

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,

Plaintiff,

v.

ERIE INSURANCE  
EXCHANGE, 100 Erie Insurance  
Place, Erie, PA 16530,

Defendant.

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HTR RESTAURANTS, INC.  
d/b/a SIEBS PUB,  
INDIVIDUALLY AND ON  
BEHALF OF A CLASS OF  
SIMILARLY SITUATED  
PERSONS,

Plaintiff,

v.

ERIE INSURANCE  
EXCHANGE,

Defendant.

**CIVIL DIVISION**

No.: G.D. 20-005137  
GD 20-006901

**OPINION**

Hon. Christine A. Ward

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FILED  
2020 NOV 20 AM 9:33  
DEPT. OF COURT RECORDS  
CIVIL FAMILY DIVISION  
ALLEGHENY COUNTY, PA

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**OPINION**

**I. Factual and Procedural Background**

Plaintiffs, Joseph Tambellini, Inc. d/b/a Joseph Tambellini Restaurant and HTR Restaurants, Inc. d/b/a Siebs Pub, individually, and on behalf of a class of similarly situated persons (hereinafter the “Allegheny County Plaintiffs”), together with Capriccio Parkway, LLC d/b/a Capriccio Café and Bar at Cret Park, and Capriccio, Inc. d/b/a Capriccio Café at Wills Eye

Hospital, on behalf of themselves and others similarly situated (the “Philadelphia County Plaintiffs”), and Perfect Pots, LLC (the “Lancaster County Plaintiff”), commenced separate actions in their respective counties when Erie Insurance Exchange (“Erie”) denied Plaintiffs’ and the class members’ claims for business interruption coverage in the wake of the COVID-19 pandemic.

The Allegheny County Plaintiffs’, the Philadelphia Plaintiffs’, and the Lancaster County Plaintiff’s Complaints and/or Amended Complaints are nearly identical. Each names Erie as the sole Defendant, and asserts claims for breach of contract and declaratory judgment. The gravamen of all Plaintiffs’ Complaints is that Erie wrongfully denied Plaintiffs’ claims for coverage under the business interruption, civil authority, and extra expense provisions in Plaintiffs’ standard business insurance policies with Erie.

On June 24, 2020, Plaintiffs filed a Joint Motion to Coordinate the above-referenced cases in the Court of Common Pleas in Allegheny County, Pennsylvania. Plaintiffs’ Motion to Coordinate also requested the coordination of all similar actions filed against Erie in Pennsylvania courts. On July 23, 2020, this Court issued an order granting Plaintiffs’ Joint Motion to Coordinate. On August 21, 2020, Erie appealed this Court’s July 23, 2020 order.

## **II. Errors Complained of on Appeal**

Erie Insurance Exchange’s Pa. R.A.P. 1925(b) statement complained of the following purported errors:

1. The Trial Court abused its discretion in granting Joseph Tambellini, Inc. d/b/a Joseph Tambellini Restaurants and HTR Restaurants, Inc. d/b/a Siebs Pub’s Motion to Coordinate where coordination of unfiled cases is beyond the scope of Rule 213.1. Future filed cases were not “pending” at the time the Motion to Coordinate was filed and were, therefore, beyond the scope of Pa. R.C.P. 213.1, which, by its clear terms, applies only to actions pending in different counties;

