

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JOSEPH ARGENAS d/b/a TWISTER’S ICE
CREAM,

Plaintiff,

v.

NATIONWIDE MUTUAL INSURANCE
COMPANY a/k/a NATIONWIDE,

Defendant.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

2:20-cv-770

Plaintiff Joseph Argenas d/b/a Twister’s Ice Cream (“Plaintiff” or “Argenas”) brings this bring this Class Action Complaint on behalf of themselves and all others similarly situated, alleging relief against Defendant Nationwide Mutual Insurance Company a/k/a Nationwide (“Defendant” or “Nationwide”) and avers as follows:

NATURE OF THE CASE

1. This is a class action seeking declaratory relief arising from Plaintiff’s contract of insurance with Defendant.
2. In light of the global coronavirus disease 2019 (“COVID-19”) pandemic and state and local government orders (“Civil Authority Orders”) mandating that all non-essential in-store businesses must shut down. Plaintiff’s and members of the class’ businesses have suffered business loss.
3. Plaintiff’s and members of the class’ insurance policies (“Policies”) provide coverage for all non-excluded business losses, and thus provide coverage here.

4. As a result, Plaintiff and members of the class are entitled to declaratory relief that their businesses are covered for all business losses that have been incurred in an amount greater than \$5,000,000.

JURISDICTION

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because (1) this matter exceeds \$5,000,000, (2) the action is a class action, (3) there are members of the class diverse from Defendants, and (4) there are more than 100 class members.

6. This Court has personal jurisdiction over Defendant Nationwide. At all relevant times Defendant has engaged in substantial business activities in the Commonwealth of Pennsylvania. At all relevant times Defendant transacted, solicited, and conducted business in Pennsylvania through its employees, agents, and/or sales representatives, and derived substantial revenue from such business in Pennsylvania. Defendant purposefully availed itself of personal jurisdiction in Pennsylvania because it contracted to provide insurance to Plaintiff and Class members in Pennsylvania which is the subject of this case. Defendant's principal place of business and headquarters are located in Ohio.

7. Venue is proper in this district pursuant to U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this District.

PARTIES

8. Plaintiff Argenas owns and operates an ice cream shop in the Commonwealth of Pennsylvania. Plaintiff's principal place of business is 4210 Main Street, Pittsburgh, Pennsylvania 15224. Plaintiff is a citizen of Pennsylvania.

9. Defendant Nationwide is an insurance carrier that provides business interruption insurance to Plaintiff. Nationwide is headquartered at One Nationwide Plaza, Columbus, OH 43215-2220. Defendant is a citizen of Ohio.

10. At all relevant times, Defendant issued a policy to Plaintiff to cover business interruption loss from May 7, 2018 until May 7, 2020 and then May 7, 2020 until May 7, 2021. The policy numbers are ACP BPFK 5422666978 and ACP BPFK5432666978, respectively. This policy was intended to cover losses to business interruption. *See* Declaration, attached hereto as Exhibit 1 and 2, respectively (hereinafter “Policy”).

11. The Policy is currently in full effect in providing, among other things, personal property, business income and extra expense, contamination coverage and additional coverage.

12. Plaintiff submitted a claim for a date of loss pursuant to its policy seeking coverage under this policy. Defendant rejected Plaintiff’s claim for coverage for business loss and business interruption and other claims, contending, *inter alia*, that Plaintiff did not suffer physical damage to its property directly and stating other reasons why Plaintiff purportedly is not entitled to coverage for the losses and damages. Defendant also claimed the policy does not cover losses due to the Virus Exclusion Clause.

FACTUAL BACKGROUND

I. Insurance Coverage

13. Plaintiff faithfully paid policy premiums to Defendant, specifically to provide, among other things, additional coverages in the event of business interruption or closures by order of Civil Authority and for business loss for property damage.

14. Under the Policy, insurance is extended to apply to the actual loss of business income sustained and the actual, necessary and reasonable extra expenses incurred when access to the Insured Property is specifically prohibited by order of civil authority as the direct result of a covered cause of loss to property in the immediate area of Plaintiff’s Insured Property. This additional coverage is identified as coverage under “Civil Authority.”

15. The Policy is an all-risk policy, insofar as it provides that covered causes of loss under the policy means coverage for all covered losses, including but not limited to direct physical loss or direct physical damage, unless the loss is specifically excluded or limited in the Policy.

