

IN THE SUPREME COURT OF PENNSYLVANIA

DOCKET NO. 52 WM 2020

JOSEPH TAMBELLINI, INC., d/b/a JOSEPH TAMBELLINI RESTAURANT

v.

ERIE INSURANCE EXCHANGE

BRIEF OF AIG *AMICI CURIAE*

Appeal from Matter Pending in the
Allegheny County Court of Common Pleas
No. GD 20-005137

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BRIEF OF AIG *AMICI CURIAE*

The AIG entities, which insure Pennsylvania policyholders, present this Brief as *amici curiae* in support of denial of the emergency application for extraordinary relief.

I. STATEMENT OF INTEREST OF THE AMICI CURIAE

The *amici curiae*, collectively identified as “AIG *amici curiae*,” are all insurance companies that are subsidiaries of AIG Property Casualty U.S., Inc., which is subsidiary of American International Group, Inc.. The AIG *amici curiae*, which insure commercial property insurance policyholders in Pennsylvania, are:

- New Hampshire Insurance Company
- Granite State Insurance Company
- Illinois National Insurance Co.
- American Home Assurance Company
- The Insurance Company of the State of Pennsylvania
- National Union Fire Insurance Company of Pittsburgh, Pa.
- Lexington Insurance Company
- AIG Specialty Insurance Company

The policies that these insurers have issued in Pennsylvania include commercial insurance and property insurance. Each policy is governed by its own terms, conditions, exceptions, endorsements and exclusions.

II. SUMMARY OF ARGUMENT OF AIG AMICI CURIAE

The exercise of this Court’s extraordinary jurisdiction and King’s Bench authority are inappropriate here. The petitioner asks this Court to make a

declaration as to the coverage obligations of all “insurers in the Commonwealth” and then to enforce those obligations as to “all businessowners in the Commonwealth.” Appl. at ¶ 52, 53, 54. The petitioner asks the Court to violate the fundamental due process rights of the scores of insurance companies that write property insurance for over one million Pennsylvania businesses and to impose a “one-size-fits all,” *en masse* resolution to all insurance disputes that have or may arise due to COVID-19. This Court should not, through this single action for a single plaintiff, deviate from the normal trial and appellate procedures for consideration of the myriad situations that have and may continue to arise. The *AIG amici curiae* ask to the Court to deny the extraordinary relief that the petitioner demands.

III. RELEVANT FACTUAL BACKGROUND

A. Nature Of The “Emergency Application”

On March 19, 2020, Pennsylvania Governor Tom Wolf ordered the closure of all non-life sustaining businesses in the Commonwealth, as a means to address COVID-19, and subsequently issued other orders (“Closure Orders”). Joseph Tambellini, Inc. d/b/a Joseph Tambellini Restaurant (“Tambellini”) is a Pittsburgh-based restaurant, insured by Erie Insurance Exchange (“Erie”) under a commercial general liability policy. Tambellini contends that COVID-19 and the Closure Orders forced it to shut down. On April 17, 2020, Tambellini filed an action

against Erie in the Allegheny County Court of Common Pleas, seeking a declaration that its Erie policy covers all of its losses, damages and expenses arising from COVID-19 and the Closure Orders. Less than two weeks later, on April 29, 2020, Tambellini filed with this Court an “Emergency Application for Extraordinary Relief Pursuant to Rule 3309, 42 Pa.C.S. § 726 and King’s Bench Powers” (“Application”).¹

With its Application, Tambellini asks this Court not only to assume jurisdiction over its Court of Common Pleas action against Erie, as its insurer, but also asks the Court, on behalf of all insured businesses throughout the Commonwealth, to exercise its King’s Bench powers to assume control of all litigation – by all business owners against all insurance companies – for losses that may have resulted from COVID-19 and the Closure Orders.²

Based on the facts alleged in its original complaint, Tambellini asserts that this Court’s supervision is required to address the insurance claims that have or may arise due to COVID-19 and the Closure Orders and would have this Court circumvent the standard trial and appellate process for those claims. In filing the

¹ Although Tambellini seeks declaratory relief from this Court, it does not reference the Pennsylvania Declaratory Judgment Act, 42 Pa.C.S. §§ 7501 *et seq.* or its requirements.

