

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

HTR RESTAURANTS, INC. D/B/A
SIEBS PUB, INDIVIDUALLY AND ON
BEHALF OF A CLASS OF SIMILARLY
SITUATED PERSONS,

Plaintiff,

v.

Case No. 2:20-CV-819

ERIE INSURANCE EXCHANGE,

Defendant.

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendant, Erie Insurance Exchange (“Erie”), through undersigned counsel and pursuant to 28 U.S.C. §§ 1441 and 1446, and under the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4 (codified in pertinent part at 28 U.S.C. §§ 1332(d), 1446, and 1453) (“CAFA”), hereby removes to this Court the lawsuit styled *HTR Restaurants, Inc. d/b/a Siebs Pub v. Erie Insurance Exchange*, Civil Div. No. GD-20-5138, filed in the Court of Common Pleas of Allegheny County, Pennsylvania. In support of this Notice of Removal, Erie states as follows:

I. INTRODUCTION

1. On April 17, 2020, Plaintiff filed this action on behalf of itself and a putative class. *See* Complaint, attached as Exhibit 1 to this Notice of Removal. According to the Complaint, Plaintiff and members of the putative class include persons who made or will make business interruption coverage claims to Defendant Erie arising from the COVID-19 pandemic. Plaintiff asserts that the Executive Orders issued by the Governor of Pennsylvania triggered the

business interruption coverage in its insurance policy because Plaintiff allegedly was compelled to shutter its restaurant to protect the health and safety of others from the threat of COVID-19. Plaintiff filed this suit on behalf of itself and a putative class seeking declaratory and injunctive relief.

2. As set forth below, this case is removeable to this Court under CAFA, as there is minimal diversity, more than 100 class members, and the amount in controversy exceeds \$5,000,000.

II. THE PARTIES

3. Plaintiff HTR Restaurants, Inc. d/b/a Siebs Pub (“Siebs”) alleges that it is a Pennsylvania Corporation with its principal place of business located in Pittsburgh, Pennsylvania. Compl. ¶ 1.

4. The Complaint alleges that Defendant Erie, a reciprocal insurance exchange, is a citizen of Pennsylvania with its principal place of business in Erie, Pennsylvania. *Id.* ¶ 25.

III. PLAINTIFF’S ALLEGATIONS

5. The Complaint alleges that Erie issued commercial property insurance policies to Plaintiff and other members of the putative class.¹ *Id.* ¶ 6. Plaintiff contends that the Governor of Pennsylvania issued a series of Executive Orders that caused a disruption to its business. *Id.* ¶¶ 18-23.

6. The Complaint alleges that as a result of the enforcement of the Executive Orders, Plaintiff and other putative class members have suffered (and will continue to suffer) substantial

¹ The facts set forth herein derive from Plaintiff’s Complaint. Erie does not admit the facts alleged in the Complaint, expressly denies liability to Plaintiff and the putative class, expressly denies that certification of any class is appropriate or permitted under the applicable rules, and reserves its rights to challenge the legal sufficiency of the Complaint.

business income losses and extra expenses as defined by Erie's various commercial property insurance policies. *Id.* ¶ 29.

7. Plaintiff asserts that it submitted claims for coverage of its business interruption and extra expense losses. *Id.* ¶ 30. The Complaint alleges that Erie denied the claims. *Id.* ¶ 33.

IV. THE COMPLAINT

8. Based upon these allegations, Plaintiff asserts the following claims against Erie:

- Count I seeks a declaratory judgment declaring that Plaintiff's losses and those of the putative class are covered by its insurance policies. Complaint p. 12, Count I Wherefore Clause ("Count I WC").
- Count II seeks an injunction enjoining Erie from denying coverage to Plaintiff and everyone else having an Erie policy. Complaint p. 13, Count II Wherefore Clause ("Count II WC").

V. THE REMOVAL REQUEST IS TIMELY

9. This Notice of Removal is timely under 28 U.S.C. § 1446(b). The Complaint was filed on April 17, 2020 and served on May 5, 2020. Because removal is made within thirty days of service, this Notice of Removal is timely. *See* Notice of Service attached as Exhibit 2 to this Notice of Removal; and all other documents filed of Record in the Court of Common Pleas of Allegheny County Pennsylvania, attached as Exhibit 3 to this Notice of Removal.

