


SALTZ MONGELUZZI & BENDESKY P.C.
BY: ROBERT J. MONGELUZZI/JEFFREY P. GOODMAN/
MARNI S. BERGER/SAMUEL B. DORDICK
IDENTIFICATION NOS: 36283/309433/309303/322647
52ND FLOOR
1650 MARKET STREET
PHILADELPHIA, PA 19103
(215) 496-8282

*Filed and Attested by the
Office of Judicial Records
ATTORNEY & SFCAN 20210106 pm
A. SILIGRINI*



<p>KEYSTONE SPORTS AND ENTERTAINMENT LLC 2501 Seaport Drive, BH100 Chester, PA 19013 <i>And</i> FC PENNSYLVANIA STADIUM LLC 2501 Seaport Drive, BH100 Chester, PA 19013 <i>And</i> PENNSYLVANIA PROFESSIONAL SOCCER LLC 2501 Seaport Drive, BH100 Chester, PA 19013 <i>And</i> RIVERTOWN DEVELOPERS, L.P. 2501 Seaport Drive, BH100 Chester, PA 19013 <i>And</i> RIVERTOWN, TCI, LP 2501 Seaport Drive, BH100 Chester, PA 19013 <i>And</i> KSE U2 LLC 2501 Seaport Drive, BH100 Chester, PA 19013 vs. FEDERAL INSURANCE COMPANY 251 North Illinois, Suite 1100 Indianapolis, Indiana 46204 <i>And</i> CHUBB INA HOLDINGS, INC. 436 Walnut Street, Philadelphia, Pennsylvania 19106 <i>And</i> CHUBB GROUP HOLDINGS, INC. 436 Walnut Street, Philadelphia, Pennsylvania 19106</p>	<p>PHILADELPHIA COUNTY COURT OF COMMON PLEAS</p> <p>COMMERCE PROGRAM</p> <p>JANUARY TERM 2021</p> <p>No.:</p> <p>JURY TRIAL DEMANDED</p>
---	---

“NOTICE

“You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by an attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgement may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

“YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

PHILADELPHIA BAR ASSOCIATION
LAWYER REFERRAL and INFORMATION SERVICE
One Reading Center
Philadelphia, Pennsylvania 19107
(215) 238-1701

“AVISO

“Le han demandado en corte. Si usted quiere defenderse contra las demandas nombradas en las páginas siguientes, tiene veinte (20) días, a partir de recibir esta demanda y la notificación para entablar personalmente o por un abogado una comparecencia escrita y tambien para entablar con la corte en forma escrita sus defensas y objeciones a las demandas contra usted. Sea avisado que si usted no se defiende, el caso puede continuar sin usted y la corte puede incorporar un juicio contra usted sin previo aviso para conseguir el dinero demandado en el pleito o para conseguir cualquier otra demanda o alivio solicitados por el demandante. Usted puede perder dinero o propiedad u otros derechos importantes para usted.

USTED DEBE LLEVAR ESTE DOCUMENTO A SU ABOGADO INMEDIATAMENTE. SI USTED NO TIENE ABOGADO (O NO TIENE DINERO SUFICIENTE PARA PAGAR A UN ABOGADO), VAYA EN PERSONA O LLAME POR TELEFONO LA OFICINA NOMBRADA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL. ESTA OFICINA PUEDE PROPORCIONARLE LA INFORMACION SOBRE CONTRATAR A UN ABOGADO.

SI USTED NO TIENE DINERO SUFICIENTE PARA PAGAR A UN ABOGADO, ESTA OFICINA PUEDE PROPORCIONARLE INFORMACION SOBRE AGENCIAS QUE OFRECEN SERVICIOS LEGALES A PERSONAS QUE CUMPLEN LOS REQUISITOS PARA UN HONORARIO REDUCIDO O NINGUN HONORARIO.

ASOCIACION DE LICENCIADOS DE
FILADELFIA
SERVICO DE REFERENCA E INFORMACION
LEGAL
One Reading Center
Filadelfia, Pennsylvania 19107
Telefono: (215) 238-1701

ORIGINAL CIVIL ACTION COMPLAINT AND JURY DEMAND

Plaintiffs, Keystone Sports and Entertainment LLC, FC Pennsylvania Stadium LLC; Pennsylvania Professional Soccer LLC, Rivertown Developers, L.P., Rivertown TCI, L.P., and KSE U2 LLC (collectively “Plaintiffs” or “Insureds”), file this Complaint for declaratory judgment and breach of contract against Defendants, Federal Insurance Company (“Federal”), Chubb INA Holdings, Inc. (“Chubb INA”), and Chubb Group Holdings, Inc. (“Chubb Group”) (collectively, “Defendants”) alleging the following:

I. INTRODUCTION

1. This action for declaratory judgment and breach of contract arises out of Defendants’ failure to comply with their obligations and provide insurance coverage for Plaintiffs’ claims under an “All-Risks” insurance policy, Customarq Series Customarq Classic Insurance Program Policy Number 3594-16-31 PHL, which was sold by Defendant Federal Insurance Company to Plaintiffs (the “Policy”).