² The application does not differentiate among commercial insurers, property insurers, homeowners’ insurers, vehicle insurers, or any other type of insurance carrier. It also fails to describe what types of policies or policy terms, conditions, exceptions, endorsements and exclusions that the Court should review. Tambellini does not assert that it has a contractual relationship or standing with respect to any Pennsylvania insurer other than Erie.

Application, Tambellini did not provide notice to any of the other business owners, whose interests it purports to represent to this Court. Tambellini also failed to provide notice to any of the insurance companies, whose rights it would have this Court summarily disregard.

B. Pennsylvania’s Response To COVID-19 And Types Of Relief Available To Affected Businesses

The Closure Orders included an addendum, listing businesses that were “life-sustaining” and that could remain open. The Closure Orders used the North American Industry Classification System, a code that the federal government uses, to compile the list of life-sustaining businesses. That list was amended at least three times over the first 10 days following the initial closure order, and has continued to evolve, most recently with revisions on April 28, 2020. Within the matrix of businesses affected, the Closure Orders have permitted some businesses to operate to varying degrees. See <https://www.scribd.com/document/452553026/UPDATED-11-45am-April-28-2020-Industry-Operation-Guidance> (last viewed May 5, 2020). Pennsylvania’s comprehensive list correlates to the directive of the Department of Homeland Security Cybersecurity and Infrastructure Security Agency, which identified 16 critical infrastructure industries. See *Friends of Danny DeVito, et al. v. Tom Wolf, Governor*, Docket No. 68 MM 2020 (Pa. April 13, 2020), 5-6.

The Governor also established a waiver process, which allowed a business to obtain clarification as to whether it was or was servicing a life-sustaining business. As of March 24, 2020, over 34,000 waiver applications had been filed with the Commonwealth. *Id.* at 43.

C. The Insurance Industry In Pennsylvania

The Pennsylvania Insurance Department regulates insurance companies in Pennsylvania. 40 P.S. §§ 41 *et seq.*; see also *Foster v. Mut. Fire, Marine & Inland Ins. Co.*, 531 Pa. 598, 608, 614 A.2d 1086, 1091 (1992) (this Court recognized “the specialized complexities involved in insurance generally,” and in the regulation of this industry). The Insurance Commissioner is afforded broad supervisory powers to regulate the insurance business. 40 P.S. § 221.1(c). Scores of insurance companies write property insurance in the Commonwealth for over one million Pennsylvania businesses.³

Commercial property policies in Pennsylvania can cover, *inter alia*, property damage to scheduled or unscheduled real and personal property, the property of others, as well as additional coverages such as extra expense, business interruption and contingent business interruption. These coverages may be combined with

³ See, e.g., Pennsylvania Insurance Department, Finding an Insurance Company, <https://www.insurance.state.pa.us/scripts/gfsearch> (last visited May 4, 2020) (listing over 43 property insurance companies); see, e.g., Pennsylvania Small Business Development Center, <https://www.pasbdc.org/resources/small-biz-stats> (last visited May 4, 2020) (placing the number of small business in Pennsylvania at over 995,000).

many other types of coverages, including commercial general liability coverage. No “one size-fits-all” policy exists. One business might opt to have an “all risk” policy, another a “named perils” policy. Each policy’s grant of coverage may reflect individually customized, broadened or restricted language through the inclusion or deletion of exclusionary language written into a manuscript policy or with endorsements or riders that broaden, limit or eliminate specific coverages or modify language used in the policy.⁴

When an insurance dispute arises, courts must examine the actual language used in a specific insurance contract to determine the rights and obligations of the parties.⁵ Insurance disputes typically involve fact-intensive review and claim-by-

⁴ The Insurance Department and Commissioner have recently noted: “[b]usiness interruption insurance does not usually cover communicable diseases, such as COVID-19. This insurance coverage replaces lost income if a business is closed for a reason related to property damage to the location, like a fire,” and generally, business interruption insurance “was not designed or priced to cover communicable disease, such as COVID-19.” See “FAQ: COVID-19 Business Interruption Insurance,” Pennsylvania Department of Insurance website, available at <https://www.insurance.pa.gov/coronavirus/Pages/COVID-Business-Insurance.aspx> (last visited May 5, 2020; see also, Elizabeth Blossfield, More States Introduce COVID-19 Business-Interruption Bills, *Claims Journal* (Apr. 16, 2020), <https://www.claimsjournal.com/news/national/2020/04/16/296600.htm> (quoting Pennsylvania Insurance Commissioner).

