

ADVANCED DENTAL ESTHETICS

vs.

ERIE INSURANCE COMPANY

NO. 2022-03891

NOTICE TO DEFEND - CIVIL

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LAWYER REFERENCE SERVICE
MONTGOMERY BAR ASSOCIATION
100 West Airy Street (REAR)
NORRISTOWN, PA 19404-0268

(610) 279-9660, EXTENSION 201

ADVANCED DENTAL ESTHETICS

vs.

ERIE INSURANCE COMPANY

NO. 2022-03891

CIVIL COVER SHEET

State Rule 205.5 requires this form be attached to any document commencing an action in the Montgomery County Court of Common Pleas. The information provided herein is used solely as an aid in tracking cases in the court system. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

Name of Plaintiff/Appellant's Attorney: JAMES C HAGGERTY, Esq., ID: 30003

Self-Represented (Pro Se) Litigant

Class Action Suit Yes No

MDJ Appeal Yes No

Money Damages Requested

Commencement of Action:

Amount in Controversy:

Complaint

More than \$50,000

Case Type and Code

Miscellaneous:

Other

Other: INSURANCE COVERAGE

Case# 2022-03891-0 Docketed at Montgomery County Prothonotary on 03/16/2022 5:26 PM; Fee = \$290.00. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY
PENNSYLVANIA

ADVANCED DENTAL ESTHETICS :
2406 N. Broad Street : TERM, 2022
Colmar, PA 18915 :
 :
 :
 :
 vs. :
 : No.
ERIE INSURANCE COMPANY :
100 Erie Insurance Place :
Erie, PA 16530 :

CIVIL ACTION – COMPLAINT

Parties

1. The plaintiff, Advanced Dental Esthetics (“Advanced Dental”) is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal place of business located at 2406 N. Main Street, Colmar, Pennsylvania 18915 regularly and routinely conducting business in the City and County of Philadelphia.

2. The defendant, Erie Insurance Company (“Erie”), is a reciprocal insurance exchange organized under the laws of the Commonwealth of Pennsylvania with its principal place of business in Erie, Pennsylvania.

3. The present action seeks recovery of declaratory and compensatory relief in connection with claims arising from the COVID-19 Pandemic and the related Governmental Orders.

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Insurance Coverage

4. At all times material hereto there existed, in full force and effect, an Ultra Pak Plus Policy (No. Q39-1090268) issued by the defendant, Erie, to the plaintiff, Advanced Dental, providing, *inter alia*, personal property, business income, extra expense, contingent business interruption, civil authority and additional coverages applicable to the losses, damages and expenses claimed in this action (“Erie Policy”).

5. The Erie Policy was in full force and effect and provided coverage for the period in which the losses in question occurred.

6. The Erie Policy is an “All Risks” policy which provides coverage for losses, damages, and expenses to the insured premises unless specifically excluded.

7. The Erie Policy does not exclude the losses, damages, and expenses caused by any virus including the COVID-19 Pandemic.

8. The Erie Policy provides coverage for the losses, damages, and expenses incurred by the plaintiff, Advanced Dental, as a result of the COVID-19 Pandemic and the actions of the Government in response thereto.

9. This claims of Advanced Dental arise out of the COVID-19 Pandemic and the Governmental Orders issued in connection therewith.

COVID-19 Pandemic

10. 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.

11. COVID-19 is a highly contagious airborne virus which has rapidly spread and continues to spread across the United States.
12. COVID-19 has been declared a pandemic by the World Health Organization.
13. COVID-19 remains stable and transmittable in aerosols and various surfaces for prolonged periods of time, up to two to three days on some surfaces.
14. COVID-19 is a public health crisis that has profoundly affected all aspects of society, including the ability of the public to congregate and gather.
15. The pandemic has been exacerbated by the fact that COVID-19 infects and stays on the surfaces of objects and materials for prolonged periods.
16. The Center for Disease Control has issued guidance that gatherings of certain people should not occur; since such gatherings increase the danger of contracting COVID-19.
17. On March 6, 2020, Governor Tom Wolf issued a Proclamation of Disaster Emergency as a result of COVID-19.
18. 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.
19. On March 23, 2020, Governor Tom Wolf issued a Stay at Home Order for citizens of various counties including Allegheny County.
20. 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.”