2. Plaintiffs’ business is conducted in Subaru Park, an 18,500-seat stadium located at One Stadium Drive, Chester, Pennsylvania 19013; the training fields immediately outside of Subaru Park; the Training Facility located at 2525 Seaport Drive, Chester, Pennsylvania 19013; and an office building located at 2501 Seaport Drive, Chester, Pennsylvania 19013, all of which are insured premises under the Policy (collectively referred to as the “Insured Premises”).

3. Subaru Park is a world-class event space that hosts Major League Soccer, in addition to numerous other sporting events, concerts, entertainment events, private special events, training clinics, camps and tours. Subaru Park is the home of Major League Soccer’s Philadelphia Union, the winner of the 2020 Supporters’ Shield (a major trophy given to the team

with the best regular season record). The multipurpose event facility features 29 luxury suites, a full-service club restaurant open on event days and a built-in concert stage.

4. The Philadelphia Union Major League Soccer team trains, studies, and practices at the Training Facility for its matches and games. The Philadelphia Union also holds public training sessions at the Training Facility, where fans watch the team practice, and where sponsors pay for advertising space and other active marketing opportunities in order to advertise to those fans. Likewise, fans can purchase merchandise, food and beverages in Subaru Park and sponsors pay significant sums for advertising space throughout Subaru Park.

5. The Policy provides business interruption coverage for business income and other related losses caused by “direct physical loss or damage.” Due to COVID-19, Plaintiffs’ properties have suffered “direct physical loss or damage” under the plain and ordinary meaning of that term. Plaintiffs have suffered “direct physical loss or damage” because COVID-19 impaired Plaintiffs’ properties. COVID-19 made Subaru Park and the Insured Premises unusable in the way that they had been used before the onset of the COVID-19 pandemic.

6. COVID-19 has physically infested the Insured Premises.

7. Instead of being able to pack fans into Subaru Park and the training fields to enjoy soccer and other sporting events, concerts, entertainment events, private special events, training clinics, camps, and tours, Plaintiffs had to keep the properties closed, and upon reopening had to substantially limit public attendance. And instead of allowing the Philadelphia Union team to study, work out, train, practice for their soccer matches and host public training camps, Plaintiffs had to keep the Training Fields and Facility completely closed for a considerable period of time. Even now, they must still operate at a significantly reduced capacity at the Training Fields and Facility.

8. These losses are direct—Plaintiffs are not asking their insurer for reimbursement after someone obtained a judgment against them for getting them sick. That might be an indirect loss. Rather, Plaintiffs are asking them to pay for their loss of business income occasioned directly by the inability to use their properties due to the actual presence and continued threat of COVID-19 infestation.

9. These losses are physical. Plaintiffs have been and are unable to use Subaru Park and the Insured Premises in the manner in which they had previously been used.¹ The Insured Properties have lost at least part of their functionality and most of their ability to generate revenue. The probable presence of the virus and probability of illness prevents the use of the Insured Premises in their normal way in no less of a way than, on a rainy day, a crumbling and open roof from the aftermath of a tornado would make the interior space of a business unusable.

10. Moreover, the SARS-CoV-2 virus that causes COVID-19 is physical—it can be seen, counted, measured, and destroyed; it replicates itself and destroys other cells and organisms. Importantly, it can exist in the air and on surfaces for indeterminate periods of time, and it can be transferred from the air and surfaces into human bodies. The presence of the virus in a facility is a *physical* presence, and it is a damaging one. COVID-19 was physically present at the Insured Properties and rendered their use dangerous.

11. These losses are losses under the Policy. They result from the loss of functionality of the spaces otherwise available for the purpose of generating business income. The losses

¹ Note, however, that Plaintiffs are not seeking recovery for their loss of use. Plaintiffs are seeking coverage for their loss of business income. As an example that drives home the difference, some law firms have been unable to use their office space because of COVID-19, but nevertheless the law firms' business income has increased and they thus have faced no loss of business income. A claim by such a law firm for not being able to use its office space would be a "loss of use" claim. But the law firm would have no loss of *business income* claim. Here, Plaintiffs' businesses have stalled because of the impairment of their business spaces, and Plaintiffs are seeking the loss of business income under the business interruption coverage of their property insurance Policy.

reflect the diminishment of the physical space in the building. What once could hold tens of thousands of raucous and energetic fans can now hold few fans, and what once could hold both professional and amateur athletes training to perfect their skills now holds only limited training of athletes in the same space at the same time. What could once sell merchandise to tens of thousands of paying customers can now sell to only a mere fraction of those customers.