VI. THE COMPLAINT SATISFIES ALL OF THE ELEMENTS FOR REMOVAL UNDER CAFA

10. CAFA was enacted to expand federal jurisdiction over class actions. *See Walsh v. Defs., Inc.*, 894 F.3d 583, 586 (3d Cir. 2018) (citing *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 595, (2013); *see also Kaufman v. Allstate New Jersey Ins. Co.*, 561 F.3d 144, 148-49 (3d Cir. 2009) (CAFA was intended to broaden federal court jurisdiction over class actions). Removal is proper under CAFA where, as here, a purported class action is filed in which: (a) there are 100 or more purported class members, (b) there is minimal diversity of citizenship, and

(c) the aggregate amount in controversy for the entire proposed class exceeds \$5,000,000, exclusive of costs and interests. *See* 28 U.S.C. § 1332(d)(2); *Judon v. Travelers Prop. Cas. Co. of Am.*, 773 F.3d 495, 500 (3d Cir. 2014) (internal citations omitted). This action meets all the criteria for removal under CAFA.

A. The Putative Class Contains One Hundred or More Members.

11. This case purports to be a “class action” within the meaning of CAFA because it was brought under a state statute or rule, namely, 231 Pa. Code Part I, Ch 1700, Rule 1701 *et seq.*, which authorizes an action to be brought by one or more representative persons as a class action if the underlying requirements are met. *See* 28 U.S.C. § 1332(d)(1)(A)-(B); Compl. ¶¶ 36-63. Plaintiff contends that “the members of the class are so numerous that joinder of them is impracticable.” Compl. ¶ 41.

12. Plaintiff purports to “bring[] this action individually and on behalf of a class of similarly situated persons.” Compl. ¶ 36. *See also*, Compl. ¶ 4. While the class is, at times (but not always), defined to consist only of Pennsylvania citizens (*e.g.*, Compl. ¶¶ 38, 40), Plaintiff seeks entry of an injunction that would cover all Erie policyholders everywhere. *See* Count II WC at (b).

13. There is no question that the putative class contains more than 100 members. Erie has issued 66,671 policies with business interruption coverage in Pennsylvania, and 214,984 such policies throughout the United States. *See* Declaration of Scott Morgason (“Morgason Dec.”) ¶ 5 attached as Exhibit 4 to this Notice of Removal. It has, to date, received at least 1,773 COVID-19 related business interruption claims in Pennsylvania, and at least 4,279 throughout the United States. *See* Morgason Dec. ¶ 5. Whether the class is limited to Pennsylvania citizens

or, as pleaded in Count II, covers all Erie policyholders everywhere, there are more than 100 members in the putative class.

B. The Putative Class Satisfies Minimal Diversity

14. CAFA requires only “minimal diversity,” meaning that “any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).

15. Erie is a citizen of Pennsylvania, so if any member of the class is not a Pennsylvania citizen, there is minimal diversity and hence jurisdiction before this Court under CAFA.

16. Plaintiff purports to “bring[] this action individually and on behalf of a class of similarly situated persons.” Compl. ¶ 36. *See also*, Compl. ¶ 4 (“on behalf of a class of similarly situated persons”). The class is at times defined to consist only of Pennsylvania citizens. *See* Compl. ¶¶ 38, 40).

17. In Count I (Declaratory Judgment), Plaintiff seeks relief “declaring that *each member of the class* is entitled to coverage.” Count I WC at (b) (emphasis added). *See also* Compl. at ¶ 76 (“*Each member of the class* is entitled to a declaration ...”) (emphasis added). If the class is interpreted not to include policyholders outside of Pennsylvania, then with respect to Count I there would be no diversity between Erie and the putative class.

18. In Count II (Injunctive Relief), however, Plaintiff expressly does *not* limit the scope of the injunction to any particular class or subclass of Pennsylvania citizens. Instead, in Count II Plaintiff does not rely on its class definition and instead more broadly demands that Erie “must be enjoined from continuing to deny and/or refuse to acknowledge coverage *to insureds* for losses....” Compl. ¶ 87 (emphasis added). Plaintiff broadly seeks in Count II an injunction

“enjoining Defendant ... from denying or refusing to acknowledge coverage for losses....”
 Count II WC at (b).

19. On the face of Plaintiff’s Complaint, therefore, the relief sought in Count II—unlike the relief sought in Count I—is *not* limited to any particular class, but rather seeks to preclude Erie from denying coverage to all “insureds” everywhere. Compl. ¶ 87, Count II WC at (b). While Plaintiff sought to limit its declaratory judgment claim to “each member of the class,” Count II contains *no such limitation* and more broadly seeks an injunction not *in favor of* class members (however defined), but *against* Erie enjoining it from denying coverage to all of its “insureds.” *Id.* ¶ 87. Erie has many insureds outside of Pennsylvania, and hence there is minimal diversity. Morgason Dec., ¶ 5.