16. The Policy also covers for damages resulting from business interruption when there is property damage. The exclusion for viruses does not apply to this pandemic.

17. Based on information and belief, Defendant has accepted the policy premiums with no intention of providing any coverage for business losses or the Civil Authority extension due to a loss and shutdown and property damage.

II. The COVID-19 Pandemic

18. The scientific community, and those personally affected by the virus, recognize the Coronavirus as a cause of real physical loss and damage. It is clear that contamination of the Insured Property would be a direct physical loss requiring remediation to clean the surfaces of the ice cream shop.

19. The virus that causes COVID-19 remains stable and transmittable in aerosols for up to three hours, up to four hours on copper, up to 24 hours on cardboard and up to two to three days on plastic and stainless steel. See <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (last visited April 9, 2020).

20. The CDC has issued a guidance that gatherings of more than 10 people must not occur. People in congregate environments, which are places where people live, eat, and sleep in close proximity, face increased danger of contracting COVID-19.

21. The global Coronavirus pandemic is exacerbated by the fact that the deadly virus physically infects and stays on surfaces of objects or materials, “fomites,” for up to twenty-eight (28) days.

22. China, Italy, France, and Spain have implemented the cleaning and fumigating of public areas prior to allowing them to re-open publicly due to the intrusion of microbials.

III. Civil Authority

23. On March 6, 2020, Pennsylvania Governor Tom Wolf issued a Proclamation of Disaster Emergency, the first formal recognition of an emergency situation in the Commonwealth of Pennsylvania as a result of COVID-19.

24. On March 19, 2020, Governor Wolf issued an Order requiring all non-life-sustaining businesses in the Commonwealth to cease operations and close all physical locations. Businesses that were permitted to remain open were required to follow “social distancing practices and other mitigation measures defined by the Centers for Disease Control.” <https://www.scribd.com/document/452416027/20200319-TWW-COVID-19-Business-Closure-Order> (last visited April 19, 2019).

25. On April 1, 2020, Governor Wolf issued a Stay at Home Order to the entire Commonwealth of Pennsylvania.

26. On, May 15, 2020, Governor Wolf allowed non-essential businesses to open in Allegheny County, however these businesses are limited to take out service.

27. The Pennsylvania Supreme Court recently clarified the Governor’s Orders and supported Plaintiff’s position that physical loss and damage exists resulting in coverage here. *See Friends of DeVito, et. al v. Wolf*, No. 68 MM 2020 (Pa. April 13, 2020).

28. Further, on April 10, 2020, President Trump seemed to support insurance coverage for business loss like that suffered by the Plaintiff.

REPORTER: Mr. President may I ask you about credit and debt as well. Many American individuals, families, have had to tap their credit cards during this period of time. And businesses have had to draw down their credit lines. Are you concerned Mr. President that that may hobble the U.S. economy, all of that debt number one? And

number two, would you suggest to credit card companies to reduce their fees during this time?

PRESIDENT TRUMP: Well it's something that we've already suggested, we're talking to them. *Business interruption insurance*, I'd like to see these insurance companies—you know you have people that have paid. When I was in private I had business interruption. When my business was interrupted through a hurricane or whatever it may be, I'd have business where I had it, I didn't always have it, sometimes I had it, sometimes, I had a lot of different companies. *But if I had it I'd expect to be paid*. You have people. I speak mostly to the restaurateurs, where they have a restaurant, they've been paying for 25, 30, 35 years, business interruption. They've never needed it. All of a sudden they need it. And I'm very good at reading language. I did very well in these subjects, OK. And I don't see the word pandemic mentioned. Now in some cases it is, it's an exclusion. But in a lot of cases I don't see it. I don't see it referenced. And they don't want to pay up. I would like to see the insurance companies pay if they need to pay, if it's fair. And they know what's fair, and I know what's fair, I can tell you very quickly. But business interruption insurance, that's getting a lot of money to a lot of people. And they've been paying for years, sometimes they just started paying, but you have people that have never asked for business interruption insurance, and they've been paying a lot of money for a lot of years for the privilege of having it, and then when they finally need it, the insurance company says 'we're not going to give it.' We can't let that happen.

See <https://youtu.be/cMeG5C9TjU> (last visited on April 17, 2020) (emphasis added).

