

**IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO**

LA-VERA PARTY CENTER, INC.)
32200 Chardon Road)
Willoughby Hills, Ohio 44094)

and)

LA-VERA EXPRESS CATERING, LLC)
32200 Chardon Road)
Willoughby Hills, Ohio 44094)

and)

LA-VERA WHOLESALE, LLC)
32200 Chardon Road)
Willoughby Hills, Ohio 44094)

and)

LA-CAVA, INC.)
32200 Chardon Road)
Willoughby Hills, Ohio 44094)

Plaintiffs,)

-v-)

WESTFIELD INSURANCE COMPANY)
c/o Frank Carrino, Statutory Agent)
One Park Circle)
Westfield Center, Ohio 44251)

Defendant.)

20CV000786
VINCENT A. CULOTTA

COMPLAINT

(Jury Demand Endorsed Hereon)

FILED
2020 JUN 22 PM 2:41
MAUREEN G. KELLY
LAKE CO. CLERK OF COURT

NOW COME Plaintiffs La-Vera Party Center, Inc., La-Vera Express Catering, LLC, La-Vera Wholesale, LLC and La-Cava, Inc., (collectively “La-Vera Group”) and for their Complaint against the Defendant states and alleges as follows:

1. Plaintiffs La-Vera Party Center, Inc., La-Vera Express catering, LLC, La-Vera Wholesale, LLC and La-Cava, Inc. are all corporations or limited liability companies organized

and existing pursuant to the laws of the State of Ohio with a principal place of business located in the County of Lake and State of Ohio at 32200 Chardon Road, Willoughby, Ohio 44094 that operate as a party center, food catering company, wholesale food seller, and real-estate holding company respectively that derive business from and/or sell food throughout various counties in Ohio, including Cuyahoga County.

2. Defendant Westfield Insurance Company (“Westfield”) is a for-profit corporation organized and existing pursuant to the laws of the State of Ohio with a principal place of business located at One Park Circle, Westfield Center, Ohio 44251 that sells insurance throughout Ohio.

3. Defendant Westfield sold an insurance policy to the La-Vera Group by and through its agent, The Fedeli Group, Inc., located at 5005 Rockside Road, Suite 500, Independence, Ohio 44131 in the County of Cuyahoga, Ohio.

FIRST CLAIM FOR RELIEF
(Declaratory Relief)

4. Plaintiffs La-Vera Group incorporate by reference herein each and every allegation set forth in paragraphs 1 through 3, inclusive, as if fully rewritten here.

5. At all times relevant, Westfield insured the La-Vera Group collectively under policy number CWP-7550128 (the “Policy”), a copy of the declarations page and policy are collectively attached hereto and incorporated herein as Exhibit 1.

6. The Policy provides for coverage for Business Income (and Extra Expense) Coverage under coverage form CP 00 30 110 12 that includes for “necessary ‘suspension’ of your ‘operations’ during the period of restoration” and for “actual loss of income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises...”, as detailed in the Policy.

7. The Policy is an "all-risk" policy, in so far as it provides that a covered cause of loss under the policy means direct physical loss of or damage to the property unless the loss is specifically excluded or limited in the Policy. Here, Plaintiffs' operations have been suspended, and access to properties prohibited, and no specific exclusion applies to reasonably justify the denial of Plaintiff's claims.

8. While the Policy was in full force and effect, the La-Vera Group sustained and suffered a loss due to the coronavirus, also known as COVID-19, and the civil authority orders issued by the Governor of Ohio that have addressed the state and nation-wide spread of the coronavirus (the "Pandemic")

9. It has been widely reported that the coronavirus can be contracted via airborne particles and can live on inert surfaces.

10. In late 2019 and early 2020, an outbreak of respiratory illness caused by a novel COVID-19 started to infect humans across the globe. On March 11, 2020, the World Health Organization ("WHO") declared the COVID-19 outbreak a pandemic (i.e. a global outbreak of disease).

11. On January 31, 2020, under §319 of the Public Health Service Act (42 U.S.C.247d), The Secretary of Health and Human Services ("HHS") declared a public health emergency in response to COVID-19.

12. On March 11, 2020, the WHO announced that COVID-19 outbreak represented a pandemic.

13. On March 13, 2020 the President of the United States of America, Donald J. Trump, issued the Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus

Disease (COVID-19) Outbreak ("Proclamation"), proclaiming the COVID-19 outbreak constituted a national emergency in the United States, beginning March 1, 2020.