20. Significantly, the Court ought to consider the citizenship, for minimal diversity purposes, of those who would benefit from the injunction prayed for in the Complaint regardless of whether such persons are included within the Plaintiff’s pleaded class definition (especially where, as here, the injunctive relief is untethered to the class definition). *See Schwartz v. SCI Funeral Services of Florida, Inc.*, 931 F. Supp. 2d 1191 (S.D. Fla. 2013). In *Schwartz*, for example, plaintiff filed a putative class action alleging Florida law claims seeking injunctive relief on behalf of a class of “Florida citizens” only. *Schwartz*, 931 F. Supp. 2d at 1192, 1196. Defendant, a Florida citizen, removed the action under CAFA, and the plaintiff sought to remand the case back to state court on the basis that there was no minimal diversity under CAFA. The court denied the motion to remand, holding that there was minimal diversity under CAFA even though the class was limited to citizens of Florida and the defendant was also a citizen of Florida.

21. The court reached that result because while plaintiff sought to eliminate jurisdiction under CAFA by ostensibly pleading a class definition to consist solely of Florida

citizens, the injunctive relief sought by plaintiff would, in fact, apply to Florida and non-Florida citizens alike. Hence, the Court held, the *real* members of the class were not limited to Florida citizens, regardless of how plaintiff purported to define the class. “Plaintiffs implicate in the claims for injunctive relief a class of real parties in interest that are not Florida citizens ... Plaintiffs ask the Court to enter an injunction ‘enjoining the unlawful acts, practices and omissions set forth herein,’ irrespective of whether the purported victims of such conduct are Florida citizens.” *Id.* at 1197. As further explained by the Court:

When a suit is brought on behalf of real parties in interest, they are treated as class plaintiffs for purpose of CAFA jurisdiction even if they are not named parties or alleged members of a Rule 23 class. ‘Courts routinely look beyond labels to determine whether a lawsuit is a ‘class action’ or ‘mass action’ under the Class Action Fairness Act.’ ... Accordingly, that the out-of-state real parties in interest are not included in the class definition here has no bearing on whether any comprise a “class” for purposes of finding CAFA jurisdiction over this lawsuit.

Id. at 1197-98 (citations omitted).

22. Here, as in *Schwartz*, to avoid CAFA jurisdiction Plaintiff pleaded its declaratory judgment claim on behalf of a class of only nondiverse class members but, also as in *Schwartz*, sought injunctive relief on behalf of diverse citizens that created federal jurisdiction under CAFA. As in *Schwartz*, this Court should count the citizenship of all persons who would benefit from the injunction—all of Erie’s “insureds”—to determine whether there is minimal diversity.

23. Significantly, the case for including the citizenship of non-Pennsylvania citizens here is even *stronger* than it was in *Schwartz* for including the citizenship of non-Florida citizens. In *Schwartz*, the injunction was expressly sought only on behalf of Florida citizens; the Court read between the lines to determine that the actual scope of any injunction would extend beyond Florida citizens. No reading between the lines is necessary here. In seeking *declaratory* relief, Plaintiff was clear that it was seeking relief “declaring that *each member of the class*

[defined at times in the Complaint as citizens only of Pennsylvania] is entitled to coverage.” Count I WC at (b) (emphasis added). But in seeking *injunctive* relief, in stark contrast, Plaintiff purposefully eschewed the “each member of the class” limitation and instead pleaded for far broader relief: an “Order ... enjoining Defendant ... from denying or refusing to acknowledge coverage for losses.” Count II WC at (b). That is, while Count I may be limited to defined class members (however the class is defined), Count II is not; instead, the injunction sought by Plaintiff in Count II would—on its face—apply to all Erie “insureds” everywhere.

24. Indeed, had Plaintiff intended to limit Count II—the injunctive relief claim—to expressly defined class members, it would have used in the Count II WC the same “each member of the class” limitation it pleaded in the Count I WC. Plaintiff did not do so, however, thus laying bare that it is seeking exactly what is pleaded in Count II, namely, an injunction that will enjoin Erie from denying coverage to all Erie “insureds” everywhere. That includes numerous “insureds” that are citizens of states other than Pennsylvania. Morgason Dec. ¶ 5.

25. Because there are members of the actual class upon whose behalf an injunction is sought that are diverse from Erie, the minimal diversity requirement under CAFA has been satisfied and this case is removeable to this Court.

C. The Amount in Controversy Greatly Exceeds \$5 Million

26. Erie disputes that Plaintiff has stated any viable claims and also disputes that Plaintiff and the putative class members are entitled to any relief. Nevertheless, the allegations of the Complaint and the nature of Plaintiff’s claims make clear that the amount in controversy exceeds CAFA’s jurisdictional threshold of \$5,000,000, exclusive of interest and costs. *See* 28 U.S.C. § 1332(d)(2) and (6).

