

James A. Maggs, Esq. (039841991)  
 Michael M. DiCicco Esq. (016511983)  
**MAGGS McDERMOTT & DiCICCO, LLC**  
 Allaire Corporate Center  
 3349 Highway 138, Building C, Suite D  
 Wall, New Jersey 07719  
 Phone: (732) 223-9870  
 Fax: (732) 223-7367  
 Attorneys for Plaintiff

GRAND CRU, LLC d/b/a RESTAURANT NICHOLAS,  <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> LIBERTY MUTUAL INSURANCE COMPANY; LIBERTY MUTUAL MID- ATLANTIC INSURANCE COMPANY; and OHIO SECURITY INSURANCE COMPANY,  <p style="text-align: center;">Defendants.</p>	SUPERIOR COURT OF NEW JERSEY LAW DIVISION – MONMOUTH COUNTY  DOCKET NO. MON-L  <p style="text-align: center;"><i>CIVIL ACTION</i></p> <p style="text-align: center;"><b>COMPLAINT FOR                  DECLARATORY RELIEF</b></p>
---	--

Plaintiff, Grand Cru, LLC d/b/a Restaurant Nicholas (“Restaurant Nicholas”) by way of Complaint against Defendants, Liberty Mutual Insurance Company, Liberty Mutual Mid-Atlantic Insurance Company, and Ohio Security Insurance Company, hereby says:

**INTRODUCTION**

1. This is an action for declaratory relief, pursuant to N.J.S.A. 2A:16-50 to :16-62, for the purposes of determining insurance coverage for Restaurant Nicholas under a comprehensive general liability policy issued by Defendants.

2. Restaurant Nicholas seeks such a declaration under the policy as set forth hereinafter to recover lost business income and expenses resulting from the action taken by civil authority to address the global pandemic of Coronavirus.

### **PARTIES**

3. Restaurant Nicholas, located at 160 Highway 35 South, Red Bank, New Jersey, Monmouth County, is the trade name under which Grand Cru, LLC operates and is authorized to do business and is doing business in New Jersey. Restaurant Nicholas is one of New Jersey's premier restaurants earning a four-star review from the New York Times and a 29/30 score in both food and service from the Zagat Survey.

4. At all relevant times, Defendants Liberty Mutual Insurance Company, Liberty Mutual Mid-Atlantic Insurance Company, and Ohio Security Insurance Company (collectively, "Liberty Mutual") are corporations licensed and authorized to do business and doing business in New Jersey and maintain their principal place of business at 175 Berkeley Street, Boston, Massachusetts.

5. Liberty Mutual issued the comprehensive general liability insurance policy to Restaurant Nicholas in Monmouth County, New Jersey. That policy forms the basis of the claims made in this action.

### **JURISDICTION AND VENUE**

6. The Court has jurisdiction over Liberty Mutual because they are licensed and authorized to and are doing business in New Jersey and provide insurance services and/or coverage for property and persons located in New Jersey. Liberty Mutual issues insurance policies in New Jersey including the policy at issue herein.

7. Venue is proper in Monmouth County, pursuant to New Jersey Court Rules 4:3-2(a)(2) and 4:3-2(b), because the cause of action arose in Monmouth County and because Restaurant Nicholas is based in and resides in Monmouth County.

### **FACTUAL BACKGROUND**

8. Restaurant Nicholas and Liberty Mutual entered into a contract of insurance whereby in exchange for the payment of premiums by Restaurant Nicholas, Liberty Mutual promised to indemnify Restaurant Nicholas for losses under coverages known as Business Income, Extra Expense, and Civil Authority at the insured premises known as 160 Highway 35 South, Red Bank, New Jersey (the “Insured Premises”).

9. The contract of insurance is memorialized by General Liability Policy Number BKS(20)57-43-28-99 with a policy period of August 15, 2019 through August 15, 2020. (hereinafter, the “Policy”).

10. Restaurant Nicholas has paid all premiums due and continues to pay all premiums under the Policy.

11. The Policy is currently in full force and effect and provides various coverages to Restaurant Nicholas including Business Income, Extra Expense, and Civil Authority.

12. Under the Business Income coverage, Liberty Mutual is obligated to pay Restaurant Nicholas for actual loss of business income sustained during a suspension of operations which suspension is caused by direct physical loss of or damage to the Insured Premises which result from a covered loss.

13. Under the Extra Expense coverage, Liberty Mutual is obligated to pay Restaurant Nicholas for necessary expenses incurred during the period of restoration that result from physical loss or damage to the Insured Premises.

14. Under the Civil Authority coverage, Liberty Mutual is obligated to pay the loss of Business Income and necessary Extra Expense caused by civil authority that prohibits access to

the Insured Premises based on a covered cause of loss to property other than to the Insured Premises.

15. The Policy covers all losses under the aforementioned coverages unless a valid exclusion to the coverage and loss is contained in the Policy.

