

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

ONION MAIDEN, LLC d/b/a
ONION MAIDEN,

Plaintiff,

v.

ERIE INSURANCE PROPERTY AND
CASUALTY COMPANY,

Defendant.

CIVIL DIVISION

No.:

COMPLAINT

Filed on Behalf of Plaintiff:

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JURY TRIAL DEMANDED

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AND NOW comes Plaintiff, Onion Maiden, LLC d/b/a Onion Maiden, by and through its attorneys, George M. Kontos, Esquire, Katie A. Killion, Esquire, Christopher C. Inman, Esquire and Kontos Mengine Killion and Hassen and files the following Complaint, and in support thereof, aver as follows:

PARTIES

1. Plaintiff, Onion Maiden, LLC d/b/a Onion Maiden, is a limited liability corporation organized and existing under the Commonwealth of Pennsylvania, with its principal place of business located at 639 E. Warrington Ave., Pittsburgh, PA 15210-1564, and as such, Plaintiff is a citizen of the Commonwealth of Pennsylvania.

2. Defendant Erie Insurance Property and Casualty Company (hereinafter "Erie") is a reciprocal insurance exchange, organized and existing in the Commonwealth of Pennsylvania, with its principal place of business in address located at 100 Erie Insurance Place, Erie, Pennsylvania 16530, and 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.

3. Defendant regularly and routinely conducts business within Allegheny County, Pennsylvania.

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

COVID-19 PANDEMIC & IMPACT

5. COVID-19 (also referred to as Coronavirus) is a highly contagious airborne virus that has spread throughout the United States and was declared a pandemic by the World Health Organization.

6. COVID-19 is a public health crisis that has profoundly affected the ability of the public to gather.

7. At times throughout the duration of the pandemic, the Center for Disease Control has issued guidance that gathering of more than ten people should not occur because gathering of that size, or larger, may increase the risk of transmission of COVID-19.

8. On March 13, 2020, the President of the United States issued a proclamation that the COVID-19 pandemic constitutes a national emergency in the United States. Additionally, the Governor of Pennsylvania, Tom Wolf, has issued multiple Proclamations and Orders throughout the pandemic.

9. First, on March 19, 2020, Governor Wolf required all non-life sustaining businesses in the Commonwealth to cease operations and to close all their physical locations.

10. On March 23, 2020, Governor Wolf issued a Stay at Home Order of citizens of many counties in the Commonwealth, including Allegheny County. On the same day, the

Pennsylvania Department of Health issued an Order stating 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.”

11. Then, on April 1, 2020, Governor Wolf extended the Stay at Home Order to the entire Commonwealth.

12. Several businesses challenged Governor Wolf’s authority to issue these executive orders. And, in Friends of Danny DeVito v. Wolf, 227 A.3d 872 (Pa. 2020), the Supreme Court upheld the Governor’s authority to issue the at-issue orders, stating 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.”**

Id. at 888-889 (emphasis added).

13. Further, in holding that Governor Wolf was within his authority to declare the entire State a disaster area, the same Court reasoned that “**any location where two or more people can congregate is within the disaster area.**” Id. at 890 (emphasis added)

COVERED LOSSES

14. At all times relevant hereto, there was in full force and effect, Ultrapack Policy #Q97-1547887 (“the Policy”) issued by Defendant Erie to the Plaintiff. The Policy provided coverage for Business Interruption and Civil Authority and additional coverages applicable to

losses claimed herein. A true and correct copy of the Erie Policy is attached hereto as Exhibit "1."

15. The Policy is an "all-risk" policy with effective dates of April 1, 2020, to April 1, 2021, for which Plaintiff paid valuable consideration. Exhibit "1."

16. This policy insures against direct physical "loss", except "loss" as excluded or limited in this policy, and provides coverage 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. The Policy provides Income Protection Coverage and Civil Authority Coverage. The Policy does not specifically exclude losses caused by the COVID-19 virus. Exhibit "1."

17. Beginning in March 2020, Plaintiff was forced to suspend its business operations as a result of COVID-19 and the aforementioned related actions of civil authorities. This suspension has caused Plaintiff to suffer significant losses and incur significant expenses.

18. Plaintiff suffered a direct physical loss of and damage to its property as a result of the COVID-19 pandemic.

19. Plaintiff has been unable to use its property for its intended purpose and has been denied access to its property, causing a suspension of business operations on the premises and the function of their property to be nearly eliminated and/or destroyed.

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

21. Plaintiff provided notice of their losses to Defendant consistent with the terms of the Policy on June 30, 2020.

22. Notwithstanding the foregoing, Defendant has denied and/or refused to acknowledge coverage for Plaintiff's losses caused by COVID-19 and the aforementioned Orders. A true and correct copy of Erie's Denial Letter is attached hereto as Exhibit "2."

Defendant's Uniform Conduct

23. 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 relevant civil authorities.

24. Upon information and belief, Erie has, on a widescale and uniform basis, refused to pay its insureds under business income, civil authority, and extra expense coverages for business income losses suffered due to COVID-19 orders made 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.