2. The Trial Court abused its discretion in granting Joseph Tambellini, Inc. d/b/a Joseph Tambellini Restaurants and HTR Restaurants, Inc. d/b/a Siebs Pub's Motion to Coordinate by purporting to coordinate both present and future lawsuits in the Court of Common Pleas of Allegheny County without a sufficient factual record related to the cost, expense, and/or burden on the other litigants from across the Commonwealth, including multiple Plaintiffs who selected other venues in which to file suit;
3. The Trial Court abused its discretion in granting Joseph Tambellini, Inc. d/b/a Joseph Tambellini Restaurants and HTR Restaurants, Inc. d/b/a Siebs Pub's Motion to Coordinate by purporting to coordinate multiple present and future-filed lawsuits in the absence of a record detailing any alleged benefits associated with coordination and whether those benefits are outweighed by the delay, expense, and prejudice to Appellant, and any absent, future-Plaintiffs, including:
  - a. **There is no predominating common question of fact or law.** A common question of fact or law does not predominate regarding the matters coordinated pursuant to the July 23, 2020 Order. To the contrary, plaintiffs make claims that will necessarily require individualized, fact-intensive consideration of each individual claimant's circumstances, varying alleged causes of loss, widely-varying alleged damages, substantive law of different jurisdictions, and the terms, conditions, endorsements, and exclusions of each individual claimant's specific policy;
  - b. **Coordination does not serve the convenience of the parties, witnesses, and counsel.** Coordination in Allegheny County of all actions filed across the Commonwealth of Pennsylvania against Erie Insurance Exchange relating to business income claims arising from COVID-19 is not convenient for the parties, witnesses, and counsel;
  - c. **Coordination will result in unreasonable delay, expense, and prejudice.** Coordination in Allegheny County of all actions filed across the Commonwealth of Pennsylvania against Erie Insurance Exchange relating to business income claims arising from COVID-19 will result in unreasonable delay or expense or otherwise prejudice parties to Erie Insurance Exchange and other litigants, including absent plaintiffs;
  - d. **Coordination will not promote the efficient use of judicial facilities and personnel or the efficient conduct of the coordinated actions.** Coordination in Allegheny County of all actions filed across the Commonwealth of Pennsylvania against Erie Insurance Exchange relating to business income claims arising from COVID-19 will not promote efficient use of judicial facilities and personnel or the just and efficient conduct of the actions; and
  - e. **Coordination is not a fair and efficient method of adjudicating these controversies.** Coordination in Allegheny County of all actions filed across the Commonwealth of Pennsylvania against Erie Insurance Exchange relating to

business income claims arising from COVID-19 is not a fair and efficient method of adjudicating these controversies. Among other things, the Order has allowed Moving Plaintiffs' Counsel to use the coordination process to establish a quasi-class action without affording Erie or other litigants the procedural protections required under the Pennsylvania Rules of Civil Procedure governing Class Actions.

4. The Trial Court abused its discretion in granting Joseph Tambellini, Inc. d/b/a Joseph Tambellini Restaurants and HTR Restaurants, Inc. d/b/a Siebs Pub's Motion to Coordinate by including an "opt out" provision in paragraph 4 which results in delay, expense, confusion, unfairness, and inefficiency; and
5. The Trial Court abused its discretion in granting Joseph Tambellini, Inc. d/b/a Joseph Tambellini Restaurants and HTR Restaurants, Inc. d/b/a Siebs Pub's Motion to Coordinate where Plaintiffs failed to give all affected parties notice of the Motion to Coordinate, as required by Pa. R.C.P. 213.1(a).

### **III. Standard of Review**

Appellate courts review a trial court order coordinating actions for an abuse of discretion. *Washington v. FedEx Ground Package System, Inc.*, 995 A.2d 1271, 1277 (Pa. Super. 2010). In exercising its discretion, the trial court considers the criteria enumerated in Pa. R.C.P. 213.1. Additionally, the trial court recognizes the explanatory comment to Pa. R.C.P. 213.1(c), explaining that "the ultimate determination that the court must make is whether coordination is a fair and efficient method of adjudicating the controversy." *Id.* (citations and internal quotations omitted). Whether the appellate court would have reached the same conclusion is immaterial. *Id.* If the "record provides a sufficient basis to justify the order of coordination, no abuse of discretion exists." *Id.*

### **IV. Discussion**

In its first matter complained of on appeal, Erie asserts that this Court abused its discretion in granting coordination because the coordination of unfiled actions is beyond the scope of Pa. R.C.P. 213.1. However, Pa. R.C.P. 213.1(d)(3) provides that "[i]f the court orders that actions shall be coordinated, it may . . . make any other appropriate order." The comments

to Pa. R.C.P. 213.1(d)(3) further explain that this subdivision is meant to provide courts with an opportunity for creative judicial management, and that any “order is limited only by its function of providing a fair and efficient method of adjudicating the controversy.” This Court recognized that, following its’ granting of the Plaintiff’s Joint Motion to Coordinate, similar claims for business interruption coverage relating to COVID-19 were forthcoming. Accordingly, in the above-described spirit of judicial efficiency, this Court ordered Erie to provide notification of any similar actions filed against Erie so that they may be transferred to this Court and be made part of the coordinated proceeding. This Court determined that, with regard to future filed actions, the most fair and orderly method for adjudicating the controversy was to have similar future actions automatically coordinated, unless any party files an objection, and the Court finds that the action should not be part of the coordinated proceeding. Therefore, pursuant to Pa. R.C.P. 213.1(d)(3), this Court did not abuse its discretion in deciding to grant the coordination with regard to future filed actions.