27. CAFA provides that “the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. § 1332(d)(6). Where, as here, “the plaintiff’s complaint does not state the amount in controversy, the defendant’s notice of removal may do so.” *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 83 (2014). To establish the amount in controversy sufficient to remove a class action case to federal court, a defendant need not submit proof to establish the amount in dispute, but rather “may simply allege or assert that the jurisdictional threshold has been met.” *Id.* at 89 (citation omitted). The jurisdictional threshold has been met.

28. CAFA’s amount in controversy requirement is satisfied where the defendant’s notice of removal includes a plausible allegation that the stakes exceed \$5,000,000. *See Winkworth v. Spectrum Brands, Inc.*, Civil Action No. 19-1011, 2019 U.S. Dist. LEXIS 181448, at *4 (W.D. Pa. Oct. 21, 2019) (quoting *Dart Cherokee Basin Operating Co.*, 574 U.S. at 89). When removing a suit, the defendant may present an estimate of the amount in controversy based on a “reasonable reading of the value of the rights being litigated.” *Judon v. Travelers Prop. Cas. Co. of Am.*, 773 F.3d 495, 507 (3d Cir. 2014) (internal citation omitted).

29. The amount in controversy is satisfied on the *possible* recovery if Plaintiff and the class were to win on all of its claims; whether they are likely to recover anything based on the merits of the case is irrelevant to the amount in controversy analysis. *See Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 877 (3d Cir. 1995) (noting that indeterminacy of the amount to be recovered does not defeat diversity jurisdiction, and it is immaterial what the plaintiff might eventually recover); *Clean Air Council v. Dragon Int’l Grp.*, No. 1:CV-06-0430, 2006 U.S. Dist. LEXIS 52292, at *11 (M.D. Pa. July 28, 2006) (citing *Meritcare Inc. v. St. Paul Mercury Ins.*

Co., 166 F.3d 214, 217 (3d Cir. 1999), *overruled on other grounds by Exxon Mobil Corp. v. Allapattah Servs.*, 545 U.S. 546 (2005) (“[O]nly if it appears to a legal certainty that Plaintiff cannot recover the minimum [jurisdictional] amount should [the court] remand.” *See also*, *Sabrina Roppo v. Travelers Commercial Ins. Co.*, 869 F.3d 568, 579 (7th Cir. 2017) (citing *Blomberg*, 639 F.3d at 763). (“The party seeking removal does not need to establish what damages the plaintiff will recover, but only how much is in controversy between the parties.”).

30. Because Plaintiff and the putative class do not seek monetary damages directly, the Court must consider the amount in controversy presented by Plaintiff’s claims for declaratory and injunctive relief. The Third Circuit measures the amount in controversy in declaratory and injunctive actions by reference to “the value of the rights which the plaintiff seeks to protect.” *Columbia Gas Transmission Corp. v. Tarbuck*, 62 F.3d 538, 539 (3d Cir. 1995). *See also*, *Cty. of Wash. v. United States Bank Nat’l Ass’n*, Civil Action No. 11-1405, 2012 U.S. Dist. LEXIS 125748, at *54 (W.D. Pa. Aug. 17, 2012) (internal citation omitted) (“With regard to actions seeking declaratory relief, the amount in controversy is the value of the right or the viability of the legal claim to be declared, such as a right to indemnification....”).

31. Significantly, where the declaratory judgment and injunctive relief pertains to the existence or extent of insurance coverage, courts look to the *face value* of the subject insurance policies to determine whether the amount in controversy is satisfied. *See Sallada v. Nationwide Mut. Ins. Co.*, Civil No. 1:CV-99-0381, 1999 U.S. Dist. LEXIS 21670, at *5 (M.D. Pa. June 2, 1999) (internal citation omitted) (“Where plaintiffs seek equitable relief pertaining to the enforcement of insurance policies, *the face value of the policy is the measure of the amount in controversy.*”) (emphasis added). *See also*, *Jumara v. State Farm Insurance Co.*, 55 F.3d at 877 (evaluating insurance policy limits in determining amount in controversy); *Manze v. State Farm*

Insurance Co., 817 F.2d 1062 (3d Cir. 1987) (same); *Nationwide Mut. Ins. Co. v. Brown*, 387 F. Supp. 2d 497, 500 (W.D. Pa. November 16, 2004) (concluding amount in controversy was satisfied where insurer's potential liability, in light of policy limits, exceeded jurisdictional threshold).

32. There is no question that the amount in controversy in this case exceeds \$5 million. Plaintiff's own policy provides potentially uncapped coverage for covered losses caused by the interruption of its business over a lengthy period of time. Plaintiff claims that its situation is typical of those of members of the putative class. *See* Compl. ¶ 49.

