health-costs/issue-brief/state-data-and-policy-actions-to-address-coronavirus/> (last visited May 27, 2020).

<sup>7</sup> <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200306-COVID19-Digital-Proclamation.pdf>.

<sup>8</sup> <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200319-TWW-COVID-19-business-closure-order.pdf>.

<sup>9</sup> <https://www.governor.pa.gov/wp-content/uploads/2020/03/03.23.20-TWW-COVID-19-Stay-at-Home-Order.pdf>.

<sup>10</sup> <https://www.governor.pa.gov/wp-content/uploads/2020/03/03.23.20-SOH-Stay-at-Home-Order.pdf>.

11. On April 1, 2020, Governor Wolf issued an Executive Order and the Pennsylvania Department of Health issued an order extending their respective “stay at home” orders to all counties in Pennsylvania.<sup>11</sup>

12. On May 7, 2020, Governor Wolf issued an Executive Order and the Pennsylvania Department of Health issued an order extending their respective “stay at home” orders until June 4, 2020.<sup>12</sup>

13. In *Friends of Danny DeVito v. Wolf*, No. 68 MM 2020, \_\_\_ A.3d \_\_\_, 2020 WL 1847100, at \*12 (Pa. Apr. 13, 2020), businesses challenged the authority of the Governor to issue the Executive Orders discussed above in response to the COVID-19 pandemic. Specifically, the businesses challenged whether the orders were properly issued pursuant to the Emergency Code, which only applied to “disasters” defined as “[a] man-made disaster, natural disaster or war-caused disaster.” *DeVito*, 2020 WL 1847100, at \*10 (quoting 35 Pa.C.S. § 7102). The Emergency Code further defines a “natural disaster” as

Any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, landslide, mudslide, snowstorm, drought, fire, explosion or other catastrophe which results in substantial damage to property, hardship, suffering or possible loss of life.

*DeVito*, 2020 WL 1847100, at \*10 (quoting 35 Pa.C.S. § 7102).

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<sup>11</sup> <https://www.governor.pa.gov/wp-content/uploads/2020/04/20200401-GOV-Statewide-Stay-at-Home-Order.pdf>; <https://www.scribd.com/document/454418390/04-01-20-SOH-Statewide-Stay-at-Home-Order>.

<sup>12</sup> <https://www.governor.pa.gov/wp-content/uploads/2020/05/20200507-TWW-Stay-at-Home-Order-Amendment.pdf>; <https://www.governor.pa.gov/wp-content/uploads/2020/05/20200507-SOH-Stay-at-Home-Order-Amendment.pdf>.

14. In sustaining the Governor’s Executive Orders under the Emergency Code, the Pennsylvania Supreme Court found that the

... COVID-19 pandemic qualifies as a “natural disaster” under the Emergency Code for at least two reasons. First, the specific disasters in the definition of “natural disaster” themselves lack commonality, as while some are weather related (e.g., hurricane, tornado, storm), several others are not (tidal wave, earthquake, fire, explosion). *To the contrary, the only commonality among the disparate types of specific disasters referenced is that they all involve “substantial damage to property, hardship, suffering or possible loss of life.” In this respect, the COVID-19 pandemic is of the “same general nature or class as those specifically enumerated,” and thus is included, rather than excluded, as a type of “natural disaster.”*

*DeVito*, 2020 WL 1847100, at \*12 (emphasis added). The Court concluded that “[t]he COVID-19 pandemic is, by all definitions, a natural disaster and a catastrophe of massive proportions.”

*Id.*

15. The Pennsylvania Supreme Court also held that Governor Wolf was within his authority to declare the entire state a disaster area, explaining:

The virus spreads primarily through person-to-person contact, has an incubation period of up to fourteen days, one in four carriers of the virus are asymptomatic, and the virus can live on surfaces for up to four days. Thus, *any location (including Petitioners’ businesses) where two or more people can congregate is within the disaster area.*

*DeVito*, 2020 WL 1847100, at \*13 (emphasis added).

#### ***Covered Losses Under the Policy***

16. Defendant issued Plaintiff’ Ultra pack Plus Commercial General Liability Policy (No. Q97-0379137) for the policy period between March 12, 2020 to March 12, 2021 (the “Policy”). A copy of the Policy is attached as Exhibit “A.”

17. Parts of the Policy are standardized forms that are used by Erie for all insureds having applicable coverage.

18. 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.

19. Among the coverages provided by the Policy, which is currently in full effect, is business interruption insurance, which, generally, would indemnify Plaintiff for lost income and profits in the event that their businesses were shut down.

20. Specifically, the Policy provides for business interruption or “Income Protection” coverage for “loss of ‘income’ and/or ‘rental income’ you sustain due to partial or total ‘interruption of business’ resulting directly from ‘loss’ or damage to property on the premises described in the ‘Declarations’ or to your food truck or trailer when anywhere in the coverage territory from a peril insured against.” Ex. Ultrapack Plus Commercial Property Coverage Part, Income Protection Coverage – Coverage 3, § I.A.

21. The Policy also provides extra expense coverage as follows:  
“Extra expense” coverage is provided at the premises described in the “Declarations.”

“Extra expense” means necessary expenses you incur due to partial or total “interruption of business” resulting directly from “loss” or damage to property on the premises described in the “Declarations” or to your food truck or trailer when anywhere in the coverage territory from a peril insured against. “Loss” or damage also includes property in the open, or in a vehicle, on the premises described in the “Declarations” or within 1,500 feet thereof, or to your food truck or trailer when anywhere in the coverage territory.

We will pay necessary actual and necessary "extra expenses" (other than the expense to repair or replace property) sustained by you to:

1. Avoid or minimize the "interruption of business" and to continue our operations:
  - a. At the premises described in the "Declarations" or
  - b. At replacement premises or at temporary locations, including:
    - 1) Relocation expenses; and
    - 2) Cost to equip and operate the replace or temporary locations.
  - c. Anywhere in the coverage territory for your food truck or trailer.
2. Minimize the "interruption of business" if you cannot continue your business operations to the extent it reduces the amount of loss that would have been payable under loss of "income" and/or "rental income."

Ex. Ultrapack Plus Commercial Property Coverage Part, Income Protection – Coverage 3.B.

22. The Policy also provides civil authority coverage as follows:  
When a peril insured against causes damage to property other than property at the premises described in the "Declarations", we will pay for the actual loss of "income" and/or "rental income" you sustain and necessary "extra expense" caused by action of civil authority that prohibits access to the premises described in the "Declarations" or access to your food truck or trailer when anywhere in the coverage territory provided that both of the following apply:

- a. Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the premises described in the "Declarations" or your food truck or trailer when anywhere in the coverage territory are within that area but are not more than one mile for the damaged property; and
- b. The action of the civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the peril insured against that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Ex. Ultrapack Plus Commercial Property Coverage Part, C.1, Additional Coverages.

