

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY
PENNSYLVANIA

JOSEPH TAMBELLINI, INC. D/B/A
JOSEPH TAMBELLINI RESTAURANT
5701 Bryant Street
Pittsburgh, PA 15206

vs.

ERIE INSURANCE EXCHANGE
100 Erie Insurance Place
Erie, PA 16530

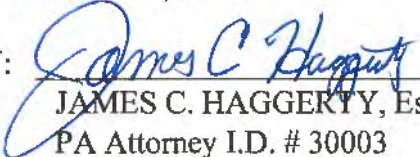
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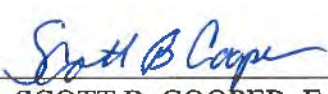
PRAECIPE

Attached please find the Emergency Application for Extraordinary Relief pursuant to Rule 3309, 42 Pa.C.S. § 726 and King’s Bench Powers, the original of which has been filed with the Prothonotary of the Supreme Court of Pennsylvania.

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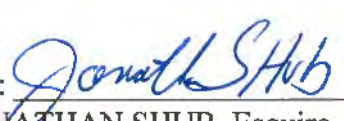
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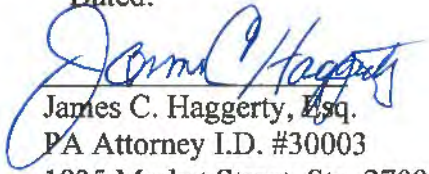
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CERTIFICATE OF SERVICE

I, James C. Haggerty, Esquire, hereby certifies that a copy of the Emergency Application for Extraordinary Relief of Plaintiffs was served on the date noted below via electronic filing, addressed as follows:


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IN THE SUPREME COURT OF PENNSYLVANIA

Joseph Tambellini, Inc., D/B/A
Joseph Tambellini Restaurant

Petitioner

vs.

Erie Insurance Exchange

Respondent

**Emergency Application for
Extraordinary Relief**

**Matter Pending in the
Allegheny County Court of
Common Pleas**

No. GD 20 005137

**EMERGENCY APPLICATION FOR EXTRAORDINARY
RELIEF PURSUANT TO RULE 3309, 42 Pa.C.S. § 726
AND KING'S BENCH POWERS**

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**EMERGENCY APPLICATION FOR EXTRAORDINARY
RELIEF PURSUANT TO RULE 3309, 42 Pa.C.S. § 726
AND KING'S BENCH POWERS**

1. Plaintiff, Joseph Tambellini, Inc. D/B/A Joseph Tambellini Restaurant (“Tambellini”) is a corporation organized and existing under the Commonwealth of Pennsylvania, with its principal place of business located at 5701 Bryant Street, Pittsburgh, PA 15206; as such, Plaintiff is a citizen of the Commonwealth of Pennsylvania.

2. Plaintiff owns and operates Joseph Tambellini Restaurant in Pittsburgh, Pennsylvania.

3. Defendant, Erie Insurance Exchange (“Erie”) is a reciprocal insurance exchange organized and existing in the Commonwealth of Pennsylvania with its principal place of business in Erie, Pennsylvania, 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.

4. Plaintiff, Tambellini, owns and operates a restaurant in Pittsburgh, Pennsylvania.

5. Defendant, Erie, issues policies of insurance, including Businessowners Policies to, *inter alia*, citizens of the Commonwealth of Pennsylvania.

Common Pleas Action

6. Plaintiff, Tambellini, has instituted suit in the Court of Common Pleas of Allegheny County against Defendant, Erie, seeking declaratory, compensatory and injunctive relief. A true and correct copy of the Complaint is attached hereto as Exhibit "A".

7. The Common Pleas lawsuit seeks coverage for losses, damages and expenses caused by the COVID-19 pandemic and the governmental Orders entered in connection therewith.

8. The issues presented by the Common Pleas lawsuit involve matters of immediate public importance which call for the exercise of jurisdiction by this Court.

9. The present action is ripe for the exercise of jurisdiction by this Court under the King's Bench Power and 42 Pa.C.S.A. § 726 in order to address these important issues affecting the citizens of the Commonwealth of Pennsylvania.

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. Coronavirus 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. The COVID-19 virus remains stable and transmittable in aerosols and various surfaces for prolonged periods of time, up to two to three days on some surfaces.

14. The COVID-19 virus 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 COVID-19 pandemic has been exacerbated by the fact that the virus 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 more than ten (10) people should not occur; such gatherings increase the danger of contracting the COVID19 virus.