12. These losses constitute damage. A physical virus has been present in and around Plaintiffs' facilities, impairing their function for their ordinary and intended uses, forcing their closure, and requiring steps to be taken to physically restore the facilities to a usable state.

13. Numerous Philadelphia Union athletes and staff that were present in the Insured Premises tested positive for COVID-19.²

14. Insurers around the country are now asking federal and state judges to interpret the words "direct physical loss or damage," but those words need no interpretation. What insurers want is for courts to change the meaning of those terms—instead of just letting a jury apply the facts of the case to these ordinary words and reach a verdict in the same way a jury would reach a verdict if it were called upon to answer whether a person was injured or property was damaged.

15. Plaintiffs entered into an insurance contract with Defendant Federal, the language to which, upon information and belief, was reviewed and/or approved by Defendants Chubb INA and Chubb Group. Although the Policy provides coverage to Plaintiff for "all-risks," including that of business interruption and related losses due to physical loss or damage to property, Defendants have reneged on their obligations. Defendants have relied on their own inapplicable exclusions and their own internal schemes to limit or altogether deny Plaintiffs from the recovery to which they are entitled. Plaintiffs have paid premiums in full and relied on the Policy as a

² Plaintiffs cannot, at this time, publicly disclose the identity of those who have tested positive for COVID-19 due to HIPAA regulations.

shield against unforeseen loss or damage and resulting loss of income. Yet, instead of following through on their end of the bargain, Defendants have failed to honor their duties under the Policy.

II. THE PARTIES

16. Plaintiff Keystone Sports and Entertainment LLC is organized under the laws of the State of Delaware, with its principal place of business at 2501 Seaport Drive, Suite BH100, Chester, Pennsylvania 19013, and is an additional Named Insured under the Policy. See **Exhibit 1** at 188.

17. Plaintiff FC Pennsylvania Stadium LLC is organized under the laws of the State of Delaware, with its principal place of business at One Seaport Drive, Chester, Pennsylvania 19013, and is a Named Insured under the Policy. See **Exhibit 1** at 10 & 188.

18. Plaintiff Pennsylvania Professional Soccer LLC is organized under the laws of the State of Delaware with its principal place of business at 2501 Seaport Drive, Suite BH100, Chester, PA 19013, and is an additional Named Insured under the Policy. See **Exhibit 1** at 188.

19. Plaintiff Rivertown Developers, L.P., is organized under the laws of the State of Pennsylvania with its principal place of business at 2501 Seaport Drive, Suite BH100, Chester, Pennsylvania 19013, and is an additional Named Insured under the Policy. See **Exhibit 1** at 188.

20. Plaintiff Rivertown TCI, L.P. is organized under the laws of the State of Pennsylvania with its principal place of business at 2501 Seaport Drive, Suite BH100, Chester, Pennsylvania 19013, and is an additional Named Insured under the Policy. See **Exhibit 1** at 188.

21. KSE U2 LLC is organized under the laws of the State of Delaware with its principal place of business at 2501 Seaport Drive, Suite BH100, Chester, PA 19013. KSE U2 LLC is a

covered entity under the Policy because it is a wholly owned subsidiary of Keystone Sports and Entertainment LLC, an additional Named Insured. See **Exhibit 1** at 188.

22. Defendant Federal Insurance Company (“Federal”) is incorporated under the laws of the State of Indiana, with a principal place of business located at 251 North Illinois, Suite 1100, Indianapolis, Indiana 46204.

23. Federal is authorized to do business and issue insurance policies in the Commonwealth of Pennsylvania.

24. Chubb INA Holdings, Inc. (“Chubb INA”) is incorporated under the laws of the State of Pennsylvania, with a principal place of business located at 436 Walnut Street, Philadelphia, Pennsylvania 19106.

25. Chubb Group Holdings Inc. (“Chubb Group”) is incorporated under the laws of the State of Pennsylvania, with a principal place of business located at 436 Walnut Street, Philadelphia, Pennsylvania 19106.

III. JURISDICTION AND VENUE

26. Subject matter jurisdiction exists over this matter pursuant to the Pennsylvania Declaratory Judgments Act, 42 Pa. Const. Stat §§7531-7541, which may be invoked to interpret the obligations of the parties under an insurance contract.