14. Various states, including the State of Ohio have issued and implemented mandatory Stay-At-Home Orders, requiring business to shut down, thus causing the La-Vera Group a loss of use of its businesses, and resulting in substantial loss of business income.

15. On March 29, 2020 President Donald J. Trump announced the extension of his Administration's social distancing guidelines until April 30, 2020.

16. Effective March 23rd, 2020, Ohio Civil Authority ordered Ohio residents to stay at home and ordered all non-essential businesses in Ohio to cease all activities. The La-Vera Group was impacted by the ordered shutdowns as non-essential businesses, thus prohibiting their ability to operate their businesses, thereby causing the La-Vera Group losses covered under the subject Policy.

17. Coronavirus and the pandemic cause direct physical loss and property damages. COVID-19 and the Pandemic are physically impacting public and private property in Ohio and throughout the country. The executive orders issued by the Governor of Ohio, and the majority of other State Governors, in response to the pandemic have caused direct physical loss of and a forced moratorium on the La-Vera Group's properties.

18. In consequence of the danger posed by the coronavirus and the Pandemic, the Governor of Ohio issued several executive orders. Executive Order 2020-01D, issued on March 9, 2020, declared a state of emergency "for the entire State to protect the well-being of the citizens of Ohio from the dangerous effects of COVID-19 ... " The order declared that:

It may be possible that individuals can get COVID-19 by touching a surface or object that has virus on it and then touching their own mouth, nose, or eyes.

19. On March 15, 2020, Ohio restricted food and beverage sales to carry-out and delivery only, with no onsite consumption permitted. The stated goal of this order was to slow the spread of the virus by minimizing in-person interaction "in an environment with a multitude of hard surfaces." The order reiterated that "It may be possible that individuals can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose or eyes." Also that:

Previously studied human coronaviruses (including SARS, which is very closely related to COVID-19) can survive on paper, wood, glass, plastic up to 4-5 days. Persistence of coronaviruses on inanimate surfaces and their inactivation with biocidal agents, The Journal of Hospital Infection, March 2020, Volume 104, Issue 3, Pages 246-251.

20. Effective March 23, 2020, Ohio civil authority ordered Ohio residents to stay at home and ordered all non-essential businesses in Ohio to cease all activities. The La-Vera Group did not qualify as an "Essential Business", and so had to cease retail and wholesale operations at all of its locations.

21. The impact of the coronavirus is so significant that the Governor of Ohio has issued an order mandating that to reopen all restaurants and food establishments are to perform daily cleaning of their entire establishment that includes sanitizing tabletops, chairs and menus between each seating as well as clean all high touch areas every two hours.

22. The action and orders of the State of Ohio resulted in a forced moratorium of the La-Vera Group's business.

23. Coronavirus and the Pandemic caused and continues to cause direct physical loss and property damage to the La-Vera Group. COVID-19 and the Pandemic are physically impacting public and private property in Ohio and throughout the country. The executive orders issued by the Governor of Ohio in response to the Pandemic have caused direct physical loss to the La-

Vera Group's business, properties, and premises. Any effort by Westfield to deny that COVID-19 and/or the Pandemic and/or the executive orders at issue caused physical loss and/or damage would constitute a false representation that could endanger policyholders and the public.

24. As of June 11, 2020, Ohio had 40,004 confirmed cases of coronavirus, with Cuyahoga County having 5,057 cases and Lake County having 338 cases. Coronavirus has killed at least 2,490 people in Ohio as of the date of this filing.

25. It is readily apparent that people and property throughout Ohio, including Cuyahoga County and Lake County, are infected with the coronavirus, and that the coronavirus has done, and continues to do, significant property and business damage in Cuyahoga County and Lake County.

26. Based on the prevalence of the coronavirus in Cuyahoga County and Lake County, the La-Vera Group's insured locations have sustained a forced moratorium, direct physical loss and/or damage due to the presence of coronavirus, and has unquestionably sustained direct physical loss of and at those locations as the result of the Pandemic and/or civil authority orders issued by the Governor of Ohio.

