

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

Plaintiff,

vs.

ERIE INSURANCE EXCHANGE
100 Erie Insurance Place
Erie, PA 16530

Defendant

CIVIL DIVISION

No.: GD 20 5137

**CIVIL ACTION – COMPLAINT
SEEKING DECLARATORY,
COMPENSATORY AND INJUNCTIVE
RELIEF**

Counsel of Record for Plaintiff:

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FILED

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DEPT. OF COURT RECORDS
CIVIL/FAMILY DIVISION
ALLEGHENY COUNTY PA

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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY

JOSEPH TAMBELLINI, INC. D/B/A :
JOSEPH TAMBELLINI RESTAURANT :
5701 Bryant Street :
Pittsburgh, PA 15206 :
vs. :
ERIE INSURANCE EXCHANGE : No.
100 Erie Insurance Place :
Erie, PA 16530 :

**CIVIL ACTION – COMPLAINT SEEKING
DECLARATORY, COMPENSATORY AND INJUNCTIVE RELIEF**

Parties

1. Plaintiff, Joseph Tambellini, Inc. D/B/A Joseph Tambellini Restaurant (“Tambellini”) is a corporation organized and existing under the Commonwealth of Pennsylvania, with its principal place of business located at 5701 Bryant Street, Pittsburgh, PA 15260; as such, Plaintiff is a citizen of the Commonwealth of Pennsylvania.
2. Plaintiff owns and operates Joseph Tambellini Restaurant in Pittsburgh, Pennsylvania.
3. 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 the Commonwealth of Pennsylvania; as such, Defendant is a citizen of the Commonwealth of Pennsylvania.

4. The present action seeks declaratory, compensatory and injunctive relief with respect to insurance coverage for losses caused by the COVID-19 virus and the governmental Orders entered in connection therewith.

5. Defendant, Erie, regularly and routinely conducts business in Allegheny County, Pennsylvania.

Insurance Coverage

6. At all times material hereto, there existed, in full force and effect, an Ultra pack Plus Commercial General Liability Policy (No. Q972145987) (“Erie Policy”) issued by Defendant, Erie, Plaintiff, Tambellini, providing, *inter alia*, property, business, personal property, business income, extra expense, contamination, civil authority and additional coverages applicable to the losses claimed in this action. A true and correct copy of the Erie Policy is attached hereto and marked as Exhibit “A”.

7. The Erie Policy was in effect and provided coverage for the period August 1, 2019 to August 1, 2020.

8. The Erie Policy is an “All Risks” policy which provides coverage for losses to the insured premises unless specifically excluded.

9. The Erie Policy does not exclude the losses caused by the Coronavirus Pandemic.

10. The Erie Policy provides coverage for the losses incurred Plaintiff, Tambellini, as a result of the Coronavirus Pandemic and the actions of the government in response thereto.

Coronavirus Pandemic

11. The Center for Disease Control and the World Health Organization has for years warned of the possibility of an airborne virus which could cause a worldwide pandemic.

12. Coronavirus COVID-19 is a highly contagious airborne virus which has rapidly spread and continues to spread across the United States.

13. COVID-19 has been declared a pandemic by the World Health Organization.

14. The COVID-19 virus remains stable and transmittable in aerosols and various surfaces for prolonged periods of time, up to two to three days on some surfaces.

15. The COVID-19 virus is a public health crisis that has profoundly affected all aspects of society, including the ability of the public to congregate and gather.

16. The COVID-19 pandemic has been exacerbated by the fact that the virus infects and stays on the surfaces of objects and materials for prolonged periods.

17. The Center for Disease Control has issued guidance that gatherings of more than ten (10) people should not occur; such gatherings increase the danger of contracting the COVID19 virus.

18. On March 6, 2020, Governor Tom Wolf issued a Proclamation of Disaster Emergency as a result of the COVID-19 virus.

19. On March 19, 2020, Governor Tom Wolf issued an Order requiring all non-life sustaining businesses in the Commonwealth to cease operation and to close all physical locations.

20. On March 23, 2020, Governor Tom Wolf issued a Stay at Home Order for citizens of various counties including Allegheny County.

21. On March 23, 2020 the Pennsylvania Department of Health issued a similar Order noting that the “operation of non-life sustaining businesses present the opportunity for unnecessary gatherings, personal contact and interaction that will increase the risk of transmission and the risk of community spread of COVID-19.”

22. On April 1, 2020, Governor Tom Wolf extended the March 23, 2020 Stay at Home Order to the entire Commonwealth of Pennsylvania.

23. The COVID-19 virus, as evidenced by these Orders, causes damage to property, particularly in places of business, such as that of Plaintiff, Tambellini, and other similarly situated persons and organizations, where the operation of the business requires inter-action, gatherings and contact in areas where there exists a heightened risk of contamination by the COVID-19 virus.