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

22. COVID-19, as evidenced by these Orders, causes damage to property, particularly in places of business, such as that of the plaintiff, Advanced Dental, 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 Pandemic

23. As a result of the impact of the COVID-19 pandemic and the referenced Orders of the Governor, the plaintiff has sustained a loss of use of its premises and was forced suspend professional medical and dental services, thereby experiencing a dramatic decrease in business, thereby incurring losses, damages, and expenses.

24. As a result of the impact of the COVID-19 Pandemic and the referenced Orders of the Governor, Advanced Dental was ordered to close, thereby incurring losses, damages, and expenses.

25. The business locations of Advanced Dental operate in a “closed environment” where many persons, including employees and customers, cycle in and out thereby creating a risk of contamination to the insured premises.

26. As a result of the COVID-19 Pandemic, Advanced Dental and its various locations was susceptible to person to person, person to property, and property to person transmittal and contamination.

27. The COVID-19 pandemic has directly and adversely affected the business operations of Advanced Dental by causing damage to the properties and the risk of further harm to the properties and its occupants.

28. Advanced Dental sustained direct loss of use and damage to their various locations which, resulted in losses, damages and expenses including but not limited to personal property, business income, extra expense, contingent business interruption and civil authority which are covered by the Erie Policy and for which the defendant, Erie, is liable.

Claim for Recovery

29. Advanced Dental has made claim upon Erie for recovery of losses, damages, and expenses caused by the COVID-19 Pandemic and the referenced Governmental Orders.

30. Advanced Dental is entitled to a declaration that its business operations are covered under the Erie Policy for, *inter alia*, business income, extra expense, civil authority and other coverages under the Erie Policy, for which the defendant, Erie, are liable.

31. By letter dated April 22, 2021, Kevin Race, Property Adjuster II of the defendant, Erie, wrote to counsel for Advanced Dental acknowledging receipt of notice of the loss and reserving rights. A true and correct copy of the April 22, 2021 letter is attached hereto as Exhibit "A".

32. By letters dated August 28, 2020, November 17, 2020 and December 24, 2020, Kevin Race, Property Adjuster, II of the defendant, Erie, wrote to counsel for Advanced Dental requesting information and documentation regarding the loss. True and correct copies of these letters are attached collectively as Exhibit "B".

33. Advanced Dental is continuing to gather information and documentation regarding the losses sustained as a result of the COVID-19 Pandemic and the related Governmental Orders.

34. Advanced Dental continues to cooperate with the defendant, Erie, in connection with the presentation of the loss, and is endeavoring to gather all information and documentation for submission in connection with the claim under the Ultra Pak Plus Policy (No. Q39-1090268).

35. By letter dated February 2, 2022, counsel for Advanced Dental wrote to Kevin Race, Property Adjuster, II of the defendant, Erie, advising of the intention to pursue the claim and requesting the specific information and documentation needed by the defendant, Erie, in order to fully and fairly investigate, evaluate and negotiate the claim.

36. Advanced Dental is entitled to a declaration that the Erie Policy provides coverage for the losses, damages and expenses caused by the COVID-19 Pandemic and the related Governmental Orders.

37. Advanced Dental is entitled to compensatory damages under the Ultra Pak Plus Policy (No. Q39-1090268) for the losses, damages and expenses caused by the COVID-19 Pandemic and the related Governmental Orders.

COUNT I
(Declaratory Relief)

38. The plaintiff hereby incorporates by reference the foregoing Paragraphs 1 through 37 of this Complaint as though same were fully set forth herein.

39. Advanced Dental is entitled to coverage under the Erie Policy for the losses, damages, and expenses caused by the COVID-19 Pandemic and the related Governmental Orders.

40. The defendant, Erie, has failed to confirm coverage for the losses, damages, and expenses caused by the COVID-19 Pandemic and the related Governmental Orders under the Erie Policy and has, instead, reserved its rights pending its continuing investigation and evaluation of the claims.