23. Covered Causes of Loss is defined under the Policy as “direct physical ‘loss’, except ‘loss as excluded or limited in this policy.’” Ex. A, Ultrapack Plus Commercial Property Coverage Part, Section II – Perils Insured Against.

24. Beginning in March 2020, Plaintiff were forced to suspend business operations as a result of the COVID-19 pandemic and the related actions of civil authorities discussed above. This suspension, which is ongoing, has caused Plaintiff to suffer significant losses and incur significant expenses.

25. Plaintiff has suffered a direct physical loss of and damage to their property as a result of the COVID-19 pandemic, “a natural disaster and a catastrophe of massive proportions” that “involve[s] ‘substantial damage to property, hardship, suffering or possible loss of life,’” *DeVito*, 2020 WL 1847100, at \*12 (Pa. Apr. 13, 2020) (citations omitted), and the orders of civil authorities enacted in response to this natural disaster. Among other things, Plaintiff has been unable to use their property for its intended purpose, and they have been denied access to their property, causing a suspension of business operations on the premises and the function of their property to be nearly eliminated or destroyed.

26. The interruption of Plaintiff’s business was not caused by any of the exclusions set forth in the applicable Policy.

27. Plaintiff provided notice of their losses to Defendant consistent with the terms and procedures of the Policy on April 10, 2020.

28. Notwithstanding the foregoing, Defendant functionally denied Plaintiff’s claims in writing on April 24, 2020 via a reservation of rights letter. See Exhibit “B,” attached.

### *Defendant's Uniform Conduct*

29. The COVID-19 pandemic is physically impacting private commercial property throughout Pennsylvania, threatening the survival of thousands of restaurants, retail establishments, and other businesses that have had their business operations suspended or curtailed indefinitely by order of civil authorities.

30. Upon information and belief, Erie has, on a widescale and uniform basis, refused to pay its insureds under its business income, civil authority, and extra expense coverages for business income losses suffered due to COVID-19, orders by civil authorities that have required the necessary suspension of business, and any efforts to prevent further property damage or to minimize the suspension of business and continue operations.

31. Indeed, upon information and belief, no insurer intends to cover any losses caused by the COVID-19 pandemic. For example, on March 18, 2020, a bipartisan group of members of the U.S. House of Representatives sent a letter to the several insurance industry trade associations, noting the devastating impact the orders of civil authorities in response to the COVID-19 pandemic were having on American businesses and requesting that insurers cover these financial losses, stating that “[b]usiness interruption insurance is intended to protect business against income losses as a result of disruptions to their operations and recognizing income losses due to COVID-19 will help sustain America’s businesses through these turbulent times, keep their doors open, and retain employees on the payroll.”<sup>13</sup>

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<sup>13</sup> [https://cunningham.house.gov/sites/cunningham.house.gov/files/wysiwyg\\_uploaded/Signed%20B11%20Letter\\_Final.pdf](https://cunningham.house.gov/sites/cunningham.house.gov/files/wysiwyg_uploaded/Signed%20B11%20Letter_Final.pdf)



32. The insurance industry leaders sent a joint response, rejecting the plea to cover COVID-19 losses, explaining their position that “Business interruption policies do not, and were not designed to, provide coverage against communicable diseases such as COVID-19.”<sup>14</sup>

33. A declaratory judgment determining that the business income, civil authority, and extra expense coverages provided in common all-risk commercial property insurance policies applies to the suspension, curtailment, and interruption of business operations resulting from measures put into place by civil authorities is necessary to prevent the Plaintiff from being denied critical coverage for which they have paid.

### **Causes of Action**

#### **COUNT I**

#### **DECLARATORY JUDGMENT – BUSINESS INCOME COVERAGE**

34. Plaintiff realleges the foregoing paragraphs of this Complaint as though fully set forth herein.

35. Plaintiff brings this Count individually.

36. Under the Declaratory Judgments Act, 42 Pa. C.S. §§7531-7541, this Court has jurisdiction to declare the rights and other legal relations of the parties in dispute.

37. Plaintiff Policy is a contract under which Erie was paid premiums in exchange for its promise to pay Plaintiff’s losses for claims covered by the Policies.

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<sup>14</sup> Insurers Reject House Members’ Request to Cover Uninsured COVID Business Losses, Insurance Journal (Mar. 20, 2020), available at <https://www.insurancejournal.com/news/national/2020/03/20/561810.htm>.

38. In Plaintiff's Policy, Erie agreed to pay for its insureds' actual loss of business income sustained due to the necessary suspension of its operations during the period of restoration.

39. Plaintiff has suffered a direct physical loss of and damage to their property as a result of COVID-19 and the orders of civil authorities, which has resulted in a suspension of their business operations causing Plaintiff to suffer losses of business income.

40. These suspensions and losses triggered business income coverage under Plaintiff's Policy.

41. Plaintiff has complied with all applicable provisions of the Policy and/or those provisions have been waived by Erie or Erie is estopped from asserting them, and yet Erie has abrogated its insurance coverage obligations pursuant to the Policy's clear and unambiguous terms and has wrongfully and illegally refused to provide coverage to which Plaintiff is entitled.

42. Erie has uniformly denied claims related to COVID-19 without individual bases or investigations, so the Court can render declaratory judgment.

43. An actual case or controversy exists regarding Plaintiff's rights and Erie's obligations under the Policies to reimburse Plaintiff for the full amount of business income losses incurred by Plaintiff in connection with the suspension of their business stemming from orders intended to mitigate the COVID-19 pandemic.

WHEREFORE, Plaintiff seeks a declaratory judgment from this Court declaring the following:

- i. Plaintiff's business income losses incurred in connection with the closure order and the necessary interruption of their business stemming from orders intended to mitigate the COVID-19 pandemic are insured losses under their Policy; and
- ii. Erie is obligated to pay Plaintiff for the full amount of the business income losses incurred and to be incurred in connection with the closure order during the period of restoration and the necessary interruption of their business stemming from orders intended to mitigate the COVID-19 pandemic.

**COUNT II**  
**BREACH OF CONTRACT – BUSINESS INCOME COVERAGE**

44. Plaintiff realleges the foregoing paragraphs of this Complaint as though fully set forth herein.

45. Plaintiff brings this Count individually.

46. Plaintiff's Policy is a contract under which Erie was paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the Policy.

