

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

**BOTWOOD LIMITED LLC D/B/A,
GOOD COMPANY**
c/o Taubman Law
1826 West 25th
Cleveland, Ohio 44113

Plaintiff,

v.

ERIE INSURANCE COMPANY,
c/o Timothy G Necastro, President
100 Erie Insurance Place
Erie, Pennsylvania 16530

-and-

ERIE INSURANCE (Canton Branch),
c/o Fred Johnson, Branch Manager
4690 Munson Street N.W.
Canton, Ohio 44718

Defendants.

CASE No:

JUDGE:

**COMPLAINT FOR DECLARATORY
JUDGMENT AND BREACH OF
CONTRACT**

(Jury Demanded)

For its Complaint against Defendant Erie Insurance Company and Defendant Erie Insurance (together “Defendants”) Plaintiff Botwood Limited, alleges and states the following:

1. This suit arises out of Defendants’ denial of Plaintiff’s claim for their loss of business income, extra expense coverage, contingent business interruption protection, and civil authority coverage under their property insurance policies through Defendants resulting from or caused by the coronavirus, the government’s stay-at-home orders, and the government’s orders to shut down in-restaurant dining in restaurants. Plaintiff has sued for declaratory judgment and breach of contract.

2. Plaintiff Good Company is an Ohio Limited Liability Company with its principal place of business in Cleveland, Ohio. Plaintiff owns and operates a restaurant.

3. Defendant Erie Insurance Company is the insurance company that insures Plaintiff's restaurant property. Defendant is headquartered in Erie, Pennsylvania, but has offices and does substantial business in Ohio, like providing insurance to businesses located in Ohio.

4. Defendant Erie Insurance is an Ohio branch of the Erie Insurance Company, and also sells insurance.

5. Plaintiff suffered the breach of contract and the harm of the business losses in Cuyahoga County, Ohio.

6. The common law claim of breach of contract is being sought in an amount over \$25,000.

GENERAL ALLEGATIONS

7. Plaintiff is insured by Defendants.

8. Plaintiff's policy includes coverages for income protection, extra expense, civil authority orders, and contingent business interruption.

9. The terms of Plaintiff's insurance policy are ambiguous in what the policy does and does not cover.

10. Plaintiff's policy states that Defendants will pay for "direct physical loss of or damage to covered property."

11. While the policy was in force, Plaintiff sustained losses due to coronavirus, also referred to as COVID-19, and the civil authority orders issued by the government of Ohio.

12. It has been widely reported that the coronavirus is able to live on many different surfaces.

13. It has not been fully ascertained how long the coronavirus is able to live on different surfaces.

14. It has also been widely reported that the coronavirus is able to live in the air for certain periods of time.

15. On March 9, 2020 Ohio's governor issued Executive Order 2020-01D, declaring a state of emergency relating to the safety of its citizens from the effects of the coronavirus.

16. In the above-mentioned Executive Order, Governor DeWine stated that it may be possible to contract the coronavirus through touching a surface or object that has the virus on it, and then subsequently touching their face.

17. Shortly after, on March 16, Ohio restricted restaurant services to only take-out and delivery, not allowing people to dine-in and eat on site at restaurants and reiterated that the virus may be spread by touching surfaces that the virus was on.

18. The coronavirus can cause direct physical harm and property damage. The virus is physically impacting property in Ohio.

19. The Executive Orders issued by the Ohio government has caused direct physical harm to the Plaintiff's property.

20. As of March 15, 2020 Ohio has 26,357 cases of the coronavirus and 1,534 people in Ohio have died because of the coronavirus.

21. As of March 15, 2020 Cuyahoga County Ohio has 3,156 cases of coronavirus and has had 162 deaths. Cuyahoga County is one of the most impacted by the coronavirus counties in Ohio.

22. Cuyahoga County is one of the most impacted counties in Ohio from the coronavirus.

23. The coronavirus and the civil authority orders by the Ohio government has caused and continues to cause significant property damage as well as direct physical loss to property to those in Cuyahoga County, including the Plaintiff.

24. Because of the direct physical loss and property damage caused by the coronavirus and the government of Ohio's orders, the Plaintiff is entitled to coverage under the income protection, extra expense coverage, civil authority coverage, and contingent business interruption coverage under their insurance policy with Defendants.

COUNT ONE
(Declaratory Judgment)

25. Plaintiff hereby adopts and incorporates as if fully re-written here all the allegations set forth in paragraph 1 through 24 of this Complaint.

26. Plaintiff submitted a timely insurance request to Defendants.

27. Defendants denied that request, stating that Plaintiff's losses were not covered by the policy issued by Defendants.

28. Plaintiff contends that these losses are covered by the insurance policy issued by Defendants and therefore entitled to payment by the Defendants.

29. Since there is a dispute about whether or not the losses are covered by the insurance policy issued to Plaintiff by Defendants, Plaintiff is entitled to declaratory relief under Ohio Civil Rule 57, and R.C. §§ 2721.01-.15.

COUNT TWO
(Breach of Contract)

30. Plaintiff hereby adopts and incorporates as if fully re-written here all the allegations set forth in paragraphs 1 through 29 of this Complaint.

31. Plaintiff has performed all required conditions under his insurance policy.

32. Defendants have refused to provide business income, extra expense, contingent business interruption, and/or civil authority coverage for the coronavirus and/or the governments orders to

stay-at-home and not allow the restaurant to have dine-in customers, as required by Plaintiff's insurance policy.

33. By denying such coverage as outlined in their policies, Defendants have breached the insurance contract with the Plaintiff.

34. As a direct and proximate result of Defendants' breach of the insurance policy, Plaintiff has suffered damages in an amount in excess of \$25,000.00, the exact amount to be proven at trial.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that judgment be granted in their favor against Defendants as follows:

1. With respect to Count One: a declaration that, (1) Plaintiff sustained direct physical loss or damage as the result of the coronavirus pandemic; (2) the policy covers the losses sustained by Plaintiff due to the coronavirus; (3) the losses incurred by Plaintiff due to the orders from the government of Ohio are covered losses under the policy; (4) Defendants cannot prove any exclusion or limitation to the coverage; (5) Plaintiff is entitled to recover from under its income protection, extra expense, and contingent business interruption coverage; (6) Plaintiff is entitled to coverage for losses due to the government of Ohio's orders; and (7) Plaintiff shall receive coverage for any future government orders that are substantially similar and that restrict access to Plaintiff's restaurant and property.
2. With respect to Count Two: an amount in excess of \$25,000, the exact amount to be proven at trial.
3. That Plaintiffs be granted the equitable relief sought herein.
4. That the Court award to Plaintiffs the costs and disbursements of the action, along with reasonable attorneys' fees, including fees and expenses.
5. That the Court grant all such other relief as it deems just and proper.

Respectfully submitted,

/s/ Brian M. Taubman
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Attorney for Plaintiff

JURY DEMAND

A trial by jury is hereby demanded on all issues of the within action.

/s/ Brian Taubman
Brian. Taubman
Attorney for Plaintiff