29. The President is articulating a few core points:

- a. Business interruption is a common type of insurance.
- b. Businesses pay in premiums for this coverage and should reasonably expect they'll receive the benefit of the coverage.
- c. This pandemic should be covered unless there is a specific exclusion for pandemics.
- d. If insurers deny coverage, they would be acting in bad faith.

30. These Orders and proclamations, as they relate to the closure of all “non-life-sustaining businesses,” evidence an awareness on the part of both state and local governments that COVID-19 causes damage to property. This is particularly true in places where business is

conducted, such as Plaintiff's, as the requisite contact and interaction causes a heightened risk of the property becoming contaminated.

a. Other States

31. The shut-down Civil Authority Orders issued by Pennsylvania authorities in mid-March and early April covering Pennsylvania non-essential businesses are similar to Civil Authority Orders that had been issued nationwide by state and local civil authorities during the course of the class period. See <https://www.wsj.com/articles/a-state-by-state-guide-to-coronavirus-lockdowns-11584749351>.

1. Alabama

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** 10-person limit.
- **Businesses:** Nonessential businesses are closed to the public, including entertainment venues, fitness centers, salons, nail parlors and certain retailers.
- **Quarantines:** No statewide directive.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** Beaches closed.

2. Alaska

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** 10-person limit.
- **Businesses:** Nonessential businesses are limited to minimum operations or remote work.
- **Quarantines:** Travelers from out of state must self-quarantine for 14 days.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** Unless locally restricted, open with social distancing.

3. Arizona

- **Travel outside home:** Residents are advised to limit travel outside the home.
- **Gatherings:** Residents are advised to avoid gatherings.
- **Businesses:** Nonessential businesses can reopen with enhanced physical distancing and safety measures in place.
- **Quarantines:** No statewide directive.
- **Bars/restaurants:** Restaurants and bars can reopen with safety precautions.
- **Beaches/parks:** Unless locally restricted, open with social distancing.

4. *Arkansas*

- **Travel outside home:** The governor has not issued a stay-at-home order.
- **Gatherings:** 10-person limit; does not apply to unenclosed outdoor spaces or places of worship.
- **Businesses:** Gym and entertainment venues are closed. Hotels, motels and vacation rentals are restricted to authorized guests.
- **Quarantines:** No statewide directive.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** State parks remain operational during the daytime.

5. *California*

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** Gatherings in a single room or place are prohibited. Visitation to hospitals, nursing homes and other residential care facilities is restricted.
- **Businesses:** Nonessential businesses are closed.
- **Quarantines:** No statewide directive.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** Some parks are fully closed. Local jurisdictions have closed some beaches.

6. *Colorado*

- **Travel outside home:** Only for essential needs/work.

- **Gatherings:** Public and private gatherings of any number are prohibited with limited exceptions.
- **Businesses:** Nonessential businesses are limited to minimum operations or remote work.
- **Quarantines:** No statewide directive.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** State parks remain open, but playgrounds, picnic areas and campgrounds are closed.

7. *Connecticut*

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** Five-person limit for social and recreational gatherings; 50-person limit for religious services.
- **Businesses:** Nonessential businesses must suspend all in-person operations.
- **Quarantines:** No statewide directive. Out-of-state visitors are strongly urged to self-quarantine.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** Trails and grounds of state parks and forests are open with social distancing.

8. *Delaware*

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** 10-person limit.
- **Businesses:** Nonessential businesses are limited to minimum operations or remote work.
- **Quarantines:** Visitors from out of state who are not just passing through must self-quarantine for 14 days.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** Beaches are closed except for exercise or dog walking. State parks remain open with restricted activity.

9. *Florida*

- **Travel outside home:** Senior citizens and those with significant medical conditions may not leave home unless for essential needs or to go to an essential job.
- **Gatherings:** No social gatherings in a public space with religious exemptions.
- **Businesses:** Nonessential services are closed to the public. Gun stores remain open.
- **Quarantines:** Visitors from outbreak hot spots, such as the New York tri-state area, must self-quarantine for 14 days.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** Florida state parks are closed. Most beaches are closed.

10. Georgia

- **Travel outside home:** Mandated social distancing and recommended mask-wearing outside. Older and at-risk residents can leave only for essential needs/work with limited visitors.
- **Gatherings:** 10-person limit, not applying to incidental or transitory groups of people going by each other.
- **Businesses:** Nonessential businesses and other entities may not permit gatherings at their premises.
- **Quarantines:** No statewide directive.
- **Bars/restaurants:** Dine-in allowed with capacity limits, sanitation requirements and dozens of other precautionary measures.
- **Beaches/parks:** Open, with social distancing.