47. In Plaintiff's Policy, Erie agreed to pay for its insured's actual loss of business income sustained due to the necessary suspension of its operations during the period of restoration.

48. Plaintiff has suffered a direct physical loss of and damage to their property as a result of COVID-19 and the orders of civil authorities, which has resulted in a suspension of their business operations causing Plaintiff to suffer losses of business income.

49. These suspensions and losses triggered business income coverage under Plaintiff's Policy.

50. Plaintiff has complied with all applicable provisions of their policies and/or those provisions have been waived by Erie or Erie is estopped from asserting them.

51. Erie, without justification, has refused performance under the Policy by denying coverage for these losses and expenses. Accordingly, Defendant is in breach of the Policy.

52. By denying coverage for any business income losses incurred by Plaintiff and as a result of the closure orders and orders intended to mitigate the COVID- 19 pandemic, Erie has breached its coverage obligations under the Policy.

53. As a result of Erie's breaches of the Policy, Plaintiff has sustained substantial damages for which Erie is liable, in an amount to be established at trial.

WHEREFORE, Plaintiff seeks compensatory damages resulting from Defendant's breaches of the Policy and seeks all other relief deemed appropriate by this Court, including attorneys' fees and costs.

**COUNT III**  
**DECLARATORY JUDGMENT – CIVIL AUTHORITY COVERAGE**

54. Plaintiff realleges the foregoing paragraphs of this Complaint as though fully set forth herein.

55. Plaintiff brings this Count individually.

56. Under the Declaratory Judgments Act, 42 Pa. C.S. §§7531-7541, this Court has jurisdiction to declare the rights and other legal relations of the parties in dispute.

57. Plaintiff's Policy is a contract under which Erie was paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the Policy.

58. In Plaintiff's Policy, Erie agreed to pay for losses of business income sustained and extra expenses incurred when, among other things, there is damage to property near the insured premises resulting from a covered cause of loss, the civil authority prohibits access to

property near the insured premises, and the civil authority action is taken in response to dangerous physical conditions.

59. Plaintiff has suffered losses and incurred expenses as a result of actions of civil authorities that prohibited access to insured premises under the Policy.

60. These losses satisfied all requirements to trigger civil authority coverage under Plaintiff's Policy.

61. Plaintiff has complied with all applicable provisions of the Policy and/or those provisions have been waived by Erie or Erie is estopped from asserting them, and yet Erie has abrogated its insurance coverage obligations pursuant to the Policy's clear and unambiguous terms and has wrongfully and illegally refused to provide coverage to which Plaintiff is entitled.

62. Erie has uniformly denied claims related to COVID-19 without individual bases or investigations, so the Court can render declaratory judgment.

63. An actual case or controversy exists regarding Plaintiff's rights and Erie's obligations under the Policy to reimburse Plaintiff for the full amount of covered civil authority losses incurred by Plaintiff in connection with closure orders and the necessary interruption of their businesses stemming from the orders intended to mitigate the COVID-19 pandemic.

WHEREFORE, Plaintiff seeks a declaratory judgment from this Court declaring the following:

- i. Plaintiff's civil authority losses incurred in connection with the closure orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic are insured losses under their Policy; and
- ii. Erie is obligated to pay Plaintiff members the full amount of the civil authority losses incurred and to be incurred in connection with the covered losses related to

the closure orders and the necessary interruption of their businesses stemming from the orders intended to mitigate the COVID-19 pandemic.

**COUNT IV**  
**BREACH OF CONTRACT – CIVIL AUTHORITY COVERAGE**

64. Plaintiff realleges the foregoing paragraphs of this Complaint as though fully set forth herein.

65. Plaintiff brings this Count individually.

66. In Plaintiff's Policy, Erie agreed to pay for losses of business income sustained and extra expenses incurred when, among other things, there is damage to property near the insured premises resulting from a covered cause of loss, the civil authority prohibits access to property near the insured premises, and the civil authority action is taken in response to dangerous physical conditions.

67. Plaintiff has suffered losses and incurred expenses as a result of actions of civil authorities that prohibited access to insured premises under the Policy.

68. These losses satisfied all requirements to trigger civil authority coverage under Plaintiff's Policy.

69. Plaintiff has complied with all applicable provisions of the Policy and/or those provisions have been waived by Erie or Erie is estopped from asserting them.

70. Erie, without justification, has refused performance under the Policy by denying coverage for these losses and expenses. Accordingly, Defendant is in breach of the Policy.

71. By denying coverage for any business losses incurred by Plaintiff in connection with the closure order and orders intended to mitigate the COVID-19 pandemic, Erie has breached its coverage obligations under the Policy.

72. As a result of Erie's breaches of the Policy, Plaintiff has sustained substantial damages for which Erie is liable, in an amount to be established at trial.

WHEREFORE, Plaintiff seeks compensatory damages resulting from Defendant's breaches of the Policy and seeks all other relief deemed appropriate by this Court, including attorneys' fees and costs.

**COUNT V**  
**DECLARATORY JUDGMENT – EXTRA EXPENSE COVERAGE**

73. Plaintiff realleges the foregoing paragraphs of this Complaint as though fully set forth herein.

74. Plaintiff brings this Count individually.

75. Under the Declaratory Judgments Act, 42 Pa. C.S. §§7531-7541, this Court has jurisdiction to declare the rights and other legal relations of the parties in dispute.

76. Plaintiff's Policy is a contract under which Erie was paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the Policy.

77. In Plaintiff's Policy, Erie agreed to pay for extra expenses incurred by Plaintiff during the period of restoration that the insureds would not have incurred if there had been no loss or damage to the insured premises. These extra expenses include expenses to avoid or minimize the suspension of business, continue operations, and to repair or replace property.

78. Plaintiff has suffered a direct physical loss of and damage to their property as a result of COVID-19 and the orders of civil authorities, which has resulted in a suspension of their business operations. As a result, Plaintiff has incurred extra expenses.

79. These expenses triggered extra expense coverage under Plaintiff's Policy.

80. Plaintiff has complied with all applicable provisions of the Policy and/or those provisions have been waived by Erie or Erie is estopped from asserting them, and yet Erie has abrogated its insurance coverage obligations pursuant to the Policy's clear and unambiguous terms and has wrongfully and illegally refused to provide coverage to which Plaintiff is entitled.

81. Erie has uniformly denied claims related to COVID-19 without individual bases or investigations, so the Court can render declaratory judgment.