⁵ This Court has long recognized, in coverage disputes, that the specific language and terms of a policy control. Effect must be given to all provisions in the contract and “interpretation must be applied to the language actually employed.” *Sykes v. Nationwide Mut. Ins. Co.*, 413 Pa. 640, 643, 198 A.2d 844, 845–46 (1964) (citations omitted). “In cases of a written contract, the intent of the parties is the writing itself. *Pines Plaza Bowling, Inc. v. Rossview, Inc.*, 394 Pa. 124, 145 A.2d 672 (1958). The intent of the parties is to be ascertained from the contractual document itself. *Hutchison v. Sunbeam Coal Corp.*, 513 Pa. 192, 519 A.2d 385, 390 (1986). The parties have the right to make their own contract, and it is not the function of a court to rewrite it. *Meeting House Lane, Ltd. v. Melso*, 628 A.2d 854, 857 (Pa. Super. 1993).

claim analyses of the specifics surrounding a claimed loss. Findings for a business interruption claim, based on the specific circumstances applied to specific policy provisions of the insurance contract, could include whether Pennsylvania law applies; whether actual direct physical loss or damage to covered property has occurred; whether any other exclusions, including those for virus, apply; whether the policyholder has met all conditions precedent to coverage; whether the policyholder took required steps to mitigate damages or restore operations; and whether time requirements have been met. The actual amount of any covered business income or extra-expenses incurred must also be determined on a claim-by-claim basis. Each case would involve unique discovery and pre-trial issues before the courts.

Insurance disputes in the Commonwealth will not necessarily involve policies governed by Pennsylvania law. In resolving conflicts of law questions, courts must determine which state has the greater interest in the application of its law and “which state had the most significant contacts or relationships with the insurance contract.” *Budtel Assocs., LP v. Continental Cas. Co.*, 915 A.2d 640, 643 (Pa. Super. 2006). Resolution of conflict of law issues depends on the facts of each case, creating more individualized factual issues. This Court’s exercise of emergency powers to adjudicate claims based on the insurance law of other states would be of little utility.

The Commonwealth’s Courts of Common Pleas provide an efficient forum for adjudicating insurance disputes, allowing for the determination of the law applicable to each policy, appropriate discovery, factual evidence and witnesses. Some counties, including Allegheny County, where Tambellini filed its complaint, have developed procedures for handling complex, commercial litigation and have judges who are experienced in trying these cases.⁶ Given the different Closure Orders, modifications and waivers that will be applied differently to different industries and different companies within the same industries, factual questions arising from COVID-19 must be addressed on a claim-by-claim basis under the specific terms of and law applicable to each policy.

⁶ See, e.g., Allegheny County Court of Common Pleas Local Rule 249 Assignment of Judges, Commerce and Complex Litigation Center, https://www.alleghenycourts.us/civil/commerce_complex_litigation.aspx (last visited May 4, 2020) (identifying “Insurance coverage disputes arising from policies insuring business enterprises and any disputes as to environmental insurance coverage provided, as to both types of disputes, that the dispute involves an amount of at least \$250,000” as commercial cases presumptively eligible to be assigned to Commerce and Complex litigation center); *see also* Philadelphia Courts, <https://courts.phila.gov/common-pleas/trial/civil/> (last visited May 5, 2020) (“The Philadelphia Commerce Court Case Management Program (“Commerce Court”) is a specialized civil program of the Trial Division of the Philadelphia Court of Common Pleas. Commercial and business-to-business disputes filed after January 2000”).

IV. THE ONE-SIZE-FITS-ALL RELIEF SOUGHT HERE IS UNTENABLE AND WOULD REFLECT AN INAPPROPRIATE EXERCISE OF THIS COURT’S KING’S BENCH POWERS.