17. On March 6, 2020, Governor Tom Wolf issued a Proclamation of Disaster Emergency as a result of the COVID-19 virus.

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. The COVID-19 virus, as evidenced by these Orders, causes damage to property, particularly in places of business, such as that of Plaintiff, Tambellini, and other similarly situated persons and organizations, 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 virus and the referenced Orders of the Governor, Plaintiff, Tambellini, has been ordered to close his business and forced to furlough employees, thereby incurring loss.

24. As a result of the impact of the COVID-19 virus and the referenced Orders of the Governor, many similarly situated businesses have been ordered to close, thereby incurring losses similar to Plaintiff.

25. The business of Plaintiff, Tambellini, like many businesses, operates in “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 virus, the business of Plaintiff, Tambellini, like other similarly situated businesses, is 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 Plaintiff, Tambellini, by causing damage and the risk of further harm to the property and its occupants.

28. Plaintiff, Tambellini, has suffered Business Income, Civil Authority and other related losses which are covered by policies of insurance issued by the Erie Policy.

Insurance Coverage

29. At all times material hereto, there existed, in full force and effect, an Ultra pack Plus Commercial General Liability Policy (No. Q972145987) (“Erie Policy”) issued by Defendant, Erie, to Plaintiff, Tambellini, providing, *inter alia*, property, business, personal property, business income, extra expense, contamination, civil authority and additional coverages applicable to the losses claimed in this action. A true and correct copy of the Erie Policy is attached hereto and marked as Exhibit “B”.

30. The Erie Policy was in effect and provided coverage for the period August 1, 2019 to August 1, 2020.

31. The Erie Policy is an “All Risks” policy which provides coverage for losses to the insured premises unless specifically excluded.

32. The Erie Policy does not exclude the losses caused by the Coronavirus Pandemic.

33. The Erie Policy provides coverage for the losses incurred Plaintiff, Tambellini, as a result of the Coronavirus Pandemic and the actions of the government in response thereto.

Claim for Recovery

34. Plaintiff, Tambellini, seeks a declaration that the Erie Policy provides coverage for the losses, damage and expenses caused by the COVID-19 pandemic and the referenced governmental Orders.

35. Plaintiff, Tambellini, is entitled to a declaration that he is covered under the Erie Policy for, *inter alia*, business income, extra expense, contamination, civil authority and other coverages under the Erie Policy.

36. Defendant, Erie, has wrongfully denied the claims of Tambellini, for recovery of damages caused by the COVID-19 pandemic and the referenced governmental Orders.

37. The Erie Policy issued to Plaintiff, Tambellini, is typical of the policies issued by Erie to businessowners throughout the Commonwealth.

38. Defendant, Erie, is among the larger insurers of businesses in the Commonwealth.

39. The instant action presents to the Court the legal insurance coverage questions of whether the Erie Policy provides coverage for: (a) Income Protection Coverage; (b) Extra Expense Coverage; and (c) Civil Authority Coverage.

40. The legal insurance coverage issues presented by the instant lawsuit are of immediate public importance to not only Plaintiff, Tambellini, but also to all citizens of the Commonwealth.

Exercise of Jurisdiction

41. The Supreme Court, under its extraordinary jurisdiction power, may “assume plenary jurisdiction” of any matter pending in Pennsylvania Courts “involving an issue of immediate public importance.” 42 Pa.C.S.A. § 726.

42. The extraordinary jurisdiction power is distinct from King’s Bench powers which allow the Supreme Court to assume jurisdiction “even when no matter is pending before the lower court.” Board of Revision of Taxes v. City of Phila., 4 A.3d 610, 620 (Pa. 2010) (citing In Re: Dauphin Cty. Fourth Investigating Grand Jury, 943 A.2d 929, 933 n. 3 (Pa. 2007)). Compare Commonwealth v. Williams, 129 A.3d 1199, 1206 (Pa. 2015) (King’s Bench).

43. In determining whether to exercise its discretion to assume plenary jurisdiction, the Supreme Court “considers the immediacy and public importance of the issues raised.” Board of Revision of Taxes v. City of Phila., 4 A.3d 6at 620. See also Friends of Danny Devito, et al. v. Tom Wolf, Governor, No. 68 MM 2020 (April 13, 2020).

44. The Supreme Court may exercise its plenary jurisdiction, in matters such as the instant case, where the petitioner’s rights are clearly demonstrated and the issues at bar, as here, are of immediate public importance.

45. The instant action presents issues of immediate public importance to not only Plaintiff, Tambellini, but to all citizens of the Commonwealth who are seeking recompense from their insurers for the losses, damage and expenses caused by the COVID-19 pandemic and the related governmental Orders.