82. An actual case or controversy exists regarding Plaintiff's rights and Erie's obligations under the Policies to reimburse Plaintiff for the full amount of extra expense losses incurred by Plaintiff in connection with closure orders and the necessary interruption of their business stemming from orders intended to mitigate the COVID- 19 pandemic.

WHEREFORE, Plaintiff seeks a declaratory judgment from this Court declaring the following:

- i. Plaintiff's extra expense losses incurred in connection with the closure orders and the necessary interruption of their businesses stemming from orders intended to mitigate the COVID-19 pandemic are insured losses under their Policy; and
- ii. Erie is obligated to pay Plaintiff for the full amount of the extra expense losses incurred and to be incurred in connection with the covered losses related to the closure orders during the period of restoration and the necessary interruption of their businesses stemming from orders intended to mitigate the COVID-19 pandemic.



**COUNT VI**  
**BREACH OF CONTRACT – EXTRA EXPENSE COVERAGE**

83. Plaintiff realleges the foregoing paragraphs of this Complaint as though fully set forth herein.

84. Plaintiff brings this Count individually.

85. Plaintiffs' Policy is a contract under which Erie was paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the Policy.

86. In Plaintiff's Policy, Erie agreed to pay for extra expenses incurred by Plaintiff during the period of restoration that the insured would not have incurred if there had been no loss or damage to the insured premises. These extra expenses include expenses to avoid or minimize the suspension of business, continue operations, and to repair or replace property.

87. Plaintiff has suffered a direct physical loss of and damage to their property as a result of COVID-19 and the orders of civil authorities, which has resulted in a suspension of their business operations. As a result, Plaintiff has incurred extra expenses.

88. These expenses triggered extra expense coverage under Plaintiff's Policy.

89. Plaintiff has complied with all applicable provisions of the Policy and/or those provisions have been waived by Erie or Erie is estopped from asserting them.

90. Erie, without justification, has refused performance under the Policy by denying coverage for these extra expenses. Accordingly, Defendant is in breach of the Policy.

91. By denying coverage for any business losses incurred by Plaintiff in connection with the closure order and orders intended to mitigate the COVID-19 pandemic, Erie has breached its coverage obligations under the Policy.

92. As a result of Erie's breaches of the Policy, Plaintiff has sustained substantial damages for which Erie is liable, in an amount to be established at trial.

WHEREFORE, Plaintiff seeks compensatory damages resulting from Defendant's breaches of the Policy and seeks all other relief deemed appropriate by this Court, including attorneys' fees and costs.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in its favor and against Defendant, as follows:

- A. Entering declaratory judgments on Counts I, III, and V favor of Plaintiff;
- B. Entering judgments on Counts II, IV, and VI in favor of Plaintiff and awarding damages for breach of contract in an amount to be determined at trial;
- C. Awarding Plaintiff costs and disbursements and reasonable allowances for the fees of Plaintiff's counsel and Plaintiff's experts, and reimbursement of expenses;
- D. Awarding pre-judgment and post-judgment interest; and
- E. Awarding such other and further relief that the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demand a trial by jury as to all issues so triable.

Respectfully Submitted:

HAGGERTY, GOLDBERG, SCHLEIFER &  
KUPERSMITH, P.C.

SCHMIT KRAMER, P.C.

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Attorneys for Plaintiffs

VERIFICATION

I, Laura Lapp, Owner of Perfect Pots, LLC, state that the facts set forth in the Amended Complaint are true and correct to the best of my knowledge, information and belief. I understand that the statements are made subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

BY: \_\_\_\_\_  
Laura Lapp, Owner  
Perfect Pots, LLC



ENTERED AND FILED  
PROTHONOTARY'S OFFICE  
Erie Insurance Exchange  
LANCASTER, PA Revised  
\*\*\*Electronically Filed\*\*\*  
Jul 01 2020 08:32AM  
Latasha White

## Ultrapack Plus Policy Declarations Renewal Certificate

**Mailing Name and Address for Insured:**

PERFECT POTS LLC  
401 WENDOVER WAY  
LANCASTER PA 17603-9225



**Other Interest:**

AA8832

CI-20-03612

**Named Insured's Full Name:**  
PERFECT POTS LLC

**Agent:**  
AA8832 DUGAN INSURANCE LLC

**Policy Period:** 03/12/2020 to 03/12/2021  
**Policy Number:** Q970379137

**Agent Address and Phone**  
DUGAN INSURANCE LLC  
60 POTTSTOWN PIKE STE 4  
CHESTER SPRINGS PA 19425-9563  
610-458-3656

Policy begins at 12:01 A.M. standard time on the effective date and ends at 12:01 A.M. standard time on the expiration date. Standard time is determined at the stated address of the named insured.

The insurance applies to those premises described below. This is subject to all applicable terms of the policy and attached forms and endorsements.

### Premium Summary

Pay Plan Discount Applies

**Total Annual Policy Premium:** \$2,312.00  
(This is not a bill. Your invoice will follow in a separate mailing.)

### Property Protection - As Per Attached Supplemental Declarations Deductible (Property Protection Only) \$500

#### Policy-Level Coverages

#### Liability Protection

#### Limits of Insurance

#### Commercial General Liability Limits of Insurance

Each Occurrence Limit	\$1,000,000
Damage to Premises Rented to You	\$1,000,000 Any One Premises
Medical Expense limit	\$5,000 Any One Person
Personal & Advertising Injury Limit	\$1,000,000 Any One Person or Organization
General Aggregate Limit	\$2,000,000
Products/Completed Operations Aggregate Limit	\$2,000,000

Insured Name: PERFECT POTS LLC  
Policy Number: Q970379137  
Policy Period: 03/12/2020 to 03/12/2021

Page 2 of 8

<b>Optional Coverages</b>	<b>Deductible</b>	<b>Amount of Insurance</b>
<b>Policy-Level Optional Coverages:</b>		
<b>Property and Inland Marine - Optional Coverages:</b>		
Terrorism		Included

Insured Name: PERFECT POTS LLC  
Policy Number: Q970379137  
Policy Period: 03/12/2020 to 03/12/2021

Page 3 of 8

## Supplemental Declarations

### Location 1 / Building 1

**Address:**  
745 STRASBURG PIKE  
LANCASTER PA 17602-1529  
**County:** Lancaster

**Occupancy/Operations:**  
Florist Shop Retail

**Interest of Named Insured In Such Premises:** Tenant/Entire

Coverage	Deductible	Amount of Insurance
<b>Property Protection</b>		
1. Buildings		NIL
2. Business Personal Property and Personal Property of Others Replacement Cost Theft Exclusion Applies: No	Property Deductible	BLANKET
3. Income Protection & Extra Expense Blanket Coverage - Contents - All Locations		Actual Loss Sustained 12 Months \$200,000
Automatic Adjustment of Business Personal Property and Personal Property of Others Coverage – 2%		