Impact of COVID-19 Virus

24. As a result of the impact of the COVID-19 virus and the referenced Orders of the Governor, Plaintiff, Tambellini, has been ordered to close his business and forced to furlough employees, thereby incurring loss.

25. As a result of the impact of the COVID-19 virus and the referenced Orders of the Governor, many similarly situated businesses have been ordered to close, thereby incurring losses similar to Plaintiff.

26. The business of Plaintiff, Tambellini, like many businesses, operates in “closed environment” where many persons, including employees and customers, cycle in and out thereby creating a risk of contamination to the insured premises.

27. As a result of the COVID-19 virus, the business of Plaintiff, Tambellini, like other similarly situated businesses, is susceptible to person to person, person to property, and property to person transmittal and contamination.

28. The COVID-19 pandemic has directly and adversely affected the business operations of Plaintiff, Tambellini, by causing damage and the risk of further harm to the property and its occupants.

29. Plaintiff, Tambellini, has suffered Business Income, Civil Authority and other related losses which are covered by policies of insurance issued by the Erie Policy.

Claim for Recovery

30. Plaintiff, Tambellini, has made claim upon Defendant, Erie, for recovery of losses caused by the COVID-19 virus and the referenced Orders.

31. Plaintiff, Tambellini, is entitled to a declaration that he is covered under the Erie Policy for, *inter alia*, business income, extra expense, contamination, civil authority and other coverages under the Erie Policy.

32. Defendant, Erie, has wrongfully denied the claims Plaintiff, Tambellini, for recovery of damages caused by the COVID-19 virus and referenced Orders.

33. Plaintiff, Tambellini, is entitled to a declaration that the policies of insurance issued Defendant, Erie, provide coverage for the losses caused by the COVID-19 virus and referenced Orders.

34. Plaintiff, Tambellini, is entitled to an Order enjoining Defendant, Erie, from denying coverage to insureds for business income, extra expense, contamination, civil authority and other coverages for losses caused by the COVID-19 virus and referenced Orders.

COUNT I
(Declaratory Relief – Individual Claims)

35. Plaintiff, Tambellini, hereby incorporates by reference the foregoing Paragraphs 1 through 34 of this Complaint as though same were fully set forth herein.

36. Plaintiff, Tambellini, is entitled to coverage under the Erie Policy for the losses caused by the COVID-19 virus and referenced Orders.

37. Defendant, Erie, has denied and/or refused to acknowledge coverage for the losses of Plaintiff, Tambellini, caused by the COVID-19 virus and the referenced Orders.

38. Plaintiff, Tambellini, is entitled to recover for losses covered by the COVID-19 virus and the referenced Orders under the Erie Policy.

39. Defendant, Erie, has wrongfully refused to provide coverage to Plaintiff, Tambellini, under the Erie Policy.

40. The denial and refusal to acknowledge coverage to Plaintiff, Tambellini, under the Erie Policy is a material breach of that policy.

41. The denial and refusal to acknowledge coverage to Plaintiff, Tambellini, under the Erie Policy is in direct violation of the specific terms and provisions of the Erie Policy.

42. Plaintiff, Tambellini, is entitled to a declaration that he is entitled to coverage for losses caused by the COVID-19 virus and the referenced Orders.

43. The controversy poses an issue for judicial determination under the Declaratory Judgment Act.

44. The controversy involves substantial rights of the parties to the action.

45. The controversy poses an issue for judicial determination which is not within the scope of authority of any arbitrator or arbitration panel pursuant to the policy of insurance in question.

46. A judgment of this court in this action will also be useful for the purpose of clarifying and settling the legal relations at issue between the parties.

47. A judgment of this court will determine, terminate and afford relief from the uncertainty and controversy giving rise to this action.

WHEREFORE, Plaintiff, Joseph Tambellini, Inc. D/B/A Joseph Tambellini Restaurant respectfully requests that the Court enter an Order:

- (a) declaring that Plaintiff, Joseph Tambellini, Inc. D/B/A Joseph Tambellini Restaurant, is entitled to coverage for losses caused by the COVID-19 virus and the referenced Orders from Defendant, Erie Insurance Exchange;
- (b) such other relief as the court deems appropriate.

COUNT II
(Injunctive Relief – Individual Claims)

48. Plaintiff, Tambellini, hereby incorporates by reference the foregoing Paragraphs 1 through 47 of this Complaint as though same were fully set forth herein.

49. Plaintiff, Tambellini, has made claim upon Defendant, Erie, for coverage for losses caused by the COVID-19 virus and the referenced Orders including but not limited to business income, extra expense, contamination, civil authority and other coverages.

50. Defendant, Erie, has denied or refused to acknowledge coverage for the loss.

51. Defendant, Erie, continues to deny and/or refused to acknowledge coverage for the losses caused by the COVID-19 virus and the referenced Orders.

52. Plaintiff, Tambellini, has suffered damages and/or is at immediate risk of suffering damages as a result of the continued denial and/or refusal to acknowledge coverage by Defendant, Erie, for the loss caused by the COVID-19 virus and the referenced Orders.