16. In response to the Coronavirus pandemic, on March 9, 2020, Governor Philip D. Murphy, in his official capacity as of Governor of New Jersey, issued Executive Order 103 declaring a Public Health Emergency and State of Emergency in New Jersey.

17. In response to the Coronavirus pandemic, on March 21, 2020, Governor Philip D. Murphy, in his official capacity as Governor of New Jersey, issued Executive Order No. 107 (hereinafter, "Order 107") which among other things, banned restaurants from serving patrons on site but permitted the restaurants to offer food delivery and take out services.

18. As a result of Order 107, access of the public to the Insured Premises for purposes of dining has been shut down.

19. Although the virus is not physically present at the Insured Premises, the virus is physically impacting public and private property and causing physical loss and damage elsewhere resulting in issuance of Order 107 and triggering coverage under Civil Authority. Any effort by Liberty Mutual to deny the physical impact and physical loss and damage to property constitutes a false and potentially fraudulent misrepresentation that could endanger policyholders and the public.

20. The Policy contains an exclusion for losses under coverages for Business Income, Extra Expense, and Civil Authority caused by, resulting from, or relating to any virus (the "Virus Exclusion").

21. The Virus Exclusion is of no force and effect with respect to the Policy because it violates New Jersey public policy as referenced in New Jersey Assembly Bill No. 3844 introduced on March 16, 2020 that provides in pertinent part:

Notwithstanding the provisions of any other law, rule or regulation to the contrary, every policy of insurance insuring against loss or damage to property, which includes the loss of use and occupancy and business interruption in force in this State on the effective date of this act, shall be construed to include among the covered perils under that policy coverage for business interruption due to global virus transmission or pandemic, as provided in the Public Health Emergency and State of Emergency declared by the Governor in Executive Order 103 of 2020 concerning the coronavirus disease 2019 pandemic.

**FIRST COUNT**

(Declaratory Judgement Under The Policy)

22. Restaurant Nicholas seeks a Declaratory Judgment that the aforementioned coverages provided under the Policy are applicable to indemnify it for the losses and damage suffered by Restaurant Nicholas as a result of the shutdown caused by the issuance of Order 107.

23. As a result of the issuance of Order 107 and the resulting shutdown, the aforementioned coverages have been triggered.

24. As a result of the issuance of Order 107, Restaurant Nicholas has suffered losses and damages subject to indemnity by Liberty Mutual under the Policy.

25. An actual case of controversy exists between Restaurant Nicholas and Liberty Mutual as to the rights of Restaurant Nicholas and the duties and obligations of Liberty Mutual under the Policy.

26. Restaurant Nicholas contends that under the Policy: (a) Order 107 triggers coverage because it prohibits access to the Insured Premises; (b) the shutdown resulting from Order 107 constitutes a suspension of operations; (c) the Virus Exclusion is void as violative of New Jersey public policy; and (d) coverage is provided to Restaurant Nicholas for any current and future losses or damage including Business Income and Extra Expense caused by the Order and any future civil authority orders resulting in a shutdown.

27. Upon information and belief, Liberty Mutual disagrees and objects to the aforementioned contentions by Restaurant Nicholas.

28. Restaurant Nicholas expressly does not seek a determination of whether the Coronavirus is physically present in the Insured Premises or the amount of damages suffered.

29. Pursuant to the New Jersey Declaratory Judgment Act, Restaurant Nicholas is entitled to a declaration by the Court of its rights and the duties and obligations of Liberty Mutual under the Policy as set forth herein.

WHEREFORE, Restaurant Nicholas demands judgment in its favor and against Liberty Mutual as follows:

- (a) declaring that Order 107 triggers coverage under the Policy because it prohibits access to the Insured Premises;
- (b) declaring that the shutdown resulting from Order 107 constitutes a suspension of operations under the Policy;
- (c) declaring that the Virus Exclusion is void as violative of New Jersey public policy;
- (d) declaring that coverage is provided to Restaurant Nicholas for any current and future losses or damage including Business Income and Extra Expense caused by Order 107 and any future civil authority orders resulting in a shutdown;

- (e) awarding attorney's fees and costs of suits; and
- (f) awarding such other relief as the Court deems just and proper.

MAGGS McDERMOTT & DiCICCO, LLC  
Attorneys for Plaintiff Grand Cru, LLC  
d/b/a Restaurant Nicholas

By: /s James A. Maggs  
JAMES A. MAGGS, ESQ.

By: /s Michael M. DiCicco  
MICHAEL M. DiCICCO, ESQ.

Dated: April 3, 2020

CERTIFICATION

Pursuant to Rule 4:5-1, I certify that the matter in controversy is not the subject of any other action pending in any court or pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated. I am aware of my continuing obligation to amend this Certification if circumstances change. I certify that the forgoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

By: /s Michael M. DiCicco  
MICHAEL M. DiCICCO, ESQ.

Dated: April 3, 2020