46. Exercise of jurisdiction by the Court is warranted by the immediate needs of citizens of the Commonwealth who need resolution of the legal insurance coverage issues facing them in attempting to re-start their businesses and their lives in the face of the losses, damages and expenses caused by the COVID-19 pandemic and the related governmental Orders.

Requested Relief
(Tambellini v. Erie)

47. The legal insurance coverage issues presented by the case at bar are currently being litigated in the Court of Common Pleas of Allegheny County. See Exhibit "A".

48. The decision of the Court of Common Pleas of the legal insurance coverage issues presented by the case at bar will then be applied to the Superior Court and, eventually, to the Supreme Court for final resolution.

49. The ultimate decision on these legal insurance coverage issues by the Supreme Court will be delayed for years as the case proceeds through the appellate process.

50. The delay occasioned by the standard appellate process will unduly prejudice not only Plaintiff, Tambellini, but also all citizens of the Commonwealth who have been similarly aggrieved by the denial and disclaimer of insurance coverage, for which a premium was paid, by Erie and other insurers throughout the State.

51. Petition, Tambellini, respectfully requests that the Court assume jurisdiction pursuant to its Extraordinary Jurisdiction and King's Bench powers to:

- (a) assume control of the litigation;
- (b) establish an expedited schedule for the submission of briefs on the legal insurance coverage issues; and

(c) schedule oral argument for the presentation of the legal insurance coverage issues to the Court.

52. All businessowners in the Commonwealth have sustained losses, damages and expenses as a result of the COVID-19 pandemic and the related governmental Orders.

53. All insurers in the Commonwealth have denied all claims and have disclaimed coverage for the losses, damage and expenses suffered by businessowners as a result of the COVID-19 pandemic and the related governmental Orders.

54. Many individual and class actions have been filed in the counties throughout the Commonwealth by businessowners against insurers for the losses, damages and expenses caused by the COVID-19 pandemic and the related governmental Orders.

55. Hundreds, if not thousands, of lawsuits are expected to be filed in the Commonwealth by businessowners against insurers to recover for the losses, damages and expenses caused by the COVID-19 pandemic and the related governmental Orders.

56. The exercise of plenary jurisdiction over the COVID-19 litigation in Pennsylvania by the Supreme Court is respectfully requested in order to:

(a) coordinate the handling of these cases in one County before a judge or group of judges;

- (b) establish a system for the expeditious resolution of any and all other legal insurance coverage issues which may arise in any COVID-19 lawsuits;
- (c) exercise consistency and fairness in the implementation of the rulings of the Supreme Court on the COVID-19 legal insurance coverage issues; and
- (d) establish a system for the prompt and fair resolution of the COVID-19 claims in a manner consistent with the rulings on the legal insurance coverage issues by the Supreme Court.¹

WHEREFORE, Plaintiff, Joseph Tambellini, Inc. D/B/A Joseph Tambellini Restaurant, respectfully requests that the Court assume and exercise plenary jurisdiction over the instant lawsuit pursuant to Rule 3309, 42 Pa.C.S. § 726 and its King's Bench Powers and to further assume authority over the COVID-19 litigation in order to immediately resolve all legal insurance coverage issues and to ensure the

¹ The exercise of its extraordinary jurisdiction powers over the COVID-19 litigation by the Supreme Court is requested to be implemented in a fashion not unlike that utilized by the Federal Courts pursuant to 28 U.S.C. § 1407 and Rules of Procedure of the Judicial Panel on Multidistrict Litigation.

prompt and fair resolution of all pending and anticipated claims and actions.

Respectfully Submitted,



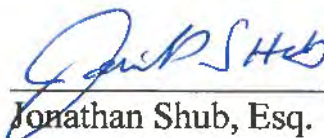
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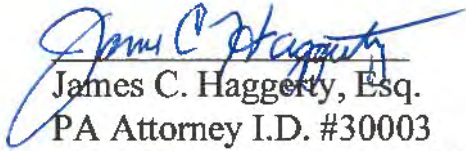
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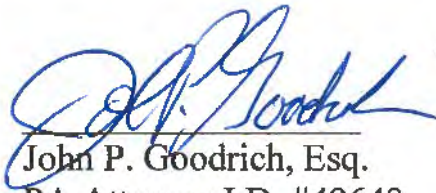
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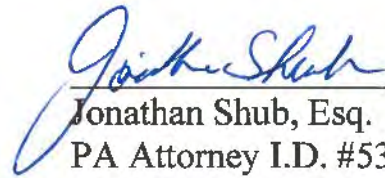
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