A. This Court’s Extraordinary Jurisdiction and Exercise of King’s Bench Powers Must Be Used Sparingly And Should Not Be Used Here

Tambellini’s Application asks this Court both to assume extraordinary jurisdiction, pursuant to Section 726 of the Judicial Code, 42 Pa. C.S. § 726; and to exercise King’s Bench powers, as described in Pennsylvania Rule of Appellate Procedure 3309 and recognized in Judicial Code Section 502, 42 Pa. C.S. § 502. Tambellini not only seeks the Court’s extraordinary jurisdiction for its specific Court of Common Pleas complaint; but asks the Court to exercise its King’s Bench powers over any and all questions of insurance coverage arising from COVID-19 and the Closure Orders, for all businesses and all insurers in the Commonwealth.

This Court has exercised its extraordinary jurisdiction only in limited circumstances and exercises its King’s Bench powers only on rare occasions. See *Com. v. Morris*, 565 Pa. 1, 17, 771 A.2d 721, 731 (2001) (where the Court exercised extraordinary jurisdiction over questions involving death penalty review, it noted that exercise of extraordinary jurisdiction “should be used sparingly.”); *Com. v. Williams*, 634 Pa. 290, 302, 129 A.3d 1199, 1206 (Pa. 2015) (King’s Bench authority must be exercised “with extreme caution”). The Court explained:

Pursuant to 42 Pa.C.S. § 726, we may “in any matter pending before any court or district justice of this Commonwealth involving an issue of

immediate public importance, assume plenary jurisdiction of such matter at any stage thereof and enter a final order or otherwise cause justice to be done.” We have noted that in a particular case it may be appropriate to assume jurisdiction under section 726 in order to conserve judicial resources, expedite the proceedings and provide guidance to the lower courts on a question that is likely to recur. *Commonwealth v. Martorano*, 535 Pa. 178, 634 A.2d 1063, 1073, n. 6 (1993).

The Court cautioned that “the presence of an issue of immediate public importance is not alone sufficient to justify extraordinary relief... [W]e will not invoke extraordinary jurisdiction unless the record clearly demonstrates petitioner’s rights.” *Id.*, citing *Cnty. of Berks v. Pa. Labor Relations Bd.*, 544 Pa. 541, 678 A.2d 355, 359 (1996) (citation omitted).

Even where important government functions were at issue, this Court has declined to exercise its extraordinary jurisdiction and King’s Bench powers. See, e.g., *In re Dauphin Cnty. Fourth Investigating Grand Jury*, 596 Pa. 378, 390, 943 A.2d 929, 935-36 (2007) (declined to exercise extraordinary jurisdiction in challenge to a Grand Jury process, noting that “challenges are properly reviewable in the ordinary course, only once a final order issues,” but exercised extraordinary jurisdiction with respect to question as to county district attorney’s authority); *Bd. of Revision of Taxes, City of Philadelphia v. City of Philadelphia*, 607 Pa. 104, 122, 4 A.3d 610, 620 (2010) (refusing to exercise King’s Bench power where parties’ dispute over “the propriety of reducing the Board of Revision of Taxes members’ salaries, while important, [did] not require accelerated review by this

Court out of the ordinary course.”). This Court has noted that its “principal obligations are to conscientiously guard the fairness and probity of the judicial process and the dignity, integrity, and authority of the judicial system, all for the protection of the citizens of this Commonwealth.” *Williams*, 634 Pa. at 302, 129 A.3d at 1206 (citing *In re Bruno*, 627 Pa. 505, 573, 101 A.3d 635, 675 (Pa. 2014); *In re Franciscus*, 471 Pa. 53, 61, 369 A.2d 1190, 1194 (1977)).

This Court already has recognized that, despite the challenges that COVID-19 poses, exercise of its extraordinary jurisdiction and King’s Bench powers is often not warranted. As recently as April 13, 2020, this Court had an opportunity to consider a constitutional/King’s Bench challenge to the Closure Orders. See *DeVito*.⁷ The Court’s treatment of that application highlights why the exercise of the Court’s extraordinary powers is inappropriate here. *DeVito* involved only two respondents, the Governor and the Secretary of Health, who both agreed that the Court should exercise its King’s Bench jurisdiction to resolve constitutional issues. *Id.* at 2. It also involved a request to interpret the Governor’s authority under statutes involving declaration of a disaster emergency.