11. Hawaii

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** 10-person limit.
- **Businesses:** Nonessential businesses are limited to minimum operations or remote work. Essential services must implement separate operating hours for high-risk populations.
- **Quarantines:** Travelers from out of state must self-quarantine for 14 days.

- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** Most state parks and public beaches are closed. All camping and lodging at parks is suspended.

12. Idaho

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** Nonessential gatherings are prohibited. Visits to hospitals, nursing homes and residential-care facilities are restricted.
- **Businesses:** Nonessential businesses are limited to minimum operations or remote work. Drive-in theaters and churches are permitted.
- **Quarantines:** Persons entering the state of Idaho are required to self-quarantine for 14 days.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** No camping in state parks.

13. Illinois

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** 10-person limit.
- **Businesses:** Nonessential businesses are limited to minimum operations or remote work.
- **Quarantines:** No statewide directive.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** State parks, fish and wildlife areas, recreational areas and historic sites are closed.

14. Indiana

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** 10-person limit.
- **Businesses:** Nonessential businesses are limited to minimum operations or remote work.
- **Quarantines:** No statewide directive.

- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** Hiking, biking, fishing, boating, birding, hunting and camping are allowed with social distancing.

15. Iowa

- **Travel outside home:** The governor has not issued a stay-at-home order.
- **Gatherings:** Limited to 10 people.
- **Businesses:** Nonessential retail businesses are closed.
- **Quarantines:** No statewide directive.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** Parks remain open. Campgrounds are closed.

16. Kansas

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** 10-person limit, exempting funerals and religious services with social distancing.
- **Businesses:** Residents may not leave home to patronize nonessential businesses, such as hair salons.
- **Quarantines:** Kansas residents who traveled to California, Florida, New York or Washington state after March 14—or visited Illinois or New Jersey after March 22—must self-quarantine for 14 days. The same applies to anybody who had close contact with a Covid-19 patient.
- **Bars/restaurants:** Dine-out or curbside service only.
- **Beaches/parks:** Most parks are open.

17. Kentucky

- **Travel outside home:** Travel outside the state is restricted to essential needs/work.
- **Gatherings:** Mass gatherings prohibited; smaller gatherings are allowed with social distancing.
- **Businesses:** Nonessential retail must close.

- **Quarantines:** Anybody coming in from out of state—including residents—must self-quarantine for 14 days upon return.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** State parks closed for overnight stays.

18. Louisiana

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** 10-person limit.
- **Businesses:** Nonessential businesses are limited to minimum operations or remote work.
- **Quarantines:** No statewide directive.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** Some state parks are open for fishing, hiking and biking during the day.

19. Maine

- **Travel outside home:** Only for essential needs/work. No use of public transportation unless absolutely necessary. .
- **Gatherings:** 10-person limit.
- **Businesses:** Nonessential businesses are limited to minimum operations or remote work.
- **Quarantines:** Travelers arriving in Maine, regardless of their state of residency, must self-quarantine for 14 days.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** Numerous parks and beaches closed.

20. Maryland

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** 10-person limit.
- **Businesses:** Nonessential businesses are limited to minimum operations or remote work. Senior-citizen activities centers are closed.

- **Quarantines:** People traveling into Maryland from anywhere outside Maryland are required to self-quarantine for 14 days with limited exceptions. (Guidance)
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** State park beaches are closed. Some parks remain open.

21. Massachusetts

- **Travel outside home:** People and especially older adults are strongly advised to stay home as much as possible. (Advisory)
- **Gatherings:** 10-person limit. Applies to confined spaces, not parks and other outdoor spaces.
- **Businesses:** Nonessential businesses must close their physical workplaces and facilities to workers and customers. Groceries must reserve an hour in the morning for older customers.
- **Quarantines:** Arriving travelers from out of state are instructed to self-quarantine for 14 days.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** No congregating on coastal beaches. State parks are open and campgrounds closed.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** State parks are open, but campgrounds, overnight lodging facilities and shelters are closed.

22. Minnesota

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** No statewide directive.
- **Businesses:** Entertainment and performance venues are closed.
- **Quarantines:** No statewide directive.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** Wildlife management areas, state forests and state parks remain open. Campgrounds are closed.