In its fifth matter complained of on appeal, Erie asserts that this Court abused its discretion in granting Plaintiffs’ Joint Motion to Coordinate because Plaintiffs’ failed to give all affected parties notice of the Motion to Coordinate. Erie did not cite any case law in support of its argument. However, in *Wohlson/Crow v. Pettinato Associated Contractors & Engineers, Inc.*, 666 A.2d 701, 704 n. 4 (Pa. Super. 1995), the Pennsylvania Superior Court vacated an order granting coordination as to certain actions because those actions were not mentioned in the motion to coordinate, and the parties to those actions were given neither notice nor opportunity to respond to the motion to coordinate.

While, at first glance, *Wohlson/Crow* might seem to support Erie’s argument, the instant matter is distinguishable for two reasons: [1] Plaintiffs’ motion to coordinate specifically

requested that this Court coordinate *all* other business interruption actions filed against Erie in Pennsylvania courts; and [2] this Court's order granting coordination provides the parties in all other business interruption actions with both notice and an opportunity to object to coordination. Specifically, paragraph 2 of this Court's order directs Erie to notify all other similarly situated Plaintiffs that these actions are being coordinated in Allegheny County, and paragraph 4 provides all parties with the opportunity to object to coordination *before* the coordination and transfer of any other action actually occurs. Thus, this Court did not abuse its discretion in granting coordination because this Court's order provided all parties with the same notice and opportunity to object as the parties would have had in the first instance.

In its second, third, and fourth matters complained of on appeal, Erie asserts that this Court abused its discretion in granting Plaintiffs' Joint Motion to Coordinate because the coordination of these cases is inappropriate considering various factors set forth in Pa. R.C.P. 213.1(c). Accordingly, for ease of disposition, this Court will address these remaining matters together, and explain why granting Plaintiffs' Joint Motion to Coordinate was appropriate with regard to each factor enumerated in Pa. R.C.P. 213.1(c).

Pa. R.C.P. 213.1 permits any party to file a motion to coordinate actions that involve a common question of law or fact. Specifically, Pa. R.C.P. 213.1(a) provides the following:

In actions pending in different counties which involve a common question of law or fact or which arise from the same transaction or occurrence, any party, with notice to all other parties, may file a motion requesting the court in which a complaint was first filed to order coordination of the actions. Any party may file an answer to the motion and the court may hold a hearing.

*Id.*



Pa. R.C.P. 213.1(c) further provides that the court shall consider the following factors in determining whether to coordinate certain cases and whether a particular location is appropriate for coordination:

1. Whether the common question of law or fact is predominating and significant to the litigation;
2. The convenience of the parties, witnesses and counsel;
3. Whether coordination will result in unreasonable delay or expense to a party or otherwise prejudice a party in an action which would be subject to coordination;
4. The efficient utilization of judicial facilities and personnel and the just and efficient conduct of the actions;
5. The disadvantages of duplicative and inconsistent rulings, orders or judgments; and
6. The likelihood of settlement of the actions without further litigation should coordination be denied.

First, these actions involve common questions of law or fact that are predominate and significant to the litigation. Specifically, these actions all require the Court to determine whether Erie breached its standard contracts of insurance through its uniform denial of all claims for business losses related to COVID-19, and/or the related actions of civil authorities taken in response to COVID-19. While Erie is correct to point out that the individual claims for business interruption coverage relating to COVID-19 are, to a certain extent, factually unique, all of them nonetheless require this Court to resolve common issues regarding the same causes of action,

which involve the same insurance policy contracts, the same insurance policy language, and the same insurance company.

The initial determinations of whether Erie's standard business insurance contracts cover business losses suffered as a result of COVID-19 can and should be determined by one court. Any issues regarding the extent to which the shutdown orders impacted each Plaintiff differently, and resulted in various Plaintiffs suffering different damages, can be addressed at a later time, and possibly by different courts. Should any Plaintiffs desire to try their individual cases in another county *after* this Court resolves the common issues in the coordinated proceeding, this Court can, pursuant to Pa. R.C.P. 213.1(d)(3), "make any other appropriate order;" including one permitting certain Plaintiffs to try their cases in separate counties.