25. Moreover, upon information and belief, no insurer intends to cover any losses caused by the COVID-19 pandemic. Specifically, on March 18, 2020, a bipartisan group of members of the U.S. House of Representatives sent a letter to the insurance industry trade associations, noting the devastating impact civil authority orders in response to COVID-19 were having on American businesses and requesting that insurance companies agree to cover the resulting financial losses.

26. The insurance industry leaders sent a joint response, rejecting the plea for coverage, stating that “Business interruption policies do not, and were not designed to, provide coverage against communicable diseases such as COVID-19.”¹

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

COUNT I
**Onion Maiden, LLC d/b/a Onion Maiden v. Erie Insurance Property and Casualty
Company**
(Declaratory Relief)

28. Plaintiff hereby incorporates by reference the foregoing paragraphs of this Complaint as though the same were fully set forth herein.

29. Under the Declaratory Judgments Act, 43 Pa. C.S. § 7531-7541, this Court has jurisdiction to declare the rights and other legal relations of parties to this dispute.

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

31. In Plaintiff's Policy, Erie agreed to pay for its insureds' actual losses for business income, civil authority, and extra expenses sustained due to the necessary suspension of its operations during the period of restoration.

1. Insurers Reject House Members' Request to Cover Uninsured COVID Business Losses, Insurance Journal (Mar. 20, 2020), available at:

<https://insurancejournal.com/news/national/2020/03/20/561810.htm>.

32. 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 and extra expenses.

33. These suspensions and losses triggered business income, civil authority, and extra expense coverage under Plaintiff's Policy.

34. 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.

35. Erie has uniformly denied claims related to COVID-19 without investigations into individual claims, so the Court can render a declaratory judgment.

36. 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 business income, civil authority, and extra expense losses incurred by Plaintiff in connection with the suspension of their business stemming from the orders intended to mitigate the COVID-19 Pandemic.

WHEREFORE, Plaintiff, Onion Maiden, LLC d/b/a Onion Maiden, respectfully requests that this Honorable Court enter an Order declaring the following:

- i. Plaintiff's losses for business income, civil authority, and extra expenses incurred in connection with the closure orders and the necessary interruption of its business stemming from the COVID-19 Pandemic are insured losses under their Policy; and
- ii. Defendant Erie Insurance Property and Casualty Company is obligated to pay Plaintiff the full amount of its losses for business income, civil authority, and extra expenses 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 II

**Onion Maiden, LLC d/b/a Onion Maiden v. Erie Insurance Property and Casualty Company
(Breach of Contract/Compensatory Relief)**

37. Plaintiff hereby incorporates by reference the foregoing paragraphs of this Complaint as though the same were fully set forth herein.

38. In Plaintiff's Policy, Erie agreed to pay for losses for 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.

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

40. These losses satisfied all the necessary requirements to trigger business income, civil authority, and extra expense coverage under the 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.

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

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

44. As a result of Erie's breaches of the Policy, Plaintiff has sustained substantial damages for which Erie is liable.

WHEREFORE, Onion Maiden, LLC d/b/a Onion Maiden, respectfully requests compensatory damages from Defendant Erie Insurance Property and Casualty Company for its breaches of the Policy and seeks all other relief deemed appropriate by this Court, including attorneys' fees and costs.

COUNT III

**Onion Maiden, LLC d/b/a Onion Maiden v. Erie Insurance Property and Casualty
Company
(Bad Faith)**

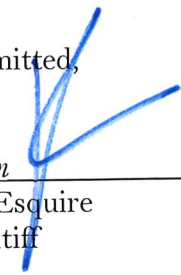
45. Plaintiff hereby incorporates by reference all preceding paragraphs as though set forth more fully herein.

46. Defendant has acted in violation of the Pennsylvania bad faith statute, 42 Pa.C.S. § 8371, and is liable for bad faith damages generally and in the following particulars:

- a. Defendant has refused to pay Plaintiff's claim without conducting a reasonable investigation based on all available information;
- b. Defendant has refused, and continues to refuse, to pay under the policy when Plaintiff has clearly met the requirements of coverage, and where no reasonable basis for the denial exists;
- c. Defendant has compelled its insured to litigate these claims to recover amounts due to them under the Policy;
- d. Defendant has compelled its insured to file suit and engage in litigation when a reasonable evaluation of the claim would have allowed the parties to avoid suit;
- e. In violating the Unfair Insurance Practice Act, 40 Pa.C.S. §1171; and
- f. Defendants have failed to act in good faith to effectuate prompt, fair, and equitable settlement of the claim in which its liability was clear.

WHEREFORE, Plaintiff, Onion Maiden, LLC d/b/a Onion Maiden, demands judgment from Defendant, Erie Insurance Property and Casualty Company, for an amount in excess of applicable arbitration limits, exclusive of interest, cost, and attorney's fees.

Respectfully submitted,


s/Katie A. Killion
Katie A. Killion, Esquire
Counsel for Plaintiff