23. *Mississippi*

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** 10-person limit.
- **Businesses:** Nonessential businesses are limited to minimum operations or remote work.
- **Quarantines:** No statewide directive.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** State parks are open for fishing. Beaches can re-open with social distancing.

24. *Missouri*

- **Travel outside home:**
- **Gatherings:** 10-person limit.
- **Businesses:** Nonessential businesses must enforce social distancing. Essential retailers must limit occupancy.
- **Quarantines:** No statewide directive.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** State parks and trails are open during the day.

25. *Montana*

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** Nonessential social and recreational gatherings are prohibited, if social distancing can not be maintained.
- **Businesses:** Nonessential businesses are limited to minimum operations or remote work.
- **Quarantines:** Nonwork travelers from out of state must self-quarantine for 14 days.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** Open with social distancing.

26. *Nebraska*

- **Travel outside home:** The governor has not issued a stay-at-home order.
- **Gatherings:** 10-person limit.
- **Businesses:** No statewide directive.
- **Quarantines:** No statewide travel quarantine. Mandatory quarantines required for Covid-19 patients and households.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** No overnight camping at state parks, state recreation areas and wildlife management areas.

27. *Nevada*

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** People may not congregate in groups of 10 or more.
- **Businesses:** Recreational, entertainment and personal-care businesses are closed, including casinos.
- **Quarantines:** No statewide directive.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** State parks in the greater Las Vegas area, including Valley of Fire and Rye Patch are closed. Other state parks remain open for day-use only.

28. *New Hampshire*

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** Nine-person limit.
- **Businesses:** Nonessential businesses are limited to minimum operations or remote work.
- **Quarantines:** No statewide directive.
- **Bars/restaurants:** Dine-out only
- **Beaches/parks:** Most park sites are open.

29. *New Jersey*

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** 10-person limit.
- **Businesses:** Nonessential retail businesses must close bricks-and-mortar premises. Recreational and entertainment businesses are closed to the public.
- **Quarantines:** No statewide directive.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** Some local beach closures. All state parks and forests are closed to the public.

30. New Mexico

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** Five-person limit in a single room or connected space outside residence.
- **Businesses:** Nonessential businesses must suspend all in-person operations.
- **Quarantines:** Arriving air travelers must self-quarantine for two weeks.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** State parks are closed.

31. New York

- **Travel outside home:** Only for essential needs/work. Individuals age 70 and older and those with compromised immune systems must stay home and limit home-visitation to immediate family members or close friends.
- **Gatherings:** Nonessential gatherings are prohibited.
- **Businesses:** Nonessential businesses limited to minimum operations or remote work. (Guidance)
- **Quarantines:** No mandatory quarantine for out-of-state travelers. Mandatory quarantines for people who have been in close contact with a Covid-19 patient.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** Social distancing at state parks.

32. North Carolina

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** 10-person limit.
- **Businesses:** Nonessential businesses are limited to minimum operations or remote work.
- **Quarantines:** No statewide directive.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** People may go to public parks and outdoor recreation areas unless locally restricted.

33. North Dakota

- **Travel outside home:** The governor has not issued a stay-at-home order.
- **Gatherings:** No statewide directive.
- **Businesses:** Personal-care services and recreational facilities are closed.
- **Quarantines:** Mandatory quarantine for residents returning from abroad or domestic travelers returning from a state with widespread community infection.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** State parks are open for day-use only.

34. Ohio

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** 10-person limit.
- **Businesses:** Nonessential businesses and operations must cease all activities except minimum basic operations.
- **Quarantines:** Travelers arriving in Ohio should self-quarantine for 14 days with limited exceptions.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** Wildlife areas, forests and nature preserves remain open.

35. Oklahoma

- **Travel outside home:** Vulnerable individuals (older residents and those with underlying medical problems) are directed to stay home except when running essential errands or commuting to critical infrastructure jobs.
- **Gatherings:** 10-person limit. No visitors at nursing homes, retirement or long-term care facilities.
- **Businesses:** Nonessential businesses must suspend services.
- **Quarantines:** Arriving travelers from the New York tri-state area, California, Louisiana and Washington should self-quarantine for 14 days with limited exceptions.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** Hiking trails, picnic tables, fishing areas and boat ramps are available for outdoor recreation.