Although the full Court agreed on the importance of ruling on the constitutionality of the Closure Orders, and the Governor’s discretion to issue

⁷ The U.S. Supreme Court has denied an application to stay this Court’s decision in *DeVito*. U.S. Supreme Court Docket No. 19A1032, (May 6, 2020 Order Denying Application for Stay).

those orders, Chief Justice Saylor, Justice Dougherty and Justice Mundy indicated that they would have refrained from exercising discretion to grant King’s Bench jurisdiction because “several material aspects of the petitioners’ claims **may involve issues of disputed fact.**” *Id.*, Concurring and Dissenting Opinion at 1 (emphasis supplied). Those Justices felt that the issues raised “should have been left to the Commonwealth Court, in the first instance, as the court of original **jurisdiction invested with fact-finding capabilities.**” *Id.* at 4 (emphasis supplied). Here, unique insurance disputes will involve exponentially broader, individualized factual issues. See Section III(C), *supra*.

This Court has conscientiously guarded against use of its extraordinary powers and use of those powers is clearly unwarranted here. In the context of one action of one insured against its insurer, Tambellini would have this Court make rulings that would affect the rights of insurers and policyholders in this Commonwealth without regard for the fact-intensive, claim-by-claim, policy-by-policy analyses that are required for an appropriate determination of the parties’ rights and obligations, based on the actual state law applicable to each policy, the actual language of each contract and the actual facts of each insurance claim or dispute. Tambellini asks the Court to by-pass that system and the myriad of factual situations that have and may continue to arise in the context of COVID-19 and the

Closure Orders and instead to impose a one-size-fits-all resolution through a definitive and indiscriminate declaration regarding coverage.

The Commonwealth's Courts of Common Pleas and their experienced trial judges remain the best forum for adjudicating insurance disputes, allowing for the factual evidence and witnesses necessary to answer these questions. Tambellini may seek an immediate resolution to its claims but it does not and cannot assert this Court could provide any general guidance that would recur and would apply to any and all insurance disputes, to all Pennsylvania policy holders and all Pennsylvania insurers, due to COVID-19. Contrary to Tambellini's claims, jurisdiction over COVID-19-related insurance disputes should remain in courts vested with fact-finding capabilities.

B. The Application Asks This Court To Violate The Fundamental Due Process Rights Of All Pennsylvania Insurers

Tambellini asks this Court to declare the coverage obligations of all "insurers in the Commonwealth" and then to enforce those obligations as to "all businessowners in the Commonwealth." Appl. at ¶ 52, 53, 54. This request denies the unnamed insurers notice and an opportunity to be heard and violates the Due Process Clause of the United States Constitution. See U.S. Const. Amend. XIV. "The fundamental requisite of due process of law is the opportunity to be heard." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950) (internal

quotation marks omitted)); *Shelley v. Kraemer*, 334 U.S. 1, 16 (1948) (“The action of state courts in imposing penalties or depriving parties of other substantive rights without providing adequate notice and opportunity to defend, has, of course, long been regarded as a denial of the due process of law guaranteed by the Fourteenth Amendment.”); *Com. Dept. of Transp., Bureau of Driver Licensing v. Clayton*, 546 Pa. 342, 684 A.2d 1060, 1064 (1996) (recognizing that the essential requisites of procedural due process are notice and meaningful opportunity to be heard). Tambellini’s failure to comply with Pa. R. A. P. 3309, which requires applicants for extraordinary relief to provide notice to all “persons who may be affected thereby,” and thereby meaningfully access their “opportunity to be heard” and present their defenses (*Mullane*, 339 U.S. at 314), underscores the Application’s due process deficiencies. Because it would be extremely cumbersome to comply with the rule’s notice requirements, Tambellini simply ignores them. This demonstrates precisely why the single, massive, extraordinary jurisdiction matter proposed is not appropriate, and indeed violates due process rights.