Insured Name: PERFECT POTS LLC  
Policy Number: Q970379137  
Policy Period: 03/12/2020 to 03/12/2021

Page 4 of 8

## Supplemental Declarations

### Location 2 / Building 1

**Address:**  
3529 OLD PHILADELPHIA PIKE  
INTERCOURSE PA 17534-7007  
**County:** Lancaster

**Occupancy/Operations:**  
Florist Shop Retail

**Interest of Named Insured In Such Premises:** Tenant/Partial

Coverage	Deductible	Amount of Insurance
<b>Property Protection</b>		
1. Buildings		NIL
2. Business Personal Property and Personal Property of Others Replacement Cost Theft Exclusion Applies: No	Property Deductible	BLANKET
3. Income Protection & Extra Expense Blanket Coverage - Contents - All Locations		Actual Loss Sustained 12 Months \$200,000
Automatic Adjustment of Business Personal Property and Personal Property of Others Coverage – 2%		



Insured Name: PERFECT POTS LLC  
 Policy Number: Q970379137  
 Policy Period: 03/12/2020 to 03/12/2021

## Supplemental Declarations

### Location 3 / Building 1

**Address:**  
 5 W KING ST  
 LANCASTER PA 17603-3813  
**County:** Lancaster

**Occupancy/Operations:**  
 Florist Shop Retail

**Interest of Named Insured In Such Premises:** Tenant/Partial

Coverage	Deductible	Amount of Insurance
<b>Property Protection</b>		
1. Buildings		NIL
2. Business Personal Property and Personal Property of Others Replacement Cost Theft Exclusion Applies: No	Property Deductible	BLANKET
3. Income Protection & Extra Expense Blanket Coverage - Contents - All Locations		Actual Loss Sustained 12 Months \$200,000
Automatic Adjustment of Business Personal Property and Personal Property of Others Coverage – 2%		

## Schedule of Static Forms

Form Number	Edition Date	Description
	/ *	
UPP	01/10 *	ULTRAPACK PLUS POLICY
PK0001	01/20 *	ULTRAPACK PLUS COMMERCIAL PROPERTY COVERAGE PART
PKAQ	01/10 *	FLORISTS AND NURSERYMEN
PKAX	01/10 *	PRODUCTION OR PROCESS MACHINERY - DEDUCTIBLE
CL0209	11/10 *	IMPORTANT NOTICE - LEAD LIABILITY EXCLUSION
CL0212	11/10 *	IMPORTANT NOTICE - POLICY SERVICE FEES
CL0217	11/10 *	IMPORTANT NOTICE - NO FLOOD COVERAGE
PKGP	01/10 *	AMENDMENT OF MOBILE EQUIPMENT DEFINITION
PKGT	01/10 *	AMENDMENT OF OCCURENCE DEFINITION FOR SUBCONTRACTED WORK
PKRG	01/10 *	PENNSYLVANIA AMENDATORY ENDORSEMENT - LOSS PAYMENT CONDITION
PKRH	01/10 *	PENNSYLVANIA AMENDATORY ENDORSEMENT - CONDITIONS
PK0003	07/16 *	ULTRAPACK PLUS EXTRA LIABILITY COVERAGES
CG0001	04/13 *	COMMERCIAL GENERAL LIABILITY COVERAGE FORM
CG0099	11/85 *	CHANGES IN GENERAL LIABILITY FORMS FOR COMMERCIAL PACKAGE POLICIES
CG2147	12/07 *	EMPLOYMENT-RELATED PRACTICES EXCLUSION
CG2167	12/04 *	FUNGI OR BACTERIA EXCLUSION
UFB213	11/12 *	SUBSCRIBER'S AGREEMENT
CG2170	01/15 *	CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM
CG2196	03/05 *	SILICA OR SILICA-RELATED DUST EXCLUSION
PKGL	12/14 *	PUNITIVE DAMAGES COVERAGE
CL0396	01/17 *	IMPORTANT NOTICE - DATA BREACH RESPONSE EXPENSES COVERAGE
CG2106	05/14 *	EXCL-ACCESS OR DISCLOSURE OF CONFIDENT OR PERS INFO AND DATA-RELATED LIAB - WITH LIMIT BOD INJ EXCEP
CG2109	06/15 *	EXCLUSION - UNMANNED AIRCRAFT

Insured Name: PERFECT POTS LLC  
Policy Number: Q970379137  
Policy Period: 03/12/2020 to 03/12/2021

Page 6 of 8

### Schedule of Static Forms - (continued)

Form Number	Edition Date	Description
IL0017	11/98 *	COMMON POLICY CONDITIONS
IL0021	09/08 *	NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (BROAD FORM)
IL0910	07/02 *	PENNSYLVANIA NOTICE
IL0952	01/15 *	CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM
IL985F	01/15 *	DISCLOSURE PURSUANT TO TERRORISM RISK INSURANCE ACT
IL0246	09/07 *	PENNSYLVANIA CHANGES - CANCELLATION AND NONRENEWAL
PKMJ	01/10 *	EXCLUSION - LEAD LIABILITY
PKMD	01/10 *	EXCLUSION - ASBESTOS
PKMQ	12/14 *	EXCLUSION - PROFESSIONAL LIABILITY
PKRO	01/10 *	AMENDMENT OF POLICY - TWO OR MORE COVERAGE PARTS

Home Office • Erie, PA 16530  
Your Agent:



CLAIMS DIRECTORY

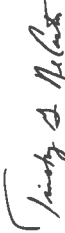
-- FOLD --

**IN THE EVENT OF AN ACCIDENT OR LOSS**

- Help any injured. Get names, addresses, auto license plate numbers of involved, including all witnesses.
- Do not discuss an accident with anyone except the police or our representative.
- Protect your auto and any property from further damage.
- Promptly call the police if someone is injured, damage is extensive, or in case of theft. In case of "hit-and-run", you must report the accident to the police within 24 hours or as soon as possible.
- Notify your Agent or ERIE of the accident or loss.

The ERIE is Above All in SERVICE®.

If we fail to give you this promised service, please drop us a note or call us on our toll-free number and tell us about it.

  
President and  
Chief Executive Officer

CUT ON DOTTED LINE

CUT ON DOTTED LINE

Home Office • Erie, PA 16530  
Your Agent:



CLAIMS DIRECTORY


-- FOLD --

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President and  
Chief Executive Officer

CUT-ON-DOTTED LINE

**CLAIM SERVICE** – For claim service anywhere in U.S. or Canada, call your Agent or, using the list below, call the Claim Office nearest your home.

