

FHMS COVID-19 Resource Center:

PA SUPREME COURT DENIES KING'S BENCH BUSINESS-INTERRUPTION PETITION

It has been over 200 years since a monarch ruled Pennsylvania, but King's Bench Power still exists in Pennsylvania. The Pennsylvania Supreme Court recently rebuffed a request to use this ancient power to address the very recent emergence of business-interruption insurance claims arising out of the COVID-19 pandemic.

King's Bench Power is the Pennsylvania Supreme Court's extraordinary ability "generally to minister justice to all persons and to exercise the powers of the court, as fully and amply, to all intents and purposes, as the justices of the Court of King's Bench, Common Pleas and Exchequer, at Westminster, or any of them, could or might do on May 22, 1722," 42 Pa.C.S. § 502, when Pennsylvania's provincial legislature established the Supreme Court. The King's Bench Power, together with statutory extraordinary jurisdiction, 42 Pa.C.S. § 726, allow the Pennsylvania Supreme Court to take over any issue affecting the judiciary in Pennsylvania, whether or not a case is pending in another state court.

The Court has historically used its extraordinary jurisdiction powers sparingly, but the COVID-19 pandemic has caused an increase in so-called King's Bench petitions. In [Friends of Danny DeVito v. Wolf, No. 66 MM 2020](#), the Supreme Court rejected challenges to Pennsylvania Governor Tom Wolf's COVID-19 shutdown order, over the [dissent of three Justices](#). And in [In re C.Z., No. 24 EM 2020](#), the Court declined to use the King's Bench power to exercise direct control over juveniles' placement into juvenile correctional facilities during the COVID-19 pandemic.

In *Joseph Tambellini, Inc. v. Erie Insurance Exchange*, No. 52 WM 2020 a Pittsburgh restaurant filed a declaratory judgment action in the Court of Common Pleas of Allegheny County seeking business-interruption insurance coverage after COVID-19 and Governor Wolf required his restaurant to close. In addition to filing suit in Pittsburgh, Tambellini filed a [King's Bench petition](#) in the Supreme Court asking the Supreme Court to assume jurisdiction over all COVID-19 business interruption in Pennsylvania.

Citing COVID-19's deleterious effects on business and the proliferation of business-interruption claims, Tambellini's request encompassed all businesses and all insurance companies, and included lawsuits that have not yet been filed. Tambellini asked that the Court coordinate all such lawsuits and prospective lawsuits before a judge to ensure consistency and expediency. Tambellini contended that the normal appeals process would take too long for businesses whose steep decline in revenue threatens their existence.

Erie Insurance [opposed Tambellini's petition](#), arguing that state and federal trial courts are equipped to handle Tambellini's and other claims. [Several insurance organizations](#) and [AIG's property-insurance subsidiaries](#) filed amici curiae briefs supporting Erie. The opponents to Tambellini's petition argued that differences in insurance carriers, policy language, types of insurance policies, types of claims, and claimants counseled against a "one-size-fits-all" approach to COVID-19 business interruption claims.

On May 14, 2020, the [Court denied the Tambellini King's Bench petition](#). The denial is a two-sentence, unsigned order with no dissent. It is difficult to extrapolate reasoning from a brief order. In contrast, however, the *Friends of DeVito* case generated a 51-page majority opinion and a 4-page dissent. The Supreme Court's unanimous, summary denial of the *Tambellini* King's Bench petition suggests that it prefers that business-interruption-coverage claims proceed in the normal way through the courts.

The Supreme Court's decision does not end Tambellini's case. Instead, it remains pending in the trial court. Tambellini still has the ability to seek an injunction, declaratory relief, and damages related to its denied insurance claim.

We continue to closely monitor emerging and anticipated trends facing insurers and insured, as well as the judicial and legislative responses to COVID-related insurance claims. As always, please do not hesitate to contact us with any questions.

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