41. Advanced Dental is entitled to recover for the losses, damages and expenses covered by the COVID-19 Pandemic and the related Governmental Orders under the Erie Policy.

42. The defendant, Erie, has wrongfully refused to acknowledge coverage to Advanced Dental under the Erie Policy for the losses, damages and expenses caused by the COVID-19 Pandemic and the related Governmental Orders.

43. The refusal to acknowledge coverage to Advanced Dental under the Erie Policy for the losses, damages and expenses caused by the COVID-19 Pandemic and the related Governmental Orders is a material breach of that policy.

44. The refusal to acknowledge coverage to Advanced Dental under the Erie Policy for the losses, damages and expenses caused by the COVID-19 Pandemic and the related Governmental Orders is in direct violation of the specific terms and provisions of the Erie Policy.

45. Advanced Dental is entitled to a declaration that it is entitled to coverage under the Erie Policy for the losses, damages and expenses caused by the COVID-19 Pandemic and the related Governmental Orders.

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

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

48. 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.

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

WHEREFORE, the plaintiff, Advanced Dental Esthetics, respectfully requests that the Court enter an Order declaring that the defendant, Erie Insurance Company, is required to provide coverage for the losses, damages and expenses caused by the COVID-19 Pandemic and the related Governmental Orders Ultra Pak Plus Policy (No. Q39-1090268).

COUNT II
(Compensatory Relief)

50. The plaintiff, Advanced Dental, hereby incorporates by reference the foregoing Paragraphs 1 through 49 of this Complaint as though same were fully set forth herein.

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

52. In the 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.

53. The plaintiff, Advanced Dental, has suffered a direct physical loss of and damage to its 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.

54. These suspensions and losses triggered business income coverage under the Erie Policy.

55. The plaintiff, Advanced Dental, has complied with all applicable provisions of the Erie Policy and/or those provisions have been waived by Erie or Erie is estopped from asserting them.

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

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

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

WHEREFORE, the plaintiff, Advanced Dental Esthetics, seeks compensatory damages in an amount in excess of \$50,000.00 resulting from the breach of the Erie Policy and seeks all other relief deemed appropriate by this Court, including attorneys' fees and costs.

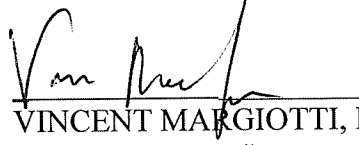
Respectfully Submitted,

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

BY: /s/ James C. Haggerty
JAMES C. HAGGERTY, Esquire
PA Attorney I.D. # 30003
1801 Market Street, Suite 1100
Philadelphia, PA 19103
(267) 350-6600
FAX (215) 665-8197

MCMENAMIN & MARGIOTTI

BY:



VINCENT MARGIOTTI, Esquire

PA Attorney I.D. #

2307 North Broad Street


P.O. Box 180

Lansdale, PA 19466

Attorneys for Plaintiff

VERIFICATION

I, Dr. Dilip Dudhat of Advanced Dental Esthetics, 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: 

Dr. Dilip Dudhat
Advanced Dental Esthetics

Case# 2022-03891-0 Docketed at Montgomery County Prothonotary on 03/16/2022 5:26 PM, Fee = \$290.00. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

EXHIBIT A



**Erie
Insurance®**

Inv

Branch Office • 2200 West Broad Street • P.O. Box 4286 • Bethlehem, PA 18018-0286
610.865.1911 • Toll free 1.800.322.9026 • Fax 610.974.7355 • www.erieinsurance.com

August 28, 2020

Vincent Marciotti, Esq.
McMenamin & Margitotti
Attorneys-at-Law
2307 North Broad Street
Lansdale, PA 19446

Re: ERIE Claim #A00002671533
ERIE Policy #Q39-1090268
Date of Loss: 3/10/2020

Dear Mr. Marciotti:

This letter is in reference to the above-captioned claim which was reported to Erie Insurance Company (ERIE) on June 19, 2020 seeking coverage under the Ultrapack Plus Policy #Q39-1090268 issued to Advanced Dental Esthetics.

It is ERIE's understanding that a claim is being asserted for loss of business income due to the business being shut down by COVID-19.