By proposing to foreclose the unnamed insurers from presenting any defenses, the relief that Tambellini seeks would also violate the due process guarantees of the Fourteenth Amendment. *Philip Morris USA v. Williams*, 549 U.S. 346, 353 (2007) (“[T]he Due Process Clause prohibits a State from punishing

an individual without first providing that individual with an opportunity to present every available defense.”).

The interaction of extraordinary jurisdiction and the right to a jury trial also implicate due process considerations. The Pennsylvania Constitution expressly requires civil jury trials. *See* Pa. Const. art. I, sec. 6 (“Trial by jury shall be as heretofore, and the right thereof remain inviolate. The General Assembly may provide, however, by law, that a verdict may be rendered by not less than five-sixths of the jury in any civil case.”). Pennsylvania courts have applied the plain language meaning of this rule. *See, e.g., Gianni v. William G. Phillips, Inc.*, 933 A.2d 114, 115 (2007) (noting state constitutional right to trial by jury). Were this Court to accept jurisdiction, it would need to expend significant resources monitoring jury trial proceedings, something the Courts of Common Pleas have both capacity and expertise to do. *Cf. Pa. Const. art. V, sec. 9* (“there shall also be a right of appeal from a court of record or from an administrative agency to a court of record or to an appellate court).

Further, the process as contemplated may deny room for defendants to exercise their federal statutory rights to removal to federal court, 28 U.S. Code § 1441, or to defend based on lack of personal jurisdiction, *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980) (“The Due Process Clause of the Fourteenth Amendment limits the power of a state court to render a

valid personal judgment against a nonresident defendant.”). The ill-defined scope of the affected insurers could sweep in insurers not otherwise subject to personal jurisdiction in Pennsylvania or that would typically be entitled to removal of an action to federal court. Alternatively, to the extent that the relief that Tambellini suggests in the Application is meant somehow to afford case-by-case exercise of rights to removal and contestation of personal jurisdiction, than the all-at-once, up-or-down adjudication it promises is illusory, particularly where many of these cases may address the law of sister states, which Pennsylvania courts are obligated to respect and apply where appropriate. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985).⁸

As a result, even if the Court were to consider exercising its extraordinary jurisdiction here, it could not do so without flouting these and other constitutional protections, leading to invalid results and creating the litigation bottleneck that Tambellini asserts would be cleared.

⁸ At the federal level, jury trials form part and parcel of American consideration of due process rights. The Seventh Amendment requires breach-of-contract disputes between private parties to be decided by a jury. This right to a jury trial is paramount. *See Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 510 (1959) (“Since the right to jury trial is a constitutional one . . . discretion [in determining the order of causes to be tried first] is very narrowly limited and must, wherever possible, be exercised to preserve jury trial.”); *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 473 (1962) (“*Beacon Theatres* requires that any legal issues for which a trial by jury is timely and properly demanded by submitted to a jury.”).

C. The Declaratory Relief Demanded Here Cannot Be Granted Without The Participation Of All Pennsylvania Insurers, As Indispensable Parties

Tambellini seeks to determine the rights under all insurance policies in the Commonwealth without the participation of insurers, other than Erie. In Pennsylvania, an indispensable party is one “whose rights are so directly connected with and affected by litigation that [the entity] must be a party of record to protect such rights[.]” *Columbia Gas Transmission Corp. v. Diamond Fuel Co.*, 464 Pa. 377, 379, 346 A.2d 788, 789 (1975).; see also *CRY, Inc. v. Mill Service, Inc.*, 536 Pa. 462, 468, 640 A.2d 372, 375 (1994) (same). Here, the absent and insurers and policyholders, whose rights Tambellini would have this Court adjudicate *in absentia*, have essential contractual rights that cannot be adjudicated without them. Because these insurers are not parties, this Court lacks subject matter jurisdiction and entertaining Tambellini’s Application without them would risk rendering an advisory opinion.