33. Significantly, Erie issued 214,984 commercial policies throughout the country with business interruption coverage and 66,671 such policies in Pennsylvania. Morgason Dec. ¶ 5. Should Plaintiff succeed in obtaining the declaratory or injunctive relief it seeks, policyholders could potentially receive business interruption coverage not provided for by the terms and conditions of the policies—not only with respect to the COVID-19 pandemic, but with respect to potential future pandemics. Such a declaration would fundamentally enlarge the scope of Erie's policies from providing coverage where physical damage causes business interruption, to policies that provide coverage in the absence of any physical damage but where a civil authority enters an order to enforce social distancing or to achieve some other supposed societal benefit. The amount in controversy requirement is easily met on these facts.

34. Moreover, to date, 4,279 claims have been made by Erie's policyholders seeking business interruption coverage related to the COVID-19 pandemic. *See* Morgason Dec. ¶ 5. Plainly, many more claims will be made. Plaintiff seeks an injunction enjoining Erie from denying coverage to any of those 4,279 policyholders and any of the other 214,984 policyholders who may file COVID-19 related business interruption claims.

35. Plaintiff provides no calculation of its own alleged damages or those of putative class members, but Erie reasonably anticipates that class members will, on average, each seek tens of thousands of dollars in damages, and hence, even assuming—most improbably—that only 4,279 of Erie’s policyholders file claims, the amount in controversy greatly exceeds \$5 million.

36. According to Erie’s records, during 2018 and 2019 Erie paid over 1,450 business interruption claims at an average of more than \$11,900 per claim. *See* Morgason Dec. ¶ 6. This figure is a conservative estimate of the damages each alleged member of the putative classes here may seek, as Plaintiff claims that its business and those of members of the putative classes were interrupted for lengthy periods of time. *See id.*

37. But, just taking the average of approximately \$11,900 paid for each business interruption claim over the last two years and multiplying that by the 4,279 policyholders who have already filed claims, yields potential claims payouts in this case of \$50,920,100 to those 4,279 policyholders. *See id.* ¶ 8.

38. This is a conservative estimate of the number of putative class members and the amount in dispute in this case. The estimated \$50,920,100 at issue as articulated above does not take into account that (a) the number of putative class members likely will increase by at least several fold as more policyholders file claims for uncovered alleged losses; (b) the likely amount sought by each policyholder will be substantially in excess of \$11,900 and likely will be multiples of that amount given the length of time encompassed by the Executive Orders; (c) case law holds that *the face amounts of the policies*, and not potential payouts, form the basis of the calculation; and (d) the requested injunctive and declaratory relief would result in the widespread enlargement of Erie’s coverage obligations now and for years to come.

VII. ERIE HAS COMPLIED WITH ALL REMOVAL PROCEDURES

39. In accordance with 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served upon all counsel of record, along with a copy of the Notice of Removal to the Clerk of the Court for the Court of Common Pleas of Allegheny County.

40. In accordance with 28 U.S.C. § 1446(a), a true copy of all state court process, pleadings and orders served on Erie are attached to this Notice of Removal.

VIII. NON-WAIVER OF DEFENSES

41. By filing this Notice of Removal, Erie does not waive any defenses available to it.

42. By filing this Notice of Removal, Erie does not admit any of the allegations in Plaintiff's Complaint. Erie expressly reserves the right to contest those allegations at the appropriate time.

WHEREFORE, Defendant Erie Insurance Exchange removes the above-captioned action from the Court of Common Pleas, Allegheny County, and requests that further proceedings be conducted in this Court as provided by law.

Dated: June 3rd, 2020

Respectfully submitted,

DiBELLA, GEER, McALLISTER & BEST, P.C.

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Paul K. Geer

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By: /s/ Tara L. Maczuzak

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Attorneys for Defendant Erie Insurance Exchange

Exhibit

1

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

HTR RESTAURANTS, INC. D/B/A
SIEBS PUB, INDIVIDUALLY AND
ON BEHALF OF A CLASS OF
CLASS OF SIMILARLY SITUATED
PERSONS

3382 Babcock Boulevard
Pittsburgh, PA 15237,

Plaintiff,

vs.