At this time, ERIE is proceeding to investigate this claim under a Reservation of Rights. What this means is that ERIE is investigating this claim and reviewing your policy to determine if there is coverage for this claim.

The Insuring Agreement for Building(s) – Coverage 1, Business Personal Property – Coverage 2 and Income Protection – Coverage 3 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.

Under the express language of these provisions, coverage will not apply unless there is direct physical "loss" of or damage to Covered Property.

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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 unless a partial or total “interruption of business” results directly from direct physical “loss” or damage to Covered Property on the premises from a peril insured against. No coverage is provided when the facts and circumstances do not meet these requirements.

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 unless there is damage to property within one mile of the premises described in the “Declarations,” caused by a peril insured against. Civil Authority coverage also does not apply unless the action of civil authority is issued as a result of the damage to such other property. No coverage is provided when the facts and circumstances do not meet these requirements.

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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 unless a partial or total “interruption of business” results directly from “loss” or damage to Buildings or Business Personal Property of “dependent properties” from a peril insured against. No coverage is provided when the facts and circumstances do not meet these requirements.

In addition to the discussion above, the following exclusions may 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 provisions apply:

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.

18. YOUR DUTIES AFTER A LOSS

In case of a covered "loss", you must perform the following duties:

- a. Give us or our Agent immediate notice. If a crime "loss", also notify the police (except Virginia);
- b. Protect the property from further damage. If necessary for property protection, make reasonable repairs and keep a record of all repair costs;
- c. Furnish a complete inventory of damaged property stating its original cost. At our request, furnish a complete inventory of undamaged property stating its original cost. If a "loss" is both less than \$10,000 and less than 5% of the amount of insurance, no special inventory and appraisal of the undamaged property shall be required;
- d. Produce for examination, with permission to copy, all books of accounts, bills, invoices, receipts, and other vouchers as we may reasonably require;
- e. Show us or our representative the damaged property, as often as may be reasonably required;
- f. Cooperate with us in our investigation of a "loss" and any suits;
- g. Separately submit to examinations under oath and sign a transcript of the same;
- h. Send us, within 90 days after the "loss", your signed and sworn proof of loss statement which includes:
 - 1) Time and cause of "loss";
 - 2) Your interest in the property and the interest of all others involved;
 - 3) Any encumbrances on the property;
 - 4) Other policies which may cover the "loss";
 - 5) Any changes in title, use, occupancy, or possession of the property which occurred during the policy term;

Vincent Marciotti, Esq.
McMenamin & Margitotti
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August 28, 2020

- 6) When required by us any plans, specifications, and estimates for the repair of the damaged building; and
- 7) The inventory of damaged property as prepared in c. above;
- i. In addition to the other conditions under **Income Protection - Coverage 3**, make necessary replacements or repairs and use all available means to eliminate any unnecessary delay in order to resume operations as soon as possible;
- j. Agree to help us enforce any right of recovery against any party liable for "loss" under this policy. This will not apply if you have waived recovery rights in writing prior to a "loss".

Until ERIE can complete a thorough review of all the documentation pertaining to this claim, we are unable to fully evaluate if any exclusions or limitations do apply to this claim. Please understand that this is not a letter denying coverage for your claim. We simply wish to inform you that some or all of the loss may not be covered.

We are requesting your cooperation in the investigation of the claims being asserted by you as required by the policy conditions. If you have any other insurance that may apply, please notify that insurer at once about this claim and supply us with the information about the other insurance. If you are aware of any additional facts that may change our present coverage analysis, please let us know. If ultimately there is no coverage for this claim, ERIE will not make payment under the policy. If part of the claim is covered and part of the claim is not covered, ERIE will only make payment for the covered portion of the claim.

This letter is not intended to nor should it be construed as setting forth an exhaustive list of all issues with respect to coverage, exclusions, defenses, conditions and limitations that may arise from this loss under your policy of insurance with ERIE. You may be advised of any and all additional issues that are identified in our investigation.