36. Oregon

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** Gatherings over 25 people are canceled statewide. Oregonians are urged to avoid gatherings of 10 people.
- **Businesses:** Nonessential business closures.
- **Quarantines:** No statewide directive.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** No daytime or overnight visitors are permitted at any state park.

37. Rhode Island

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** Five-person limit.
- **Businesses:** Noncritical retail businesses must cease operations.
- **Quarantines:** Mandatory two-week quarantine for out-of-state visitors.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** State beaches and parks are closed.

38. South Carolina

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** Gatherings of three or more are prohibited if deemed a threat to public health.
- **Businesses:** Nonessential businesses are limited to minimum operations or remote work.
- **Quarantines:** No statewide directive.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** Public beaches and access points to lakes, rivers and waterways are closed. Local restrictions on parks.

39. South Dakota

- **Travel outside home:** The governor has not issued a stay-at-home order.
- **Gatherings:** Unnecessary gatherings of 10 or more prohibited.
- **Businesses:** No statewide directive.
- **Quarantines:** No statewide directive.
- **Bars/restaurants:** No statewide directive.
- **Beaches/parks:** No statewide directive.

40. Tennessee

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** Social gatherings of 10 or more people prohibited.
- **Businesses:** Nonessential businesses are limited to minimum operations or remote work.
- **Quarantines:** No statewide directive.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** Most state parks have reopened for day-use only.

41. Texas

- **Travel outside home:** Texans must minimize in-person contact with people who are not in the same household. (A number of major counties have more explicit stay-at-home orders.) No visits to nursing homes or long-term care facilities unless providing critical assistance.
- **Gatherings:** 10-person limit.
- **Businesses:** No eating or drinking at bars and restaurants or visits to gyms, massage establishments, tattoo studios, piercing studios and cosmetology salons.
- **Quarantines:** Air travelers flying to Texas from New York, New Jersey, Connecticut, California, Louisiana or Washington—or Atlanta, Chicago, Detroit, Miami—must self-quarantine for 14 days.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** Many state parks remain open. Some beaches are closed or limited to restricted activities.

42. *Utah*

- **Travel outside home:** High-risk individuals (older residents and those with serious underlying medical conditions) may leave only for essential needs/work. Others must stay home whenever possible.
- **Gatherings:** 10-person limit recommended.
- **Businesses:** Businesses must minimize face-to-face contact with high-risk employees.
- **Quarantines:** Two-week quarantine after traveling out of state or exposed to a person with Covid-19 symptoms.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** State parks open to all visitors, except parks under local health order restrictions.

43. *Vermont*

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** Nonessential gatherings are limited to 10 people.
- **Businesses:** Nonessential businesses are limited to minimum operations or remote work.

- **Quarantines:** Visitors must self-quarantine for two weeks unless traveling for an essential purpose.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** RV parks and campgrounds are closed with emergency shelter exceptions

44. *Virginia*

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** 10-person limit.
- **Businesses:** Recreation and entertainment businesses must close.
- **Quarantines:** No statewide directive.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** Beaches are closed except for fishing and exercising. State parks are open for day-use activities. Campgrounds are closed.

45. *Washington*

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** All gatherings of people for social, spiritual and recreational purposes are prohibited.
- **Businesses:** Nonessential businesses are limited to minimum operations or remote work.
- **Quarantines:** No statewide directive.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** State parks and recreational fisheries are closed.

46. *West Virginia*

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** Five-person limit with some exceptions.
- **Businesses:** Nonessential businesses are limited to minimum operations or remote work.

- **Quarantines:** Two-week mandatory quarantines for people traveling into West Virginia from areas of substantial community spread of Covid-19.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** Park lodges, cabins and campgrounds are closed.

47. *Wisconsin*

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** All public and private gatherings are prohibited with limited exceptions.
- **Businesses:** Nonessential businesses are limited to minimum operations or remote work.
- **Quarantines:** No mandatory quarantine for out-of-state travelers. Self-quarantine recommended for out-of-state travelers.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** Many state parks are closed. Campgrounds are closed.

48. *Wyoming*

- **Travel outside home:** Residents urged but not required to stay home whenever possible.
- **Gatherings:** Limited to nine people.
- **Businesses:** Theaters, bars, museums, gyms, nightclubs and other public places are closed.
- **Quarantines:** People traveling to Wyoming for nonwork purposes must self-quarantine for 14 days.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** No statewide directive.

