

4. The present action seeks declaratory relief as to a Motorists insurance policy, described in detail below, with respect solely to Pennsylvania state law for losses, damages, and expenses related to the COVID-19 pandemic.

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

Insurance Coverage

6. At all times material hereto, there existed, in full force and effect, a Business Insurance by Motorists policy (No. 33.309917-60E) (“Motorists Policy”) issued by Defendant, Motorists, to Plaintiff, DiAnoia’s, providing, *inter alia*, property, business, personal property, business income, extra expense, continuation, civil authority and additional coverages applicable to the losses, damages, and expenses claimed in this action. A true and correct copy of the Motorists Policy is attached hereto and marked as Exhibit “A”.

7. The Motorists Policy was in effect and provided coverage for the period June 20, 2019 to June 20, 2020.

8. The Motorists Policy is an “All Risks” policy which provides coverage for losses, damages, and expenses to the insured premises unless specifically excluded.

9. The Motorists Policy does not exclude the losses, damages, and expenses caused by the COVID-19 Pandemic.

10. The Motorists Policy provides coverage for the losses, damages, and expenses incurred Plaintiff, DiAnoia’s, as a result of the COVID-19 pandemic and the actions of the government in response thereto.

11. This case involves purely an issue of Pennsylvania state law.

12. Plaintiff DiAnoia's claims arise out of a Pandemic.

Coronavirus Pandemic

13. 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.

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

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

16. 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.

17. 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.

18. 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.

19. 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 COVID-19 virus.

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

21. 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, DiAnoia’s, 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

24. As a result of the impact of the COVID-19 pandemic and the referenced Orders of the Governor, Plaintiff, DiAnoia’s, has sustained partial loss of use of its premises, was forced stop all seated and eat-in food service, has seen a dramatic decrease in its business, and has been forced to furlough employees, thereby incurring losses, damages, and expenses.

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

26. The business of Plaintiff, DiAnoia’s, 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 pandemic, the business of Plaintiff, DiAnoia's, 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, DiAnoia's, by causing damage and the risk of further harm to the property and its occupants.

29. Plaintiff, DiAnoia's, has suffered Business Income, Civil Authority and other related losses, damages, and expenses which are covered by policies of insurance issued by the Defendant, Motorists.

Claim for Recovery

30. Plaintiff, DiAnoia's, has made claim upon Defendant, Motorists, for recovery of losses, damages, and expenses caused by the COVID-19 pandemic and the referenced Orders.

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

32. Defendant, Motorists, has wrongfully denied the claims Plaintiff, DiAnoia's, for recovery of damages caused by the COVID-19 pandemic and referenced Orders.

33. Plaintiff, DiAnoia's, is entitled to a declaration that the policies of insurance issued by Defendant, Motorists, provide coverage for the losses, damages, and expenses caused by the COVID-19 pandemic and referenced Orders.

34. Plaintiff, DiAnoia's, is entitled to an Order enjoining Defendant, Motorists, from denying coverage to insureds for business income, extra expense, contamination, civil authority

and other coverages for losses, damages, and expenses caused by the COVID-19 pandemic and referenced Orders.

COUNT I
(Declaratory Relief – Individual Claims)

35. Plaintiff, DiAnoia's, hereby incorporates by reference the foregoing Paragraphs 1 through 34 of this Complaint as though same were fully set forth herein.

36. Plaintiff, DiAnoia's, is entitled to coverage under the Motorists Policy for the losses, damages, and expenses caused by the COVID-19 pandemic and referenced Orders.

37. Defendant, Motorists, has denied and/or refused to acknowledge coverage for the losses, damages, and expenses of Plaintiff, DiAnoia's, caused by the COVID-19 pandemic and the referenced Orders.

38. Plaintiff, DiAnoia's, is entitled to recover for losses, damages, and expenses covered by the COVID-19 pandemic and the referenced Orders under the Motorists Policy.

39. Defendant, Motorists, has wrongfully refused to provide coverage to Plaintiff, DiAnoia's, under the Motorists Policy.

40. The denial and refusal to acknowledge coverage to Plaintiff, DiAnoia's, under the Motorists Policy is a material breach of that policy.

41. The denial and refusal to acknowledge coverage to Plaintiff, DiAnoia's, under the Motorists Policy is in direct violation of the specific terms and provisions of the Motorists Policy.

42. Plaintiff, DiAnoia's, is entitled to a declaration that it is entitled to coverage for losses, damages, and expenses caused by the COVID-19 pandemic and the referenced Orders.

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

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

45. 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.

46. 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.

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

WHEREFORE, Plaintiff, DiAnoia's Eatery, LLC d/b/a DiAnoia's and Pizzeria Davide, respectfully requests that the Court enter an Order:

- (a) declaring that Plaintiff, DiAnoia's Eatery, LLC d/b/a DiAnoia's and Pizzeria Davide is entitled to coverage for losses, damages, and expenses caused by the COVID-19 pandemic and the referenced Orders from Defendants, Motorists Mutual Insurance Company; and
- (b) such other relief as the court deems appropriate.

Respectfully Submitted:

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VERIFICATION

I, David Anioia, as representative of DiAnoia's Eatery, LLC d/b/a DiAnoia's and Pizzeria Davide, state that the facts set forth in the Complaint are true and correct to the best of my knowledge, information and belief. I understand that the statements are made subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

DATE:

4/25/20

BY:


Representing DiAnoia's Eatery, LLC d/b/a DiAnoia's and Pizzeria
Davide