It is ERIE's intention not to waive, but rather fully reserve all rights, exclusions, defenses, issues and limitations to which ERIE may be entitled with respect to the matter that may be the subject of this claim. If we ultimately resolve the coverage issues in your favor, you will be advised in writing. Our investigation or discussion with any interested parties should not be construed as a waiver of any policy conditions, provisions or terms, all of which remain in force and effect. ERIE reserves all rights and defenses under the policy. ERIE reserves the right to suspend all investigation or other activity at any time during the case of the same, advising you at the time, the reason of such suspension. ERIE further reserves the right to deny coverage to you or anyone else seeking coverage under the policy at a later date and seek a judicial determination of its rights and obligations under the policy.

If you have any questions or concerns in regard to this letter, please feel free to contact me at the number listed below.

Sincerely,

Kevin D. Race, AIC
Property Claims Adjuster
(215) 721-4159
1-800-545-0409 (Fax)

[mj]

By certified mail – return receipt requested



Erie
Insurance®

Branch Office • 2200 W. Broad St. • P. O. Box 4286 • Bethlehem, PA 18018-0286 • 610-865-1911
Toll Free 1-800-322-9026 • Fax 610- 974-7355 • <http://www.erie-insurance.com>

April 22, 2021

McMenamin & Margiotti
2307 North Broad Street
P.O. Box 180
Lansdale, PA 19466

Re: Erie Claim Number: A00002671533 (the "Claim")
Erie Policy Number: Q391090268 (the "Policy")
Erie Insured: Advanced Dental Esthetics
Date of Loss: 3/10/2020 (as reported)

Dear Attorney Margiotti,

I write on behalf of Erie Insurance Exchange (Erie) regarding the above captioned claim which was reported to Erie on June 19, 2020 seeking coverage under the Ultrapack Plus Policy #Q39-1090268 issued to Advanced Dental Esthetics. In providing this response, Erie continues to do so under a full and complete reservation of all rights, terms and conditions stated under the policy.

Specifically, I write regarding Erie's request to secure our policyholders statement of loss to review the claim. Our letters and emails dated August, 28, 2020, September 25, 2020, August 14, 2020, October 23, 2020, November 17, 2020, December 24, 2020, February 2, 2021 and March 8, 2021 have gone without response. Erie has not received response and again requests to secure a statement of loss from our policyholder to review the facts of loss. Please contact my office to arrange a date and time to secure this statement. In this context, the Ultrapack Plus Commercial Property Coverage Policy (Ed. 01/20) provides as follows:

SECTION X - COMMERCIAL PROPERTY CONDITIONS

18. YOUR DUTIES AFTER A LOSS

In case of a covered "loss", you must perform the following duties:

- a. Give us or our Agent immediate notice. If a crime "loss", also notify the police (except Virginia);
- b. Protect the property from further damage. If necessary for property protection, make reasonable repairs and keep a record of all repair costs;
- c. Furnish a complete inventory of damaged property stating its original cost. At our request, furnish a complete inventory of undamaged property stating its original cost. If a "loss" is both less than \$10,000 and less than 5% of the amount of insurance, no special inventory and appraisal of the undamaged property shall be required;

d. Produce for examination, with permission to copy, all books of accounts, bills, invoices, receipts, and other vouchers as we may reasonably require;

e. Show us or our representative the damaged property, as often as may be reasonably required;

f. Cooperate with us in our investigation of a "loss" and any suits;

g. Separately submit to examinations under oath and sign a transcript of the same;

h. Send us, within 90 days after the "loss", your signed and sworn proof of loss statement which includes:

- 1) Time and cause of "loss";
- 2) Your interest in the property and the interest of all others involved;
- 3) Any encumbrances on the property;
- 4) Other policies which may cover the "loss";
- 5) Any changes in title, use, occupancy, or pos-session of the property which occurred during the policy term;
- 6) When required by us any plans, specifications, and estimates for the repair of the damaged building; and
- 7) The inventory of damaged property as prepared in c. above;

i. In addition to the other conditions under Income Protection - Coverage 3, make necessary replacements or repairs and use all available means to eliminate any unnecessary delay in order to resume operations as soon as possible;

j. Agree to help us enforce any right of recovery against any party liable for "loss" under this policy. This will not apply if you have waived recovery rights in writing prior to a "loss".