CLASS ALLEGATIONS

32. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23(b)(2) on behalf of the following Class:

All insured of Defendants who have suffered business interruption and lost income as a result of Civil Authority Orders issued in response to the COVID-19 pandemic.

33. Upon information and belief, Defendants do not cover business interruption services for all restaurants in contravention to the uniform language contained in the insurance policies it has issued.

34. The exact number of the Class members is unknown as such information is in exclusive control of Defendants. However, due to the nature and commerce involved, Plaintiff believes the Class consists of hundreds of insureds nationwide, making joinder of the Class members impractical.

35. Common questions of law and fact affect the right of each Class member. Plaintiff is seeking Declaratory Relief for all Class members who run businesses with similar policies to Plaintiff's. Declaratory relief will permit adjudication of the rights of all parties as to whether Defendants' policies provide coverage for business interruptions losses the Class has suffered as a result of Civil Authority Orders.

36. Common questions of law and fact that affect the Class members include, but are not limited to:

- a. Whether Defendants were legally obligated to pay for business interruption as a result of Civil Authority Orders issued in response to the COVID-19 pandemic;
- b. Whether Plaintiff and Class members have suffered "property damages" in accordance with the terms and conditions of Defendants business interruption insurance policies;
- c. Whether Plaintiff and Class members are excluded from coverage for losses they suffered due to the Civil Authority Orders as a result of the Virus or Bacterial exclusions contained in Defendants' insurance policies; and
- d. Whether Defendants are justified in denying Plaintiff and Class members' claims.

37. The claims and defenses of Plaintiff, as representative plaintiff, are typical of the claims and defenses of the Class because Defendants wrongfully denied that its policy covers claims to Plaintiff and the Class members.

38. Plaintiff, as representative plaintiff, will fairly and adequately assert and protect the interests of the Class.

- a. Plaintiff has hired attorneys who are experienced in prosecuting class actions and will adequately represent the interests of the Class; and
- b. Plaintiff has no conflict of interest that will interfere with the maintenance of a class action.

39. A class action provides a fair and efficient method for adjudication of the controversy for the following reasons:

- a. Prosecution of separate actions by individual Class members would create a risk of inconsistent and varying results against Defendants when confronted with incompatible standards of conduct; and
- b. Adjudications with respect to individual Class members could, as a practical matter, be dispositive of any interest of other members not parties to such adjudications and substantially impair their ability to protect their interests.

40. Defendants have taken steps to discourage the Class from submitting claims under their policies. For this reason, Declaratory relief for the entire class is appropriate and necessary.

IV. Impact on Plaintiff

41. Typically, Plaintiff's seasonal ice cream shop opens mid-March every year. As a result of the Orders referenced herein, Plaintiff did not open the doors to its ice cream shop.

42. Plaintiff's business loss occurred when the Commonwealth of Pennsylvania issued its order on March 19, 2020 closing restaurants. Plaintiff had intentions of opening its ice cream shop right when the Commonwealth mandated that all non-essential businesses close on March 19, 2020.

43. Plaintiff's restaurant is not a closed environment, and because people – staff, customers, community members, and others – constantly cycle in and out of the restaurant, there is an ever-present risk that the Insured Property is contaminated and would continue to be contaminated.

44. Businesses like Plaintiff's ice cream shop are more susceptible to being or becoming contaminated, as both respiratory droplets and fomites are more likely to be retained on the Insured Property and remain viable for far longer as compared to a facility with open-air ventilation.

45. Plaintiff's business is also highly susceptible to rapid person-to-property transmission of the virus, and vice-versa, because the service nature of the business places staff and customers in close proximity to the property and to one another and because the nature of the restaurant and activity exposes to high level of respiratory droplets and fomites being released into the air of the property.

46. The virus is physically impacting Plaintiff. Any effort by Defendant to deny the reality that the virus causes physical loss and damage would constitute a false and potentially fraudulent misrepresentation that could endanger Plaintiff and the public.

47. A declaratory judgment determining that the coverage provided under the Policy exists and is necessary so as to prevent the Plaintiff and the class from being left without vital coverage acquired to ensure the survival of the trucking school due to the shutdown caused by the civil authorities' response. As a result of these Orders, Plaintiff and the class have incurred, and continues to incur, among other things, a substantial loss of business income and additional expenses covered under the Policy.