State	Office	Call Toll Free	State	Office	Call Toll Free
DC	Silver Spring	1-800-492-2709	PA	Allentown/Beth	1-800-322-9026
IL	Peoria	1-888-335-3743		Erie	1-877-771-3743
IN	Fort Wayne	1-800-892-5655		Home Office (Erie)	1-800-458-0811
	Indianapolis	1-800-624-1620		Harrisburg	1-800-382-1304
KY	Lexington	1-877-589-3743		Johnstown	1-800-241-4209
MD	Silver Spring	1-800-492-2709		Murrysville	1-800-553-3367
	Hagerstown	1-800-533-5602		Philadelphia	1-800-821-2902
NC	Charlotte	1-800-473-3882		Pittsburgh	1-800-922-1824
	Raleigh	1-800-533-3982	TN	Knoxville	1-888-922-3743
NY	Rochester	1-800-333-0823	VA	Richmond	1-800-322-3743
OH	Canton	1-800-362-6541		Roanoke	1-800-533-3743
	Columbus	1-800-282-1702		Waynesboro	1-800-542-2250
			WI	Waukesha	1-877-740-3743
			WV	Parkersburg	1-800-642-1948

**Our phones answer 24/7!**

**To report a claim, call:**

- Your Agent
- ERIE Claims Service: **1-800-367-3743**
- ERIEGlass<sup>SM</sup> (Auto glass only): **1-800-552-ERIE**
- ERIERoad Service: **1-888-295-5060**
- FRAUD FINDERS<sup>®</sup> (To report fraud): **1-800-368-6696**

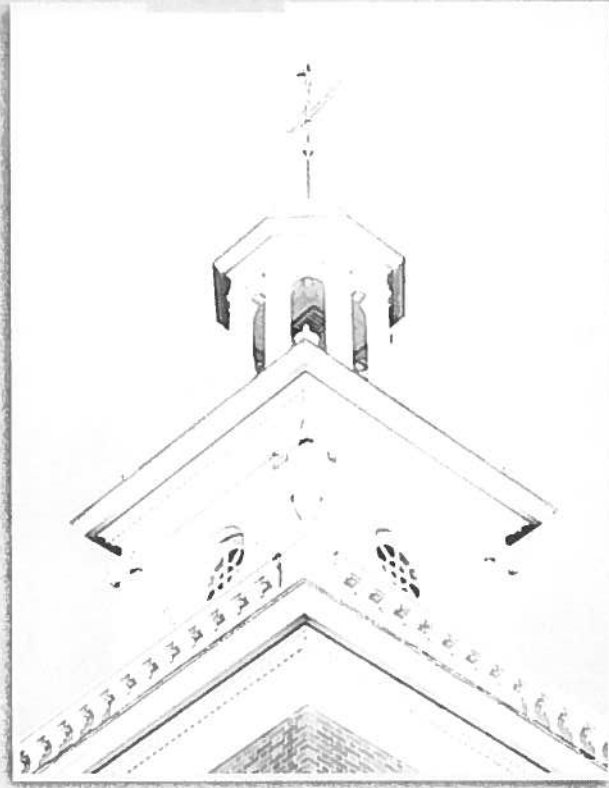
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- FRAUD FINDERS<sup>®</sup> (To report fraud): **1-800-368-6696**



# Ultrapak<sup>™</sup> Plus Policy



Erie  
Insurance<sup>®</sup>

Member Companies

Erie Insurance Exchange • Erie Insurance Property & Casualty Company

## ULTRAPACK PLUS POLICY

ERIE INSURANCE GROUP is proud to present this policy. This important contract between YOU and The ERIE consists of this policy with coverage agreements, definitions, and conditions, a Declarations, plus any endorsements. We urge YOU to read it.

The protection given by this policy is in keeping with the single purpose of our Founders: "To provide YOU with as near PERFECT PROTECTION, as near PERFECT SERVICE, as is humanly possible, and to do so at the LOWEST POSSIBLE COST."

### AGREEMENT

#### ERIE INSURANCE EXCHANGE

In return for your timely premium payment, your compliance with all of the provisions of this policy, and your signing of a "Subscriber's Agreement" with Erie Indemnity Company and other Subscribers, we agree to provide the coverages you have purchased. Your coverages and limits of protection are shown in the Declarations, which are part of this policy.

Your signing the "Subscriber's Agreement", which includes a limited power-of-attorney, permits Erie Indemnity Company, as Attorney-in-Fact, to make reciprocal insurance contracts between you and other Subscribers and otherwise manage the business of the Erie Insurance Exchange. This power-of-attorney applies only to your insurance business at the Exchange and is limited to the purposes described in the "Subscriber's Agreement".

Your responsibility as a "Subscriber" is determined by this policy and the "Subscriber's Agreement". You are liable for just the policy premiums charged and are not subject to any other premium liability under the policy.

This agreement is made in reliance on the information you have given us and is subject to all of the terms of this policy.

This policy, all endorsements to it, and the "Subscriber's Agreement" constitute the entire agreement between you and us.

#### ERIE INSURANCE PROPERTY AND CASUALTY COMPANY

In return for your timely premium payment and your compliance with all of the provisions of this policy, we agree to provide the coverages you have purchased. Your coverages and limits of protection are shown in the Declarations, which are part of this policy.

This agreement is made in reliance on the information you have given us, and is subject to all of the terms of this policy.

This policy and all endorsements to it constitute the entire agreement between you and us.

### DEFINITIONS

#### ADDITIONAL ERIE INSURANCE EXCHANGE DEFINITIONS

The following words have this special meaning in policies issued by *Erie Insurance Exchange* when they appear in quotes.

- "Subscriber" means the person who signed, or the partnership, firm or corporation that authorized the signing of, the application for this policy.

- "Subscriber's Agreement" means the agreement, including a limited power-of-attorney among the Subscribers and the Erie Indemnity Company, as Attorney-in-Fact.

### GENERAL POLICY CONDITIONS

#### 1. AUTOMATIC RENEWAL POLICY

Your policy will be automatically renewed at the end of the policy period, unless terminated by you or us in accordance with the steps explained in the Cancellation Condition.

Each year, we will send you a Renewal Certificate which shows the premium due for the next policy period.

This is a service that we provide for you so that your insurance protection does not stop.

If you do not want the renewal policy, you must mail our Agent or us written notice in advance of the new policy period. If you do not notify us, your policy remains in effect. You must pay us the earned premium due us for this time.