27. The La-Vera Group submitted a timely insurance claim to Westfield.

28. Westfield issued a denial letter on April 14, 2020 in which it stated no coverage is available under the Policy.

29. Based upon information and belief, Westfield has accepted the policy premiums from the La-Vera Group with no intention of providing any coverage under the Policy due to a loss and/or shutdown from a pandemic and/or a forced moratorium, i.e. the COVID-19 pandemic.

30. While the Policy was in force, the La-Vera Group sustained a loss due to: a) coronavirus, also referred to as "COVID-19"; and 2) the Civil Authority orders issued by the Governor of Ohio that have addressed the state and nationwide spread of the coronavirus, i.e. the Pandemic.

31. Since there is a dispute about whether or not the La-Vera Group has coverage under Westfield's policy for the loss sustained and to be sustained in the future, the La-Vera Group is entitled to declaratory relief from this Court pursuant to Ohio Civil Rule 57 and R.C. §2721.01 to 2721.15.

32. The La-Vera Group is entitled to a declaration that: (1) the La-Vera Group sustained direct physical loss or damage as a result of the coronavirus pandemic; (2) coronavirus is a covered cause of loss under the Policy; (3) the losses incurred by the La-Vera Group as the result of the executive orders issued by the Governor of Ohio and Ohio's civil authorities are covered losses under the Policy; (4) Westfield has not and cannot prove the application of any exclusion or limitation; (5) the La-Vera Group is entitled to coverage for its Business Income (and Extra Expense) Coverage policy resulting from coronavirus; (6) the La-Vera Group is entitled to coverage for loss due to the actions of Ohio's civil authorities; (7) the actions of Ohio's civil authorities resulted in a forced moratorium of the La-Vera Group's business for which the La-Vera Group is entitled to Policy coverage; (8) the La-Vera Group has insurance coverage for any substantially similar civil authority order in the future that limits or restricts the public's access to the La-Vera Group; and (9) any other issue that may arise during the course of litigation that is a proper issue on which to grant declaratory relief.

33. The La-Vera Group does not seek a determination of its damages resulting from the coronavirus pandemic. If there is a dispute between the parties as to the amount of the loss, the Policy provides that such a dispute should be resolved by Appraisal:

Appraisal

If we and you disagree on the amount of Net Income and operating expense or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser.

The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of Net Income and operating expense or amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain deny the claim. (CP

00301012 page 5 of 9).

34. The La-Vera Group prays for declaratory relief from the Court that Westfield must resolve any dispute about the amount of loss via Appraisal. The La-Vera Group also requests the Court to appoint the umpire if the appraisers cannot agree.

35. The La-Vera Group prays for any further relief the Court deems proper, including attorney fees, interest, and costs as allowed by law or in the exercise of the Court's equitable jurisdiction.

SECOND CLAIM FOR RELIEF

(Breach of Covenant of Good Faith and Fair Dealing—Bad Faith)

36. Plaintiffs La-Vera Group incorporate by reference herein each and every allegation set forth in paragraphs 1 through 35, inclusive, as if fully rewritten here.

37. Ohio law recognizes the independent tort of bad faith in the context of the insured/insurer relationship.

38. Westfield's malicious conduct has breached the implied covenant of good faith and fair dealing implicit to the policy of insurance.

39. Ohio law provides that an insurer's lack of good faith is equivalent to bad faith.

40. Each and all of the La-Vera Group are all insureds of Westfield in the State of Ohio.

41. Westfield maliciously failed and refused to make an adequate investigation or any investigation regarding the La-Vera Group's claims which, among other things, has caused a severe delay in full indemnification of Plaintiffs' claims, and providing all benefits that Plaintiffs are entitled to under the Policy, which has severely prejudiced and damaged the La-Vera Group, and has further resulted in Westfield withholding all recoverable benefits due under the Policy.

42. Westfield has failed to accept coverage and indemnify the La-Vera Group as required under the subject Policy.

43. Westfield maliciously refused and continues to refuse to give any reasonable interpretation to the provisions in the Policy or any reasonable application of such provisions to the La-Vera Group's claims and has breached its fiduciary duty to the La-Vera Group by acting to protect its own financial interests therein at the expense of and detriment to Plaintiffs' rights.