53. Defendant, Erie, must be enjoined from continuing to deny and/or refuse to acknowledge coverage to insureds for losses caused by the COVID-19 virus and the referenced Orders.

WHEREFORE, Plaintiff, Joseph Tambellini, Inc. D/B/A Joseph Tambellini Restaurant, respectfully requests that the Court enter an Order enjoining Defendant, Erie Insurance Exchange, from further denying coverage to Plaintiff, Joseph Tambellini, Inc. D/B/A Joseph Tambellini Restaurant, for losses caused by the COVID-19 virus and the governmental Orders.

COUNT III
(Compensatory Relief – Individual Claims)

54. Plaintiff, Tambellini, hereby incorporates by reference the foregoing Paragraphs 1 through 53 of this Complaint as though same were fully set forth herein.

55. Plaintiff, Tambellini, is entitled to recover under the Erie Policy for all losses covered by the COVID-19 virus and the referenced Orders.

56. Plaintiff, Tambellini, is entitled to recover all business income, extra expense, contamination, civil authority and other applicable coverages under the Erie Policy.

57. Defendant, Erie, has breached the terms and provisions of the Erie Policy by denying the claims of Plaintiff, Tambellini, for all losses caused by the COVID-19 virus and the referenced Orders.

58. The breach of the indemnification obligations under the Erie Policy by Defendant, Erie, has caused Plaintiff, Tambellini, to suffer loss and harm.

60. Defendant, Erie, is required to pay to Plaintiff, Tambellini, all covered losses caused by the COVID-19 virus and related Orders, including but not limited to business income, extra expense, civil authority and pertinent coverages under the Erie Policy.

WHEREFORE, Plaintiff, Joseph Tambellini, Inc. D/B/A Joseph Tambellini Restaurant,
respectfully requests that the Court enter judgment against Defendant, Erie Insurance Exchange,
for all covered losses and damages under the Erie Policy

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


SCHMIDT KRAMER, P.C.

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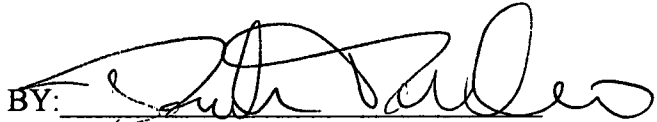
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Attorneys for Plaintiffs

VERIFICATION

I, Joseph Tambellini, Inc. D/B/A Joseph Tambellini Restaurant, state that the facts set forth in the 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: 

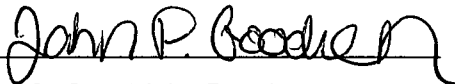
Joseph Tambellini, Inc. D/B/A

Joseph Tambellini Restaurant Kayla Stockdale

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: John P. Goodrich, Esquire

Signature: 

Name: John P. Goodrich, Esquire

Attorney No. (if applicable): 49648

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

Allegheny

County



For Prothonotary Use Only:

Docket No:

GD 20 5137

TIME STAMP

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:

- Complaint
 Writ of Summons
 Petition
 Transfer from Another Jurisdiction
 Declaration of Taking

Lead Plaintiff's Name:

Joseph Tambellini, Inc.

Lead Defendant's Name:

Erie Insurance Exchange

Are money damages requested? Yes No

Dollar Amount Requested: (check one)
 within arbitration limits
 outside arbitration limits

Is this a Class Action Suit? Yes No

Is this an MDJ Appeal? Yes No

Name of Plaintiff/Appellant's Attorney: John P. Goodrich, Esquire

Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- Intentional
 Malicious Prosecution
 Motor Vehicle
 Nuisance
 Premises Liability
 Product Liability (does not include mass tort)
 Slander/Libel/ Defamation
 Other: _____

CONTRACT (do not include Judgments)

- Buyer Plaintiff
 Debt Collection: Credit Card
 Debt Collection: Other _____
 Employment Dispute: Discrimination
 Employment Dispute: Other _____
 Other: _____

CIVIL APPEALS

- Administrative Agencies
 Board of Assessment
 Board of Elections
 Dept. of Transportation
 Statutory Appeal: Other _____
 Zoning Board
 Other: _____

MASS TORT

- Asbestos
 Tobacco
 Toxic Tort - DES
 Toxic Tort - Implant
 Toxic Waste
 Other: _____

REAL PROPERTY

- Ejectment
 Eminent Domain/Condemnation
 Ground Rent
 Landlord/Tenant Dispute
 Mortgage Foreclosure: Residential
 Mortgage Foreclosure: Commercial
 Partition
 Quiet Title
 Other: _____

MISCELLANEOUS

- Common Law/Statutory Arbitration
 Declaratory Judgment
 Mandamus
 Non-Domestic Relations Restraining Order
 Quo Warranto
 Replevin
 Other: Injunctive Relief