Your cooperation is necessary in order for Erie to determine whether the Policy provides coverage for this loss. Failure to cooperate will cause delay of Erie's determination and may materially prejudice Erie's investigation.

At this time, ERIE is proceeding to investigate this claim under a Reservation of Rights. What this means is that ERIE is investigating this claim and reviewing your policy to determine if there is coverage for this claim.

The Insuring Agreement for Building(s) – Coverage I, Business Personal Property – Coverage II and Income Protection – Coverage III 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:

**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.

Under the express language of these provisions, coverage will not apply unless there is direct physical "loss" of or damage to Covered Property.

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 unless a partial or total "interruption of business" results directly from direct physical "loss" or damage to Covered Property on the premises from a peril insured against. No coverage is provided when the facts and circumstances do not meet these requirements.

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 unless there is damage to property within one mile of the premises described in the "Declarations", caused by a peril insured against. Civil Authority coverage also does not apply unless the action of civil authority is issued as a result of the damage to such other property. No coverage is provided when the facts and circumstances do not meet these requirements.

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 - premises you depend on as a source of materials or services that you need for your operations. Services does not include water, communication, power supply, or waste water removal properties;
- b. Recipient Locations - premises you depend on as a customer for your products or services;
- c. Manufacturing Locations - premises you depend on to manufacture products for your customers under contract or sale; or
- d. Leader Locations - 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. It begins with the date of direct "loss" or damage to the "dependent property" caused by a peril insured against 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 unless a partial or total "interruption of business" results directly from "loss" or damage to Buildings or Business Personal Property of "dependent properties" from a peril insured against. No coverage is provided when the facts and circumstances do not meet these requirements.

In addition to the discussion above, the following exclusions may 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 provisions apply:

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.

Until ERIE can complete a thorough review of all the documentation pertaining to this claim, we are unable to fully evaluate if any exclusions or limitations do apply to this claim. Please understand that this is not a letter denying coverage for your claim. We simply wish to inform you that some or all of the loss may not be covered.

We are requesting your cooperation in the investigation of the claims being asserted by you as required by the policy conditions. If you have any other insurance that may apply, please notify that insurer at once about this claim and supply us with the information about the other insurance. If you are aware of any additional facts that may change our present coverage analysis, please let us know. If ultimately there is no coverage for this claim, ERIE will not make payment under the policy. If part of the claim is covered and part of the claim is not covered, ERIE will only make payment for the covered portion of the claim.

This letter is not intended to nor should it be construed as setting forth an exhaustive list of all issues with respect to coverage, exclusions, defenses, conditions and limitations that may arise from this loss under your policy of insurance with ERIE. You may be advised of any and all additional issues that are identified in our investigation.

It is ERIE's intention not to waive, but rather fully reserve all rights, exclusions, defenses, issues and limitations to which ERIE may be entitled with respect to the matter that may be the subject of this claim. If we ultimately resolve the coverage issues in your favor, you will be advised in writing. Our investigation or discussion with any interested parties should not be construed as a waiver of any policy conditions, provisions or terms, all of which remain in force and effect. ERIE reserves all rights and defenses under the policy. ERIE reserves the right to suspend all investigation or other activity at any time during the case of the same, advising you at the time, the reason of such suspension. ERIE further reserves the right to deny coverage to you or anyone else seeking coverage under the policy at a later date and seek a judicial determination of its rights and obligations under the policy.

If you have any questions or concerns in regard to this letter, please feel free to contact me at the number listed below.

