

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

VALERIO’S, INC.)	CASE NO.
12405 Mayfield Road)	
Cleveland, Ohio 44106)	JUDGE
)	
Plaintiff,)	
)	
v.)	
)	
ERIE INSURANCE EXCHANGE)	<u>COMPLAINT FOR BREACH OF</u>
100 Erie Insurance Place)	<u>CONTRACT AND DECLARATORY</u>
Erie, Pennsylvania 16530)	<u>RELIEF</u>
)	
Defendant.)	Jury Demand Endorsed Hereon

GENERAL ALLEGATIONS

1. Plaintiff Valerio’s, Inc., is an Ohio corporation that does business as Valerio’s Ristorante at 12405 Mayfield Road, Cleveland, Ohio 44106. Founded and operated by Valerio and Stella Iorio, Valerio’s Ristorante has been one of Cleveland’s most loved and successful authentic Italian restaurants, but its operations have been sharply curtailed by the events that give rise to this complaint.

2. Defendant Erie Insurance Exchange (“Erie”) is a Pennsylvania-domiciled reciprocal insurer that is in the business of providing property and casualty insurance.

3. In order to protect its business operations from losses outside its control, Valerio’s obtained a commercial insurance policy, number Q97-2014696, from Erie (“the policy”), providing coverage for Valerio’s operations at 12405 Mayfield Road, Cleveland, Ohio 44106. A true and

correct copy of the Declarations for the policy is attached as Exhibit A. The policy is voluminous and is in the possession of Erie, and therefore has not been attached in its entirety.

4. The policy issued by Erie provides coverage for, among other things, Income Protection Coverage, Extra Expense Coverage, and loss due to the actions of civil authorities. This coverage is extended in, among other things, Forms PK-00-01(Ed. 01/20) CL-0001 and PK-JK (Ed. 9/18) CL-0348, which provide coverage for loss of business income, along with extra expenses incurred to avoid or minimize the suspension, in the event of a partial or total interruption of business resulting from a peril insured against, as well as additional coverage for the actual loss of income and necessary extra expenses incurred as a result of “action of civil authority that prohibits access” to the insured property.

5. While the policy was in force, Valerio’s sustained, and continues to sustain, covered losses due to the presence, and the risk of the presence, of the pathogen that causes COVID-19 within and on its premises, as well as within and on other premises in the immediate vicinity.

6. As Governor Mike DeWine noted in Executive Order 2020-01D, issued on March 9, 2020 and declaring a state of emergency due to the COVID-19 crisis, COVID-19 is caused by a new strain of coronavirus that can be contracted by touching a surface or object that has the virus on it. Amy Acton, M.D., MPH, Director of the Ohio Department of Health, has since issued Directors’ Orders restricting the operations of various types of businesses and commercial operations, noting that COVID-19 is easily spread, and that previous studies have shown that human coronaviruses can survive on inanimate surfaces for as long as four to five days.

7. On March 15, 2020, following the issuance of Executive Order 2020-01D, Dr. Acton issued a Director’s Order prohibiting the sale of food and beverages for onsite consumption, and

restricting all food and beverage sales to carry-out and delivery only, in order “to avoid an imminent threat with a high probability of widespread exposure to COVID 19.” In her March 15, 2020 Director’s Order prohibiting the sale of food and beverages for on-site consumption, Dr. Acton specifically noted that COVID-19 is easily spread, and that previous studies have shown that human coronaviruses can survive on inanimate surfaces for as long as four to five days. A copy of the order is attached as Exhibit B.

8. On March 22, 2020, Dr. Acton issued a “Stay At Home Order” restricting the activities and movement of Ohio residents, including Ohio residents who would otherwise frequent Valerio’s, and again restricting Valerio’s business activities to carry-out and delivery service. A copy of the order is attached as Exhibit C.

9. As a direct and proximate result, Valerio’s has been compelled to restrict its business activities at the insured premises to carry-out service only, and as a result has sustained, and will continue to sustain, serious business interruption losses and other damages that are covered under the policy.

10. Dr. Acton issued the March 15, 2020 and March 22, 2020 Director’s Orders pursuant to the statutory authority vested in her under R.C. § 3701.13.

11. The pathogen that causes COVID-19 is a physical substance that is capable of remaining active and virulent on inert physical surfaces, including the physical surfaces within the insured property and properties within close proximity.

12. Governor DeWine’s declaration of a state of emergency, and Dr. Acton’s Director’s Orders, each constitute actions of civil authority for purposes of Erie’s policy.

13. On April 17, 2020, Valerio’s presented a claim for business interruption loss and

other coverage under the policy, with the amount of the claim to be determined after the conclusion of the prohibition on business activities and any necessary period of restoration.

14. On April 21, 2020, Erie formally denied Valerio's claim, asserting that the policy does not provide coverage for the business interruption and extra expense losses that have been claimed. A copy of the denial letter is attached as Exhibit D.

COUNT I - BREACH OF CONTRACT

15. The preceding paragraphs are fully incorporated herein.

16. The policy issued to Valerio's by Erie is a contract under which Valerio's paid premiums in exchange for Erie's promise to indemnify Valerio's for certain losses specified in the policy, including business income lost, and extra expenses incurred, as a result of a covered loss.

17. Contamination with the pathogen that causes COVID-19 caused direct physical loss and damage to the insured premises, as well as to other premises, such that the loss of business income and extra expense resulting from the curtailment of Valerio's business operations is covered under the policy, and Erie is obligated to indemnify Valerio's for the loss.

18. Valerio's has performed all of its obligations under the policy, including the payment of premiums, and has otherwise satisfied all conditions precedent to recovering under the policy.

19. Valerio's loss claims are not subject to any applicable policy exclusion.

20. By denying coverage, Erie has breached its obligations under the policy, and as a result, Valerio's has sustained, and will continue to sustain, damages in an amount to be determined at trial.

COUNT II – DECLARATORY JUDGMENT

21. The preceding paragraphs are fully incorporated herein.

22. There is a dispute between Valerio's and Erie as to the construction of the policy of insurance at issue in this action, and the enforceability of its terms, such that an actual controversy exists between the parties for purposes of Chapter 2721 of the Ohio Revised Code.

23. As a result, Valerio's is entitled to a declaration of its rights under the policy, including its rights to indemnification for business income and extra expense losses arising from the events at issue in this case.

24. Valerio's is entitled to a declaration that its ongoing business income and extra expense losses incurred as a result of, and in connection with, the drastic curtailment of its business activities due to the COVID-19 pandemic are insured losses under the policy issued by Erie, and that once documented, Erie shall be obligated to pay the full amount of those expenses or to pay policy limits, whichever is less.

WHEREFORE, plaintiff Valerio's, Inc. prays for the following:

- a. Judgment in its favor on Count I in an amount to be proven at trial or, in the alternative, an order that an appraisal of plaintiff's damages be conducted in accordance with the policy terms;
- b. A declaration that plaintiff's business income and extra expense losses incurred as a result of the drastic curtailment of business activities due to the COVID-19 pandemic are insured losses under the policy of insurance issued by defendant Erie Insurance Exchange;
- c. Costs, including attorneys' fees; and
- d. Such other and further relief as this Court deems just and equitable.

JURY DEMAND

Plaintiff hereby demands trial by jury on all claims so triable.

Respectfully submitted,

/s/ Jonathan D. Mester

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