ERIE INSURANCE EXCHANGE
100 Erie Insurance Place
Erie, PA 16530

Defendant

CIVIL DIVISION

No.: GD-20-5138

**CIVIL ACTION – CLASS ACTION
COMPLAINT**

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FILED

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DEPT. OF JUDICIAL SERVICES
CIVIL/FAMILY DIVISION
ALLEGHENY COUNTY PA

OPS\$KRISTOPHER1
17 April 2020
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GD-20-005138

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY

HTR RESTAURANTS, INC. D/B/A	:	
SIEBS PUB, INDIVIDUALLY AND	:	
ON BEHALF OF A CLASS OF	:	
CLASS OF SIMILARLY SITUATED PERSONS	:	
3382 Babcock Boulevard	:	
Pittsburgh, PA 15237	:	
	:	
vs.	:	
	:	No.
ERIE INSURANCE EXCHANGE	:	
100 Erie Insurance Place	:	
Erie, PA 16530	:	

CIVIL ACTION – CLASS ACTION COMPLAINT

Parties

1. Plaintiff, HTR Restaurants, Inc. D/B/A Siebs Pub (“Siebs Pub”) is a corporation organized and existing under the Commonwealth of Pennsylvania, with its principal place of business located at 3382 Babcock Boulevard, Pittsburgh, Pennsylvania 15237; as such, Plaintiff is a citizen of the Commonwealth of Pennsylvania.

2. Plaintiff owns and operates Siebs Pub and 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. The present action seeks declaratory and injunctive relief on behalf of the individual plaintiff, Siebs Pub, and on behalf of a class of similarly situated persons, under identical insurance policies issued by Defendant, Erie, in the Commonwealth of Pennsylvania.

5. Defendant, Erie, regularly and routinely conducts business in Allegheny County, Pennsylvania.

Insurance Coverage

6. At all times material hereto, there existed, in full force and effect, an Ultra pack Plus Commercial General Liability Policy (No. Q972133627) (“Erie Policy”) issued by Defendant, Erie, Plaintiff, Siebs Pub, providing, *inter alia*, property, business, personal property, business income, extra expense, continuation, 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 “A”.

7. The Erie Policy was in effect and provided coverage for the period July 9, 2019 to July 9, 2020.

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

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

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

9

Coronavirus Pandemic

11. 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.

12. Coronavirus COVID-19 is a highly contagious airborne virus which has rapidly spread and continues to spread across the United States.

13. COVID-19 has been declared a pandemic by the World Health Organization.

14. 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.

15. 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.

16. 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.

17. 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.

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

19. 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.

20. On March 23, 2020, Governor Tom Wolf issued a Stay at Home Order for citizens of various counties including Allegheny County.

21. 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.”

22. On April 1, 2020, Governor Tom Wolf extended the March 23, 2020 Stay at Home Order to the entire Commonwealth of Pennsylvania.

23. The COVID-19 virus, as evidenced by these Orders, causes damage to property, particularly in places of business, such as that of Plaintiff, Siebs Pub, 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 Virus

24. As a result of the impact of the COVID-19 virus and the referenced Orders of the Governor, Plaintiff, Siebs Pub, has been ordered to close its business and forced to furlough employees, thereby incurring loss.

25. 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.

26. The business Plaintiff, Siebs Pub, 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.

27. As a result of the COVID-19 virus, the business of Plaintiff, Siebs Pub, like other similarly situated businesses, is susceptible to person to person, person to property, and property to person transmittal and contamination.

28. The COVID-19 pandemic has directly and adversely affected the business operations of Plaintiff, Siebs Pub, and other similarly situated businesses, by causing damage and the risk of further harm to the property and its occupants.

29. Plaintiff, Siebs Pub, and other similarly situated persons, have suffered Business Income, Civil Authority and other related losses which are covered by policies of insurance issued by Defendant, Erie.

Claim for Recovery

30. Plaintiff, Siebs Pub, has made claim upon Defendant, Erie, for recovery of losses caused by the COVID-19 virus and the referenced Orders.

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

32. All similarly situated persons and organizations to whom Defendant, Erie, has issued policies of insurance are entitled to a declaration that he or she is covered for business

income, extra expense, contamination, civil authority and other coverage under the policies issued by Defendant, Erie.

33. Defendant, Erie, has wrongfully denied the claims Plaintiff, Siebs Pub, and similarly situated persons, for recovery of damages caused by the COVID-19 virus and referenced Orders.

34. Plaintiff, Siebs Pub, and all similarly situated persons, are entitled to a declaration that the policies of insurance issued by Defendant, Erie, provide coverage for the losses caused by the COVID-19 virus and referenced Orders.

35. Plaintiff, Siebs Pub, and all similarly situated persons are entitled to an Order enjoining Defendant, Erie, from denying coverage to insureds for business income, extra expense, contamination, civil authority and other coverages for losses caused by the COVID-19 virus and referenced Orders.

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Class Action Allegations

36. Plaintiff, Siebs Pub, brings this action individually and on behalf of a class of similarly situated persons as a class action pursuant to the Pennsylvania Rules of Civil Procedure.