Sincerely,

Kevin Race
Property Adjuster II
Erie Insurance

Certified Mail/Return Receipt Requested

Cc: Advanced Dental Esthetics
Cc: File

Case# 2022-03891-0 Docketed at Montgomery County Prothonotary on 03/16/2022 5:26 PM, Fee = \$290.00. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

EXHIBIT B



Erie
Insurance®

Branch Office • 2200 West Broad Street • Suite 1 • P.O. Box 4286 • Bethlehem, PA 18018-0286
610.865.1911 • Toll free 1.800.322.9026 • Fax 800.545.0409 • erieinsurance.com

November 17, 2020

Vincent Marciotti, Esq.
McMenamin & Margitotti
Attorneys-at-Law
2307 North Broad Street
Lansdale, PA 19446

Re: ERIE Claim #A00002671533
ERIE Policy #Q39-1090268
Date of Loss: 3/10/2020

Dear Mr. Marciotti:

This letter is in reference to the above-captioned claim which was reported to Erie Insurance Company (ERIE) on June 19, 2020 seeking coverage under the Ultrapack Plus Policy #Q39-1090268 issued to Advanced Dental Esthetics.

Erie has not received response to our numerous requests to secure a recorded and/or written statement of loss from our policyholder. Erie has not received cooperation during our investigation of the referenced claim. As such, we assume our policyholder no longer wishes to pursue this claim and we will be closing the claim at this time. If our assumption is incorrect, please contact my office to arrange the statement of loss and/or submit the previously provided written statement document.

I turn your attention to the following policy provisions:

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.

18. YOUR DUTIES AFTER A LOSS

In case of a covered "loss", you must perform the following duties:

- a. Give us or our Agent immediate notice. If a crime "loss", also notify the police (except Virginia);
- b. Protect the property from further damage. If necessary for property protection, make reasonable repairs and keep a record of all repair costs;

Advanced Dental Closing

Case# 2022-03891-0 Docketed at Montgomery County Prothonotary on 03/16/2022 5:26 PM, Fee = \$290.00. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

- c. Furnish a complete inventory of damaged property stating its original cost. At our request, furnish a complete inventory of undamaged property stating its original cost. If a "loss" is both less than \$10,000 and less than 5% of the amount of insurance, no special inventory and appraisal of the undamaged property shall be required;
- d. Produce for examination, with permission to copy, all books of accounts, bills, invoices, receipts, and other vouchers as we may reasonably require;
- e. Show us or our representative the damaged property, as often as may be reasonably required;
- f. Cooperate with us in our investigation of a "loss" and any suits;
- g. Separately submit to examinations under oath and sign a transcript of the same;
- h. Send us, within 90 days after the "loss", your signed and sworn proof of loss statement which includes:
 - 1) Time and cause of "loss";
 - 2) Your interest in the property and the interest of all others involved;
 - 3) Any encumbrances on the property;
 - 4) Other policies which may cover the "loss";
 - 5) Any changes in title, use, occupancy, or possession of the property which occurred during the policy term;
 - 6) When required by us any plans, specifications, and estimates for the repair of the damaged building; and
 - 7) The inventory of damaged property as prepared in c. above;
- i. In addition to the other conditions under **Income Protection - Coverage 3**, make necessary replacements or repairs and use all available means to eliminate any unnecessary delay in order to resume operations as soon as possible;
- j. Agree to help us enforce any right of recovery against any party liable for "loss" under this policy. This will not apply if you have waived recovery rights in writing prior to a "loss".

Case# 2022-03891-0 Docketed at Montgomery County Prothonotary on 03/16/2022 5:26 PM, Fee = \$290.00. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

If you have any questions or concerns in regard to this letter, please feel free to contact me at the number listed below.

Waiving none, but in all other respects reserving to the Erie Insurance Exchange all of its rights and defenses under and pursuant to the policy of insurance under which this claim has been made, I remain,

Sincerely,

Kevin Race / PT

Kevin D. Race, AIC
Property Claims Adjuster
(215) 721-4159
1-800-545-0409 (Fax)

Cc: Kelly Insurance Agency Inc.
212 W. Main Street
Trappe PA 19426
Cc: Advanced Dental Esthetics
2406 N. Broad Street
Colmar PA 18915
Cc: File



Branch Office • 2200 West Broad Street • P.O. Box 4286 • Bethlehem, PA 18018-0286
610.865.1911 • Toll free 1.800.322.9026 • Fax 610.974.7355 • www.erieinsurance.com

December 24, 2020

McMenamim & Margiotti
2307 N Broad Street
P.O. Box 180
Lansdale, PA 19446

ERIE Claim #A00002671533
ERIE Insured: Advanced Dental Esthetics
ERIE Policy #Q391090268
Date of Loss: March 10, 2020 (as reported)