## 2. CANCELLATION

### Your Right to Cancel or Refuse Renewal

You may cancel this policy or any coverage by mailing or delivering to our Agent or us written notice stating at what future date you want the cancellation to take effect. We may waive these requirements by confirming the date of cancellation to you in writing.

### Our Right to Cancel or Refuse to Renew

We may cancel or refuse to renew by mailing you written notice stating the effective date of our action. Our action will comply with the laws of the state in which your principal office is located. The cancellation will not take effect until at least 30 days (Maryland - 45 days, except for nonpayment of premium - 30 days) after we send it. For states that require a different number of days for notification of cancellation or non-renewal, or specify the reasons for cancellation or non-renewal, an Amendatory Endorsement is attached.

We reserve the right to cancel for your non-compliance with our premium payment plans. We do not waive our right to cancel, even if we have accepted prior late payments.

### Method of Giving Notice

Mailing notice to the address shown on the Declarations will be sufficient proof of notice. The policy period will end on the date and time stated in the notice.

### Return of Premium

If your policy is cancelled by you or us, we will return the pro rata unused share of your premium. Cancellation will be effective even if we have not given or offered the return premium.

## 3. CONCEALMENT, FRAUD OR MISREPRESENTATION

This entire policy is void if before or after a loss any insured has intentionally concealed or misrepresented any material fact or circumstance concerning this insurance.

In the event of a fraudulent claim, we will not make payment for the loss.

## 4. COOPERATION

You agree to cooperate with us by:

- a. truthfully completing and promptly returning questionnaires and audit forms about this insurance;
- b. permitting and helping with inspections and audits; and
- c. complying with specific recommendations to improve your risk.

## 5. HOW YOUR POLICY MAY BE CHANGED

This policy conforms to the laws of the state in which your principal office is located. If the laws of the state change, this policy will comply with these changes.

Your policy may be changed by asking us. Your request must contain enough information to identify you. Asking our Agent is the same as asking us. If we agree with your request, we will then issue an Amended Declarations.

We will give you the benefit of any change in coverage made by us, if it does not require additional premium. This change will be effective as of the date we implement the change for you in your state.

## 6. INCREASE IN HAZARD

Unless we agree beforehand, coverage is suspended if the hazard is substantially increased by any means within the control of the insured.

## 7. INSPECTION AND AUDIT

We have the right but are not obligated to:

- a. make inspections and surveys at any time;
- b. give you reports on the conditions we find; and
- c. recommend changes.

Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to provide for the health or safety of workers or the public. We do not warrant that your property or operations are safe, healthful or in compliance with any law, regulation, code or standard. Inspections, surveys, reports or recommendations are for our benefit only.

This condition also applies to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

We may examine and audit your books and records at any time during or within three years after the policy period, as they relate to this insurance. No appeals or disputes regarding your premium will be permitted three years after your audit is completed.

## 8. OUR RIGHT TO RECOVER FROM OTHERS

After we make a payment under this policy, we will have the right to recover from anyone else held responsible. This right will not apply under Property Protection if you have waived it in writing prior to loss. Any insured is required to transfer this right to us, and do nothing to harm this right. Anyone receiving payment from us and from someone else for the same loss will reimburse us up to our payment.

**9. POLICY ACCEPTANCE**

By accepting this policy, you agree that the statements on the Declarations are accurate and complete and are based on the facts you have given us. This policy is issued in reliance on these facts.

**10. PREMIUMS**

The first Named Insured shown in the Declarations:

- a. is responsible for the payment of all premiums; and
- b. will be the payee for any return premiums we pay.

**11. PRIORITY**

At our option, this insurance will first protect you, and then others we protect.

**12. TIME OF INCEPTION**

If this policy replaces another policy ending at noon on the date of this policy, we will protect you as of that time.

**13. TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS POLICY**

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

This policy has been signed on our behalf at Erie, Pennsylvania by our President and Secretary. If required by law, it has been countersigned on the Declarations by our authorized Agent.

Secretary

President

**ADDITIONAL ERIE INSURANCE EXCHANGE CONDITION**

The following condition applies *only* to policies issued by *Erie Insurance Exchange*.

**1. ACCOUNTING**

Erie Indemnity Company may keep up to 25% of the premium written or assumed by Erie Insurance Exchange as compensation for:

- a. becoming and acting as Attorney-in-Fact;
- b. managing the business and affairs of Erie Insurance Exchange, its affiliates and subsidiaries; and
- c. paying general administrative expenses, including sales commissions, salaries, and other employment costs, the cost of supplies, and other administrative costs.

The rest of the premium will be placed on the books of the *Erie Insurance Exchange*. We will deposit or invest this amount as permitted by law. This amount will be used to pay losses, adjustment expenses, legal expenses, court costs, taxes, assessments, licenses, fees, and other governmental fines and charges, establishment of reserves and surplus, and reinsurance, and may be used for dividends and other purposes Erie Indemnity Company decides are to the advantage of the Subscribers.



Home Office • 100 Erie Insurance Place • Erie, PA 16530 • 814.870.2000  
Visit our website at [erieinsurance.com](http://erieinsurance.com)

UPP (Ed. 1/10) CL-0236





ENTERED AND FILED  
PROTHONOTARY'S OFFICE  
LANCASTER, PA  
\*\*\*Electronically Filed\*\*\*  
Jul 01 2020 08:32AM  
Latasha White

April 24, 2020

Perfect Pots, LLC  
401 Wendover Way  
Lancaster, PA 17603-9225

Re: ERIE Claim #A00002543571  
ERIE Policy: #Q97-0379137  
Date of Loss: 3/16/20

CI-20-03612

Dear Laura Lapp:

This letter is in reference to the above-captioned claim which was reported to Erie Insurance Exchange (ERIE) on April 10, 2020 seeking coverage under the Ultrapack Plus Policy #Q97-0379137 issued to Perfect Pots, LLC.

During our conversation on April 14, 2020, you explained that your businesses were forced to close related to COVID-19 as mandated by the Governor of Pennsylvania, or were voluntarily closed by you and were not closed due to direct, physical loss caused by a peril insured against to the premises listed on the Declarations or any businesses within one mile of the premise. We regret to inform you that there is no coverage for your loss of income because there is no direct physical loss to your building or business personal property.

Please reference the Insuring Agreement for Building(s) Coverage I, Business Personal Property - Coverage II and Income Protection Coverage III which reads in relevant part:

**SECTION I - COVERAGES**

**INSURING AGREEMENT**

We will pay for direct physical "loss" of or damage to covered property at the premises described in the "Declarations" caused by or resulting from a peril insured against.