37. Defendant, Erie, has wrongfully denied and/or failed to acknowledge the coverage to persons or organizations who have sustained covered losses caused by the COVID-19 virus and the referenced Orders.

38. Plaintiff, Siebs Pub, seeks to represent a class of Pennsylvania citizens who have sustained covered losses caused by the COVID-19 virus and the referenced Orders where: (a) Defendant, Erie, issued a policy of insurance providing, *inter alia*, business income, extra expense, contamination, civil authority and other applicable coverages to each class member; (b) the putative class member has suffered covered losses under those policies by reason of the COVID19 virus and referenced Orders; and (c) Defendant, Erie, has disclaimed coverage and/or refused to acknowledge coverage under the policy in question for the loss.

39. Plaintiff, Siebs Pub, reserves the right to amend the definition and/or identify subclasses upon completion of class certification.

40. The putative class is limited to citizen citizens of the Commonwealth of Pennsylvania in numbers sufficient to allow class certification.

41. The members of the class are so numerous that joinder of them is impracticable.

42. Identification of the members of the class can be ascertained in and through discovery of the files and/or computer data base of Defendant, Erie.

43. A class action is the only practicable means available for the members of the class to pursue the appropriate remedies and receive the necessary underinsured motorist benefits under the policies of insurance in question.

44. A class action is the only practicable means available to prevent the Defendant, Erie, from engaging in the continuous and systematic denial and disclaimer of coverage for losses caused by the COVID-19 virus and referenced Orders.

45. The questions of law and fact are common to the members of the class which Plaintiff, Siebs Pub, seeks to represent.

46. The questions of law and fact common to the members of the class predominate over questions that may affect only individual members.

47. The common questions of law and fact which control this litigation predominate over any individual issues include, but are not limited to:

- (a) Each member of the class suffered losses as a result of the COVID-19 virus and referenced Orders;
- (b) Each member of the class is an insured under a policy of insurance issued by Defendant, Erie, which provided business income, extra expense, contamination, civil authority and other coverages applicable to the loss;
- (c) Each class member is eligible to recover under the policy issued by Defendant, Erie, for the losses caused by the COVID-19 virus and the referenced Orders;
- (d) Defendant, Erie, has denied or refused to acknowledge coverage for the loss;
- (e) The denial or refusal to acknowledge coverage is illegal and a breach of the terms and provisions of the policy at issue; and
- (f) Each member of the class is entitled to a declaration that he or she is entitled to recover under the policy of insurance issued by Defendant, Erie, for the losses caused by the COVID-19 virus and referenced Orders.

48. Plaintiff, Siebs Pub, is a member of the class that it seeks to represent.

49. The claims Plaintiff, Siebs Pub, are typical of the claims of other members of the class which it purports to represent.

50. Plaintiff, Siebs Pub, is well qualified to act as class representative.

51. Plaintiff, Siebs Pub, will fairly and adequately protect the interests of the members of the class.

52. Plaintiff, Siebs Pub, has no interest that is adverse or antagonistic to the interests of the members of the class.

53. Plaintiff, Siebs Pub, is committed to prosecuting the class action.

54. Plaintiff, Siebs Pub, has retained competent counsel who are experienced in litigation of this nature.

55. A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

56. Joinder of all class matters is impracticable and the likelihood of individual class members prosecuting separate claims is remote due to the fact that the members of the class do not know that they are entitled to uninsured motorist coverage.

57. The expense and burden of individual litigation makes it unlikely that a substantial member of the class members will individually seek redress for the wrongs done to them.

58. It is desirable for all concerned to concentrate the litigation in this particular forum for adjudication.

59. Plaintiff, Siebs Pub, anticipates no difficulty in the management of this action as a class action.

60. The class action brought by Plaintiff, Siebs Pub, is a convenient and proper forum in which to litigate the claim.

61. The prosecution of separate actions by individual class members would create the risk of bearing inconsistent determinations that could confront Defendant, Erie, with incompatible standards of conduct and which could prejudice non-parties to any adjudication or substantially impede their ability to protect their own interests because of the overriding common questions of law and fact involved in the matter.

62. Prosecution of these claims as a class action will result in an orderly and expeditious administration of the claims and will foster economies of time, effort and expense.

63. Prosecution of these claims as a class action will contribute to uniformity of decisions concerning the practices of Defendant, Erie.

COUNT I
(Declaratory Relief – Individual and Class Claims)

64. Plaintiff, Siebs Pub, hereby incorporates by reference the foregoing Paragraphs 1 through 63 of this Complaint as though same were fully set forth herein.

65. Plaintiff, Siebs Pub, is entitled to coverage under the Erie Policy for the losses caused by the COVID-19 virus and referenced Orders.