Dear Attorney Margiotti:

I write on behalf of Erie Insurance Exchange (ERIE) regarding the above-captioned claim and your letter dated November 23, 2020 indicating you are gathering information and documents for our insured's loss. Attached, please find a copy of the Reservation of Rights letter dated August 8, 2020 outlining our investigation and review of the policy to determine if coverage exists for this claim. ERIE sent subsequent e-mails requesting to secure our Policyholder's statement of loss to review the claim. In providing this response, ERIE continues to do so under a full and complete reservation of all rights, terms and conditions stated under the policy.

ERIE has not received a response and again requests to secure a statement of loss from our Policyholder to review the facts of loss. Please contact my office to arrange a date and time to secure the statement. In this context, the Ultrapack Plus Commercial Property Coverage Policy, PK0001 (Ed. 1/20), provides as follows:

SECTION X - COMMERCIAL PROPERTY CONDITIONS

18. YOUR DUTIES AFTER A LOSS

In case of a covered "loss", you must perform the following duties:

- a. Give us or our Agent immediate notice. If a crime "loss", also notify the police (except Virginia);
- b. Protect the property from further damage. If necessary for property protection, make reasonable repairs and keep a record of all repair costs;
- c. Furnish a complete inventory of damaged property stating its original cost. At our request, furnish a complete inventory of undamaged property stating its original cost. If a "loss" is both less than \$10,000 and less than 5% of the amount of insurance, no special inventory and appraisal of the undamaged property shall be required;
- d. Produce for examination, with permission to copy, all books of accounts, bills, invoices, receipts, and other vouchers as we may reasonably require;
- e. Show us or our representative the damaged property, as often as may be reasonably required;
- f. Cooperate with us in our investigation of a "loss" and any suits;

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- g. Separately submit to examinations under oath and sign a transcript of the same;
- h. Send us, within 90 days after the "loss", your signed and sworn proof of loss statement which includes:
 - 1) Time and cause of "loss";
 - 2) Your interest in the property and the interest of all others involved;
 - 3) Any encumbrances on the property;
 - 4) Other policies which may cover the "loss";
 - 5) Any changes in title, use, occupancy, or possession of the property which occurred during the policy term;
 - 6) When required by us any plans, specifications, and estimates for the repair of the damaged building; and
 - 7) The inventory of damaged property as prepared in c. above;
- i. In addition to the other conditions under **Income Protection - Coverage 3**, make necessary replacements or repairs and use all available means to eliminate any unnecessary delay in order to resume operations as soon as possible;
- j. Agree to help us enforce any right of recovery against any party liable for "loss" under this policy. This will not apply if you have waived recovery rights in writing prior to a "loss".

Your cooperation is necessary in order for ERIE to determine whether the policy provides coverage for this loss. Failure to cooperate will cause delay of ERIE's determination and may materially prejudice ERIE's investigation.

This letter and our coverage investigation involved Claim A00002671533 reported under Policy #Q391090268. Please only submit information and documentation related to the location insured under this policy. ERIE is unaware of claims for other locations and is only investigating the loss submitted under the referenced policy number.

The policy provides as follows:

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.

You are reminded of the following policy provision:

15. SUITS AGAINST US

We may not be sued unless there is full compliance with all the terms of this policy. Suit must be

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December 24, 2020

brought within 2 years (Maryland and North Carolina - 3 years) after the "loss" occurs.

If you have any questions relating to the contents of this letter, please feel free to call my office at (215) 721-4159.

Waiving none, but in all other respects reserving to the Erie Insurance Company all of its rights and defenses under and pursuant to the policy of insurance under which this claim has been made, I remain

Sincerely,

Kevin Race

Kevin Race
Property Adjuster II
Allentown/Bethlehem Claims Office
Phone: 2157214159
Fax: 8005450409
Email: K7610@erieinsurance.com

/dm

Enclosure:

Reservation of Rights Letter 8/8/20

cc: Kelly Insurance Agency
212 W Main Street
Trappe, PA 19426