SECTION II - PERILS INSURED AGAINST states:

**SECTION II - PERILS INSURED AGAINST**

**BUILDING(S) - COVERAGE 1**

**BUSINESS PERSONAL PROPERTY AND PERSONAL PROPERTY OF OTHERS - COVERAGE 2**

**INCOME PROTECTION - COVERAGE 3**

**Covered Cause of Loss**

This policy insures against direct physical "loss", except "loss" as excluded or limited in this policy.

### **Business Interruption Coverage**

Refer to SECTION I of the policy for what constitutes Covered Property under INCOME PROTECTION - COVERAGE 3. **Income Protection** means loss of "income" and or "rental income" you sustain due to partial or total "interruption of business" resulting directly from "loss" or damage to property on the premises described in the "Declarations" from a peril insured against. **Extra Expense Coverage** under paragraph B of Coverage 3 also requires a partial or total "interruption of business" resulting directly from "loss" or damage to property on the premises described in the "Declarations" from a peril insured against.

---

As defined in Section XI of the policy, "Loss" means direct and accidental loss of or damage to covered property. "Interruption of business" means the period of time that your business is partially or totally suspended and it:  
1. Begins with the date of direct "loss" to covered property caused by a peril insured against; and 2. Ends on the date when the covered property should be repaired, rebuilt, or replaced with reasonable speed and similar quality.

*Income Protection does not apply because there was no partial or total "interruption of business" due to direct physical "loss" or damage to Covered Property on the premises from a peril insured against.*

### **Additional Coverages - Civil Authority**

Additional Coverages - Civil Authority under paragraph C of the Income Protection Coverage Section of the policy (SECTION I, Coverage 3) reads:

#### **C. Additional Coverages**

##### **1. Civil Authority**

When a peril insured against causes damage to property other than property at the premises described in the "Declarations", we will pay for the actual loss of "income" and/or "rental income" you sustain and necessary "extra expense" caused by action of civil authority that prohibits access to the premises described in the "Declarations" provided that both of the following apply:

- a. Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the premises described in the "Declarations" are within that area but are not more than one mile from the damaged property; and
- b. The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the peril insured against that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Civil Authority coverage for "income" and or "rental income" will begin 72 hours after the time of the first action of civil authority that prohibits access to the premises described in the "Declarations" and will apply for a period of up to four consecutive weeks from the date on which such coverage began.

*Civil Authority coverage does not apply because a Civil Authority did not order that the business be closed due to damage to property within one mile of the premises described in the "Declarations," caused by a peril insured against.*

#### **Extension of Coverage – Contingent Business Interruption**

The Extension of Coverage for loss of "income" or "rental income" for Contingent Business Interruption under SECTION VIII (B)(5) also requires a partial or total "interruption of business" resulting directly from "loss" or damage to Building(s) or Business Personal Property of "dependent properties" from a peril insured against.

"Dependent property" means premises operated by others whom you depend on in any way for continuation of your normal business operations. The "dependent properties" are:

- a. Contributing Locations which mean those premises you depend on as a source of materials or services that you need for your operations. Services do not include water, communication, power supply, or waste water removal services;
- b. Recipient Locations which mean those premises you depend on as a customer for your products or services;
- c. Manufacturing Locations which mean those premises you depend on to manufacture products for your customers under contract or sale; or
- d. Leader Locations which mean those premises you depend on to attract customers to your business.

"Interruption of business" for contingent business interruption means the period of time that your business is suspended and it:

- a. Begins with the date of direct "loss" or damage to the "dependent property" caused by a peril insured against; and
- b. Ends on the date when the "dependent property" should be repaired, rebuilt, or replaced with reasonable speed and similar quality.

*Contingent Business Interruption does not apply because there was no partial or total "interruption of business" directly from "loss" or damage to Buildings or Business Personal Property of "dependent properties" from a peril insured against.*

In addition to the discussion above, the following exclusions apply to this loss:

### **SECTION III - EXCLUSIONS**

#### **E. Coverage 3**

We do not cover under **Income Protection - Coverage 3:**

1. Increase of loss resulting from ordinance or law regulating construction or repair of buildings.
2. Consequential damages resulting from the breach of contractual obligations.
4. Loss due to delay or loss of market.
6. "Extra expense" caused by the suspension, lapse, or cancellation of any license, lease, or contract beyond the "interruption of business".
7. Increase of loss resulting from ordinance or law regulating the prevention, control, repair, clean-up, or restoration of environmental damage.
8. Income protection specifically insured in whole or in part by this or any other insurance.

Additionally, the following policy provision applies:

**15. SUITS AGAINST US**

We may not be sued unless there is full compliance with all the terms of this policy. Suit must be brought within 2 years (Maryland and North Carolina - 3 years) after the "loss" occurs.

Nothing in this letter is intended to waive, alter or restrict any of the terms, conditions or defenses of the policy of insurance in question, all of which are expressly reserved and affirmed.

We regret that we could not assist you in this matter. If you have any questions or concerns regarding this letter, please feel free to contact me at the number listed below.

Sincerely,

Michael Kargulewicz, AIC  
Property Adjuster  
Harrisburg Claims Office  
(484) 643-2525

/mjn

cc: perfectpotsbylaura@gmail.com (by e-mail)  
cc: AA8832, Dugan Insurance, LLC



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A Professional Corporation  
ATTORNEYS AT LAW

Jeffrey B. Gittleman  
[jgittleman@barrack.com](mailto:jgittleman@barrack.com)

June 24, 2020

VIA ELECTRONIC MAIL

John P. Goodrich, Esq.  
Jack Goodrich & Associates, P.C.  
429 Fourth Avenue, Suite 900  
Pittsburgh, PA 15219  
[jack@goodrichpc.com](mailto:jack@goodrichpc.com)

Re: *The Natural Shoe Store, Inc. v. Erie Insurance Exchange et al.*,  
Philadelphia CCP, Commerce Program, Case No. 200600959, June Term, 2020

Dear Jack:

I am counsel in the above case. It is a business interruption class action that raises the same issues against the same insurance company as the *Tambellini* and *HTR* actions that were filed in Allegheny County. Counsel for The Natural Shoe Store, Inc. will join and not oppose a Motion to Coordinate the above action in Allegheny County.

Sincerely,

s/ Jeffrey B. Gittleman  
Jeffrey B. Gittleman

JBG/cab



PHILADELPHIA, PA    SAN DIEGO, CA    NEW YORK, NY    CONSHOHOCKEN, PA    NEWARK, NJ

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