CAUSE OF ACTION

DECLARATORY RELIEF

48. Plaintiff re-alleges and incorporates by reference into this cause of action each and every allegation set forth in each and every paragraph of this Complaint.

49. The Declaratory Judgment Act, 28 U.S.C. § 2201(a), provides that in “a case of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.” 28 U.S.C. § 2201(a).

50. An actual controversy has arisen between Plaintiff and Defendant as to the rights, duties, responsibilities and obligations of the parties under the Policy in that Plaintiff contends and, on information and belief, Defendant disputes and denies that:

- a. The Orders constitute a prohibition of access to Plaintiff’s Insured Property;
- b. The prohibition of access by the Orders has specifically prohibited access as defined in the Policy;
- c. The Policy’s Exclusion of Loss Due to Virus or Bacteria does not apply to the business losses incurred by Plaintiff here;
- d. The Orders trigger coverage;
- e. The Policy provides coverage to Plaintiff for any current and future civil authority closures of business in California due to physical loss\or damage directly or indirectly from the Coronavirus under the Civil Authority coverage parameters;
- f. The Policy provides business income coverage in the event that Coronavirus has directly or indirectly caused a loss or damage at the insured premises or immediate area of the Insured Property; and
- g. Resolution of the duties, responsibilities and obligation of the parties is necessary as no adequate remedy at law exists and a declaration of the Court is needed to resolve the dispute and controversy.

51. Plaintiff seeks a Declaratory Judgement to determine whether the Orders constitute a prohibition of access to Plaintiff’s Insured Property as Civil Authority as defined in the Policy.

52. Plaintiff further seeks a Declaratory Judgement to affirm that the Order triggers coverage.

53. Plaintiff further seeks a Declaratory Judgment to affirm that the Policy provides coverage to Plaintiff and the class for any current and future Civil Authority closures of businesses in the Commonwealth of Pennsylvania due to physical loss or damage from the Coronavirus and the policy provides business income coverage in the event that Coronavirus has caused a loss or damage at the Insured Property.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff herein prays as follows:

- a. For a declaration that the Orders constitute a prohibition of access to Plaintiff's Insured Property.
- b. To certify the class under Rule 23(b)(2).
- c. To direct notice to the class.
- d. For a declaration that the prohibition of access by the Orders is specifically prohibited access as defined in the Policy.
- e. For a declaration that the Orders trigger coverage under the Policy.
- f. For a declaration that the Policy provides coverage to Plaintiff for any current, future and continued civil authority closures of businesses in Pennsylvania due to physical loss or damage directly or indirectly from the Coronavirus under the Civil Authority coverage parameters.
- g. For a declaration that the Policy provides business income coverage in the event that Coronavirus has directly or indirectly caused a loss or damage at the Plaintiff's Insured Property or the immediate area of the Plaintiff's Insured Property.
- h. For such other relief as the Court may deem proper.

TRIAL BY JURY IS DEMANDED

Plaintiff hereby demands trial by jury.

Dated: May 28, 2020

Respectfully submitted,

/s/ Daniel C. Levin

Arnold Levin, Esq.

Laurence Berman, Esq.

Frederick Longer, Esq.

Daniel Levin, Esq.

LEVIN SEDRAN & BERMAN LLP

510 Walnut Street, Suite 500

Philadelphia, PA 19106-3697

Telephone: (215) 592-1500

Facsimile: (215) 592-4663

alevin@lfsblaw.com

flonger@lfsblaw.com

dlevin@lfsblaw.com

Aaron Rihn, Esq.

ROBERT PEIRCE & ASSOCIATES

707 Grant Street, Suite 125

Pittsburgh, PA 15219

Telephone: (412) 281-7229

Facsimile: (412) 281-4229

Richard M. Golomb, Esq.

Kenneth J. Grunfeld, Esq.

GOLOMB & HONIK, P.C.

1835 Market Street, Suite 2900

Philadelphia, PA 19103

Telephone: (215) 985-9177

Facsimile: (215) 985-4169

rgolomb@golombhonik.com

kgrunfeld@golombhonik.com

W. Daniel "Dee" Miles, III

Rachel N. Boyd

Paul W. Evans

BEASLEY, ALLEN, CROW, METHVIN,

PORTIS & MILES, P.C.

P.O. Box 4160

Montgomery, AL 36103

Telephone: (334) 269-2343

Facsimile: (334) 954-7555

Counsel for Plaintiff