66. Each member of the class is entitled to coverage under the applicable policy issued by Erie.

67. Defendant, Erie, has denied and/or refused to acknowledge coverage for the losses of Plaintiff, Siebs Pub, caused by the COVID-19 virus and the referenced Orders.

68. Defendant, Erie, has wrongfully denied and refused to acknowledge coverage to each member of the class for the losses caused by the COVID-19 virus and referenced Orders.

69. Plaintiff, Siebs Pub, is entitled to recover for losses covered by the COVID-19 virus and the referenced Orders under the Erie Policy.

70. Each member of the class is entitled to recover for losses caused by the COVID-19 virus and the referenced Orders under the applicable policy.

71. Defendant, Erie, has wrongfully refused to provide coverage to Plaintiff Siebs Pub, under the Erie Policy.

72. The denial and refusal to acknowledge coverage to Plaintiff, Siebs Pub, under the Erie Policy is a material breach of that policy.

73. The denial and refusal to acknowledge coverage to Plaintiff, Siebs Pub, under the Erie Policy is in direct violation of the specific terms and provisions of the Erie Policy.

74. The denial and refusal to acknowledge coverage to each member of the class under the applicable policy is a material breach of that policy.

75. Plaintiff, Siebs Pub, is entitled to a declaration that it is entitled to coverage for losses caused by the COVID-19 virus and the referenced Orders.

76. Each member of the class is entitled to a declaration that he and/or she is entitled to coverage for losses caused by the COVID-19 virus and the referenced Orders under the pertinent policy of insurance issued by Defendant, Erie.

77. The controversy poses an issue for judicial determination under the Declaratory Judgment Act.

78. The controversy involves substantial rights of the parties to the action.

79. The controversy poses an issue for judicial determination which is not within the scope of authority of any arbitrator or arbitration panel pursuant to the policy of insurance in question.

80. A judgment of this court in this action will also be useful for the purpose of clarifying and settling the legal relations at issue between the parties.

81. A judgment of this court will determine, terminate and afford relief from the uncertainty and controversy giving rise to this action.

WHEREFORE, Plaintiff, HTR Restaurants, Inc., D/B/A Siebs Pub, respectfully requests that the Court enter an Order:

- (a) declaring that Plaintiff, HTR Restaurants, Inc. D/B/A Siebs Pub, is entitled to coverage for losses caused by the COVID-19 virus and the referenced Orders from Defendant, Erie Insurance Exchange;
- (b) declaring that each member of the class is entitled to coverage for losses caused by the COVID-19 virus and the referenced Orders from Defendant, Erie Insurance Exchange; and
- (c) such other relief as the court deems appropriate.

COUNT II
(Injunctive Relief – Individual and Class Claims)

82. Plaintiff, Siebs Pub, hereby incorporates by reference the foregoing Paragraphs 1 through 81 of this Complaint as though same were fully set forth herein.

83. Plaintiff, Siebs Pub, has made claim upon Defendant, Erie, for coverage for losses caused by the COVID-19 virus and the referenced Orders including but not limited to business income, extra expense, contamination, civil authority and other coverages.

84. Defendant, Erie, has denied or refused to acknowledge coverage for the loss.

85. Defendant, Erie, continues to deny and/or refused to acknowledge coverage for the losses caused by the COVID-19 virus and the referenced Orders.

86. Plaintiff, Siebs Pub, and members of the class have suffered damages and/or are at immediate risk of suffering damages as a result of the continued denial and/or refusal to acknowledge coverage by Defendant, Erie, for the loss caused by the COVID-19 virus and the referenced Orders.

87. Defendant, Erie, must be enjoined from continuing to deny and/or refuse to acknowledge coverage to insureds for losses caused by the COVID-19 virus and the referenced Orders.

WHEREFORE, Plaintiff, HTR Restaurants, Inc., D/B/A Siebs Pub, respectfully requests that the Court enter an Order:

- (a) enjoining Defendant, Erie Insurance Exchange, from further denying coverage to Plaintiff, HTR Restaurants, Inc., D/B/A Siebs Pub, for losses caused by the COVID-19 virus and the governmental Orders; and
- (b) enjoining Defendant, Erie Insurance Exchange, from denying or refusing to acknowledge coverage for losses caused by the COVID-19 virus and the governmental Orders.

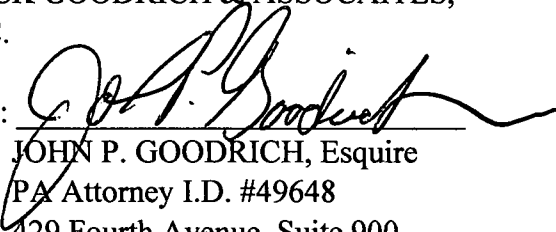
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