Second, the coordination of these cases in Allegheny County is convenient for all parties. Erie contends that distance and expedience are inversely proportional and that coordination is therefore inconvenient for Plaintiffs whom are located in other counties throughout the Commonwealth. While travel might have been a more determinative consideration prior to the COVID-19 pandemic, this Court is now proceeding with all matters remotely via videoconferencing on Microsoft Teams. Accordingly, the relationship between distance and expedience has changed as travel is no longer required. Thus, all parties involved in the coordinated action are capable of participating in any proceeding from whatever locations the parties find most convenient.

Third, coordination will not result in unreasonable delay, expense, nor otherwise prejudice any party subject to coordination. Paragraph 4 of this Court's order (i.e., the "opt out" provision) provides that "[a]ny party in an action identified in a notice filed with this Court as raising common questions of fact or law can within thirty (30) days of this Order or within

fourteen (14) days after the notice is filed (whichever is later), file an objection to being part of the coordinated proceeding with this Court [and] . . . [i]f the Court finds that the action should not be part of the coordinated proceedings, the action will not be transferred.” Although the “opt out” provision might result in some delay and expense, any such delay or expense will likely be minimal given the ease with which arguments can be scheduled and conducted remotely. Overall, the “opt out” provision makes the adjudication of business interruption insurance claims against Erie more efficient and fair, and it does not otherwise prejudice any parties, because it helps the Court and the parties limit coordination to only those actions that truly involve common questions of law or fact. All other actions will not be transferred, and the parties in those actions may proceed with their claims in the county of their choosing.

Fourth, coordination promotes the efficient utilization of judicial facilities and personnel, as well as the just and efficient adjudication of the actions. As part of the Allegheny County Court of Common Pleas’ Commerce and Complex Litigation Center (“the Center”), this Court frequently deals with insurance coverages disputes. Indeed, insurance coverage disputes arising from policies insuring business enterprises are among the types of actions presumptively assigned to the Center. Thus, this Court is especially positioned to handle this matter in a just and efficient manner. Given this Court’s familiarity with insurance disputes, and its ability to conduct proceedings remotely, this Court correctly determined that coordination in Allegheny County would promote the efficient utilization of judicial facilities and personnel, and the just and efficient conduct of the actions.

Fifth, coordination of these actions in one court ensures that there will not be duplicative and inconsistent rulings, orders or judgments throughout the Commonwealth. As mentioned already, these actions all involve the same causes of action, the same insurance policy contracts,

the same insurance policy language, and the same insurance company. Accordingly, the most fair and efficient way to adjudicate these actions is to have one judge determine, at the very least, the initial questions regarding whether Erie's insurance policies cover business losses related to COVID-19. If these cases are not coordinated, and if different Judges throughout the Commonwealth are forced to adjudicate the exact same questions regarding the same insurance policy contracts and the same insurance company, duplicative or inconsistent rulings will be unavoidable.

Sixth, Pa. R.C.P. 213.1(c) directs courts to consider the likelihood of settlement of the actions without further litigation should coordination be denied. Here, it seems unlikely that any of these actions would reach a settlement should coordination be denied because Erie has consistently denied all claims for business losses related to COVID-19 and/or the related actions of civil authorities taken in response to COVID-19. Moreover, even assuming that there would be some potential for the settlement of the actions if this Court denied coordination, because five of the six factors enumerated in Pa. R.C.P. 213.1(c) weigh in favor of coordination as demonstrated above, this Court's decision to coordinate does not amount to an abuse of discretion. *See Lincoln General Ins. Co. v. Donahue*, 616 A.2d 1076, 1081 (Pa. Cmwlth. 1992) (holding that there is no abuse of discretion where five of the six factors weigh in favor of a trial court's decision to coordinate actions pursuant to Pa. R.C.P 213.1).

## **V. Conclusion**

As all of the requirements for coordination of actions have been satisfied pursuant to Pa. R.C.P. 213.1, this Court did not abuse its discretion in granting the Allegheny County Plaintiffs', the Philadelphia County Plaintiffs', and the Lancaster County Plaintiff's Joint Motion to Coordinate. Accordingly, this Court's July 23, 2020 order should be affirmed.

By the Court:

*Christine Ward, J.*

Christine Ward, J.

Dated: 11/19/20