Failure to join an indispensable party to a lawsuit deprives the court of subject matter jurisdiction. *In re 2005 Sale of Real Estate by Clinton Cnty. Tax Claim Bureau*, 915 A.2d 719 (Pa. Commw. 2007); *Polydyne, Inc. v. City of Philadelphia*, 795 A.2d 495 (Pa. Commw. 2002). Failure to join an indispensable party is a nonwaivable defense under the Pennsylvania Rules of Civil Procedure. Pa.R.Civ.P. 1032(a).

In determining whether a party is indispensable, the focus is on the party that has not been joined. This Court has stated that determining whether a party is indispensable requires consideration of at least four factors:

- Do absent parties have a right or interest related to the claim?
- If so, what is the nature of that right or interest?
- Is that right or interest essential to the merits of the issue?
- Can justice be afforded without violating the due process rights of absent parties?

CRY, Inc., at 375 (citation omitted). It is beyond dispute that parties to a contract must be joined as parties to a dispute involving the rights under that contract. See *Xpress Truck Lines, Inc. v. Pennsylvania Liquor Control Bd.*, 503 Pa. 399, 469 A.2d 1000, 1006 (1983).

This Court has held that even if one or more of the parties asserts the existence of important insurance coverage issues that are likely to recur, it does not obviate the need to join indispensable parties. See *Vale Chem. Co. v. Hartford Acc. & Indem. Co.*, 512 Pa. 290, 295 (1986). In that case, the Court recognized the importance of joining interested parties to declaratory judgment actions involving insurance coverage, including insurers and affected persons with claims against the policyholder. *Id.* at 295-96. In asking this Court to consider this single, expedited proceeding, Tambellini would have the Court exclude the insurers and the policyholders whose interests it asks this Court to adjudicate.

Excluding these interested parties would result in impermissible advisory opinion. See *Vale*, 512 Pa. at 295 n.2. “A declaratory judgment may be obtained only where there is a real controversy; it must not be employed to determine rights in anticipation of events that may never occur or for consideration of moot cases or for the rendition of an advisory opinion that may prove to be academic.” *Szoko v. Twp. of Wilkins*, 974 A.2d 1216, 1219 n. 5 (Pa. Commw. 2009) (citing *Mazur v. Washington Cnty. Redevelopment Auth.*, 954 A.2d 50 (Pa. Commw. 2009), appeal denied, 600 Pa. 766, 967 A.2d 961 (2009)). Tambellini cannot disregard the interests of the indispensable parties it has failed to join to its ill-conceived application for extraordinary relief.

V. CONCLUSION

For the foregoing reasons, the AIG *amici curiae* asks this Court to refrain from exercising its extraordinary jurisdiction and King's Bench powers.

Respectfully submitted,



By _____
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On behalf of AIG Amici Curiae

Dated: May 7, 2020

CERTIFICATE OF COMPLIANCE

Pursuant to Pennsylvania Rule of Appellate Procedure 1115 (f), I hereby certify that this BRIEF has a word count of 4,450 words, as counted by Microsoft Word's word count tool.

A handwritten signature in blue ink that reads "Clifford B. Levine". The signature is written in a cursive style.

Clifford B. Levine

IN THE SUPREME COURT OF PENNSYLVANIA

JOSEPH TAMBELLINI, INC.,	:	Emergency Application for
d/b/a JOSEPH TAMBELLINI	:	Extraordinary Relief
RESTAURANT,	:	
	:	Matter Pending in the Allegheny
Petitioner,	:	County Court of Common Pleas
	:	No. GD 20-005137
vs.	:	
	:	
ERIE INSURANCE EXCHANGE,	:	
	:	
Respondent.	:	

ORDER

AND NOW this ___ day of May, 2020, upon consideration of the Application of the AIG Applicants, as identified, to participate as *Amici Curiae* in this proceeding, the AIG Application is GRANTED and the Court will accept the Brief of AIG *Amici Curiae*, as attached to the Application, for consideration in this matter.

BY THE COURT:

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing APPLICATION and BRIEF OF AIG APPLICANTS was filed with the Court on the 7th day of May, 2020 and that a true and correct copy of the APPLICATION and BRIEF, as permitted by the Court, was filed and served by Electronic and U.S. First Class Mail on the 7th day of March, 2020, as follows:

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