44. Westfield failed to provide the La-Vera Group any reasonable or justifiable basis for denying Plaintiffs' claims.

45. Westfield maliciously misrepresented the Policy terms and conditions to the La-Vera Group including, and without limitation, attempting to use an inapplicable exclusion, i.e. the virus/bacteria exclusion in a knowingly and malicious attempt to avoid paying Plaintiffs all benefits they are entitled to receive under the Policy.

46. Westfield, knowing that the La-Vera Group were incompetent, inexperienced and unable to act to protect their interests, that such benefits were justly due, and that such benefits were necessary to pay Plaintiffs' necessities of their use of the Premises, nevertheless have maliciously deprived Plaintiffs of such benefits.

47. Westfield's refusal to properly investigate, adjust, handle, process and/or pay benefits due the La-Vera Group compelled and forced Plaintiffs to, among other things, engage counsel and to initiate litigation to recover such benefits.

48. The La-Vera Group are informed and believe and thereon allege that Westfield intends to and will continue to delay, deny, and withhold, in bad faith, benefits due Plaintiffs unless and until compelled to pay such benefits by final judgment of this Honorable Court.

49. Defendant Westfield's bad faith dealings were all done with malicious intent and with the intent to deprive Plaintiffs of their rights under the Policy.

50. At all material times and in doing things alleged herein, Westfield acted oppressively, maliciously and with a conscious disregard of the La-Vera Group's rights, with the intention of benefitting Westfield financially and with the intention of causing or recklessly disregarding the probability of causing, injury and emotional distress to Plaintiffs, Westfield has refused and continues to refuse to pay all benefits due Plaintiffs and, further, has unjustifiably and/or intentionally failed to properly investigate, adjust, process, handle and pay Plaintiffs' claims resulting in a significant and unjustifiable delay in resolving Plaintiffs' claims under the terms and conditions of the Policy. In so doing, Westfield did maliciously vex, annoy, injure, and harass Plaintiffs so as to justify the assessment of punitive and exemplary damages against Westfield.

51. As a direct and proximate result of Westfield's malicious conduct, the La-Vera Group have sustained substantial compensable losses and damages, including benefits withheld, and economic losses, such as attorney's fees, out of pocket expenses, loss of business income, business diminution, personal property loss, out-of-pocket costs and expenses, diminution in value of the insurance policy, and have suffered embarrassment and humiliation and severe mental and emotional distress and discomfort, all to Plaintiffs' detriment and damage in amounts not fully ascertained, but in an amount in excess of \$25,000, and within the jurisdiction of this Honorable Court.

WHEREFORE, Plaintiffs the La-Vera Group pray for judgment against the Defendant as follows:

(a) On the First Count, Plaintiffs respectfully request that a Declaratory Judgment be entered in its favor, declaring as follows, that: (1) the La-Vera Group sustained direct physical loss or damage as a result of the coronavirus pandemic; (2) coronavirus is a covered cause of loss under the Policy; (3) the losses incurred by the La-Vera Group as the result of the executive orders issued by the Governor of Ohio and Ohio's civil authorities are covered losses under the Policy; (4) Westfield has not and cannot prove the application of any exclusion or limitation; (5) the La-Vera Group is entitled to coverage for its Business Income (and Extra Expense) Coverage policy resulting from coronavirus; (6) the La-Vera Group is entitled to coverage for loss due to the actions of Ohio's civil authorities; (7) the actions of Ohio's civil authorities resulted in a forced moratorium of the La-Vera Group's business for which the La-Vera Group is entitled to Policy coverage; (8) the La-Vera Group has insurance coverage for any substantially similar civil authority order in the future that limits or restricts the public's access to the La-Vera Group; and (9) any other issue that may arise during the course of litigation that is a proper issue on which to grant declaratory relief; and

(b) On the Second Count, for compensatory and consequential damages in an amount in excess of Twenty Five Thousand Dollars (\$25,000.00), plus exemplary and punitive damages in an amount not less than ten times (10x) the compensatory and consequential damage award to Plaintiffs, the cost of Plaintiffs' attorney fees and costs as provided by law, plus any other and further relief which this Court deems just and equitable, including all costs of this action, and interest.

/s/ David A. Corrado

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JURY DEMAND

Pursuant to Rule 38(B) of the Ohio Rules of Civil Procedure, Plaintiffs hereby demand a trial by a jury of the maximum number permitted by law.

/s/ David A. Corrado

DAVID A. CORRADO (0055611)