

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

DELUCA'S DINER II, LLC

Plaintiff,

v.

ERIE INSURANCE PROPERTY AND
CASUALTY COMPANY,

Defendant.

CIVIL DIVISION

No.:

COMPLAINT

Filed on Behalf of Plaintiff:

Counsel of Record for This Party:

George M. Kontos, Esquire
PA ID #62712
gkontos@kontosmengine.com

Katie A. Killion, Esquire
PA ID #205203
killion@kontosmengine.com

Kontos Mengine Killion and Hassen
603 Stanwix Street
Two Gateway Center, Suite 1228
Pittsburgh, PA 15222

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

DELUCA'S DINER II, LLC

CIVIL DIVISION

Plaintiff,

No.:

v.

ERIE INSURANCE PROPERTY AND
CASUALTY COMPANY,

Defendant.

**COMPLAINT SEEKING DECLARATORY,
COMPENSATORY, AND INJUNCTIVE RELIEF**

AND NOW comes Plaintiff, Deluca's Diner II, LLC, by and through its attorneys, George M. Kontos, Esquire, Katie A. Killion, Esquire, and Kontos Mengine Killion and Hassen and files the following Complaint, and in support thereof, aver as follows:

PARTIES

1. Deluca's Diner, II, LLC (hereinafter "Deluca's Diner") is a corporation organized and existing under the Commonwealth of Pennsylvania, with its principal restaurant location at 1110 Park Manor Boulevard, Pittsburg, PA 15205-4801, 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, compensatory, and injunctive relief with respect to the insurance coverage for losses caused by the COVID-19 virus and governmental orders that were entered in connection therewith.

INSURANCE COVERAGE

5. At all times relevant hereto, there was in full force and effect, Ultrapack Policy #Q972167615 (“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. See a copy of the Erie Policy attached hereto as Exhibit “1.”

6. The Policy’s effective dates were from August 25, 2019 to August 25, 2020.
2020.

7. Plaintiff paid valuable consideration to Erie Insurance and in exchange received an “Ultrapack Plus” all-risk policy. Exhibit “1.”

8. 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.

9. The Policy does not specifically exclude losses caused by the COVID-19 virus.

10. The policy provides Income Protection Coverage and Civil Authority Coverage.

COVID-19 PANDEMIC & IMPACT

11. 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.

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

13. 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.

14. Additionally, the Governor of Pennsylvania, Tom Wolf, has issued multiple Proclamations and Orders throughout the pandemic.

15. 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.

16. On March 23, 2020, Governor Wolf issues 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.”

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

18. The COVID-19 virus, as well as the Orders issued by the Commonwealth of Pennsylvania, caused damage to property, particularly in places of business, such as that of

Plaintiff, and other similarly situated persons and organizations, whether the operation of the business requires gatherings and contact in areas where there exists a heightened risk of contamination by COVID-19.

19. Upon information and belief, at the time the claim was made, Plaintiff's business, as well as the surrounding homes and businesses within a one-mile radius, were contaminated with the COVID-19 virus.

20. As a result of the impact of COVID-19 and the corresponding Orders by the Pennsylvania government, Plaintiff, and many other similarly situated businesses, have been ordered to close its business and was forced to furlough employees, thereby incurring a loss.

21. At the time of the closure orders and submission of Plaintiff's claim, the actual number of COVID-19 cases within Allegheny County and elsewhere in the state and nation was relatively unknown due to the lack of testing abilities, symptoms, and other factors outside of the Plaintiff's control.

22. In addition to the notification received from contact tracers, it is believed and therefore averred that Plaintiff's owners were in contact with individual(s) and/or areas that were discovered thereafter to be contaminated with COVID-19.

23. COVID-19 has directly and adversely affected the business operations of Plaintiff, by causing damage and the risk of further harm to Plaintiff's property and occupants therein.

24. Thus, Plaintiff has suffered Business Interruption, Civil Authority, and other related covered losses.

COUNT I
Deluca's Diner II, LLC v. Erie Insurance Property and Casualty Company
(Declaratory Relief)

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

26. Plaintiff is entitled to coverage under the Policy for the losses caused by the COVID-19 virus and aforementioned Orders.

27. Defendant has denied and/or refused to acknowledge coverage for Plaintiff's losses caused by COVID-19 and the aforementioned Orders. See Erie's Denial Letter attached hereto as Exhibit "2."

28. Plaintiff is entitled to recover for the losses caused by COVID-19 and the resulting ordered under the Policy.

29. Defendant has wrongfully refused to provide coverage to Plaintiff under the Policy and has misrepresented policy provisions in doing so.

30. This denial and refusal to acknowledge coverage to Plaintiff is a material breach of the Policy.

31. The denial and refusal to acknowledge coverage to Plaintiff are in direct violation of the specific terms and provisions of the Policy.

32. The denial and refusal to acknowledge the Plaintiff's loss is in direct violation of the Pennsylvania Unfair Claims Settlement Practices Act, specifically:

- (a) An insurer or agent may not fail to fully disclose to first-party claimants pertinent to benefits, coverages or other provisions of an insurance policy or insurance contract under which a claim is presented.
- (b) An insurer or agent may not fail to fully disclose to first-party claimants benefits, coverages or other provisions of an insurance policy or insurance contract when the benefits, coverages or other provisions are pertinent to a claim.

31 Pa. Code § 146.4 (a-b).

33. Plaintiff is entitled to a declaration that it is entitled to coverage for the losses caused by COVID-19 and the corresponding Orders.

34. This controversy involves substantial rights of the parties to this action. It also poses an issue for judicial determination which is not within the scope of authority of an arbitrator or arbitration panel pursuant to the at-issue insurance policy.

35. As such, this controversy is an issue for judicial determination under the Declaratory Judgement Act.

36. A judgment of this court in this action will also be useful for the purpose of clarifying and settling the legal relations between the parties and will determine, terminate, and afford relief from the uncertainty and controversy giving rise to this action.

WHEREFORE, Plaintiff, Deluca's Diner, II, LLC, respectfully requests that this Honorable Court enter an Order declaring that Plaintiff is entitled to coverage for the losses caused by COVID-19 and Orders from Defendant Erie Insurance Property and Casualty Company and such other relief as this Court deems appropriate.

COUNT II

Deluca's Diner, II, LLC v. Erie Insurance Property and Casualty Company (Injunctive Relief)

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

38. Plaintiff has made a claim upon Defendant for coverage for losses caused by COVID-19 and the resulting governmental orders including but not limited to business income, extra expense, contamination, civil authority, and other claims for coverage.

39. Defendant has denied or refused to acknowledge coverage for this loss.

40. Defendant continues to deny and/or refuse to acknowledge coverage for the losses caused by COVID-19 and the resulting governmental Orders.

41. Plaintiff has suffered damages and/or is at immediate risk of suffering damages as a result of the continued denial and/or refusal to acknowledge coverage by Defendant for the loss caused by COVID-19 and the referenced Orders.

42. Defendant must be enjoined from continuing to deny and/or refusing to acknowledge coverage to insureds for losses caused by COVID-19 and the referenced Orders.

WHEREFORE, Plaintiff, Deluca's Diner, II, LLC, respectfully requests that this Honorable Court enter an Order enjoining the Defendant, Erie Insurance Property and Casualty Company, from further denying coverage to the Plaintiff, for losses caused by COVID-19 and the government's Orders.

COUNT III

Deluca's Dinner, II, LLC v. Erie Insurance Property and Casualty Company (Compensatory Relief)

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

44. Plaintiff is entitled to recover under the Policy for all losses caused by COVID-19 and the governmental Orders.

45. Plaintiff is entitled to recover all business income, extra expense, contamination, civil authority, and other applicable coverage claims under the Policy.

46. Defendant has breached the terms and provisions of the Policy by denying the claims of the Plaintiff for all losses caused by COVID-19 and the governmental Orders.

47. The breach of these obligations under the Policy by Defendant has caused Plaintiff to suffer economic loss and damages.

48. Defendant is required to pay Plaintiff all covered losses caused by COVID-19 and the governmental Orders, including by not limited to: business income, extra expense, civil authority, and other pertinent coverages under the Policy.

Wherefore, Plaintiff, Deluca's Diner, II, LLC, respectfully requests that this Honorable Court enter judgment against Defendant, Erie Insurance Property and Casualty Company, for all covered losses and damages under the Erie Policy.

Respectfully submitted,

s/George M. Kontos
George M. Kontos, Esquire
Counsel for Plaintiff