27. This court has personal jurisdiction over Defendants because they do business within the Commonwealth of Pennsylvania and because the instant dispute arose from Defendants’ activities within the Commonwealth of Pennsylvania.

28. Venue is proper pursuant to Pa. R. Civ. P. 2179(b) because all three defendants regularly transact business in Philadelphia County and derive substantial revenue from their activities in Philadelphia County. Additionally, the obligations under the contract at issue were

to be performed, at least in part, in Philadelphia County and allegations and claims for relief set forth in this Complaint arise out of unlawful acts committed in Philadelphia County. Furthermore, Chubb INA and Chubb Group maintain principal places of business in Philadelphia County.

IV. FACTUAL BACKGROUND

29. The Policy covers the Insured Premises at Subaru Park, an 18,500-seat stadium located at One Stadium Drive, Chester, Pennsylvania 19013; the training fields outside of Subaru Park; the Training Facility located at 2525 Seaport Drive, Chester, Pennsylvania 19013; and the office building located at 2501 Seaport Drive, Chester, Pennsylvania 19013. The Insured Premises are world-class sports and entertainment facilities and related training facilities and office space. Subaru Park and the adjacent training fields can host a variety of events in addition to professional soccer games, including concerts, tailgates, and community activities. Subaru Park operated continuously from its construction in 2010 through March of 2020, when it was forced to close its doors to paying customers and cancel events due to the actual infestation and continued threat of COVID-19 and the resultant orders issued by governmental authorities.

30. Prior to the COVID-19 pandemic, Subaru Park would routinely host the Army-Navy soccer game, Collegiate Rugby Championship, lacrosse, and other major ticketed events, but these events had to be canceled due to COVID-19 and the subsequent civil authority orders.

31. In addition, the Philadelphia Union regularly hosted youth programs including clinics, camps, and tournaments at the Training Facility.

32. Federal is an insurance company that sold an insurance policy to Plaintiffs providing coverage to Plaintiffs against business income loss incurred resulting from “direct

physical loss or damage³. . .” See Policy No. 3594-16-31 PHL, attached hereto as **Exhibit 1**. The Policy had an effective term of July 1, 2019 to July 1, 2020.

33. For the premises located at 2501 Seaport Drive and One Stadium, the Policy provides blanket limits of \$168,772,890 for building, personal property and electronic data processing coverage and Business Income With Extra Expense Coverage limits of \$18,000,000. The Business Income With Extra Expense Coverage is split into two sub-sections entitled “Premises Coverages” and “Additional Coverages.” In pertinent part, the Premises Coverages include but are not limited to “Ingress and Egress Coverage,” and the Additional Coverages include but are not limited to Civil Authority and Dependent Business Premises Coverage.

34. For the Office Building located at 2501 Seaport Drive, the Policy provides Business Income with Extra Expense Coverage with limits of \$4,815,016.

35. The Policy provides an additional \$1,000,000 in Blanket Limits for the Premises Coverages which includes but is not limited to sub-limits of \$250,000 per location in extra expense coverage; and \$25,000 per location in loss prevention coverage. **Exhibit 1**, at p. 21-24.

36. The Policy also provides Dependent Business Premises coverage with limits of \$250,000 per occurrence and Ingress or Egress coverage with limits of \$50,000 per occurrence. **Exhibit 1**, at p. 26-27.

37. In exchange for Federal’s agreement to take on Plaintiffs’ risk of loss, Plaintiffs paid \$163,038.00 in premiums for the Policy from July 1, 2019 to July 1, 2020. Plaintiffs have paid or tendered all consideration required under the Policy, including payment of premium.

³ Though the Policy includes some coverage exclusions, none of the exclusions are applicable to Plaintiffs’ claims.

A. COVID-19 Is a Highly Contagious and Deadly Communicable Disease

38. COVID-19, a disease resulting from the SARS-CoV-2 novel coronavirus, is a deadly communicable disease that has already infected approximately 19.2 million people in the United States and killed more than 330,000 Americans.⁴

39. While a vaccine was just very recently developed and approved for use, the availability of the vaccine is extremely limited and doses are being rationed to those who have a more immediate need for the vaccine, such as front-line healthcare workers. It is sure to be a considerable amount of time until the majority of Americans are vaccinated.

40. On March 11, 2020, the World Health Organization (“WHO”) declared the COVID-19 outbreak a pandemic.⁵ On March 13, 2020, President Trump declared a national emergency due to the outbreak in the United States.⁶

41. The time between exposure to the coronavirus and first symptoms, otherwise known as the incubation period, for COVID-19 can last up to 14 days.⁷ Some COVID-19 patients show symptoms, and some are asymptomatic. Even asymptomatic persons can transmit COVID-19 for an extended period of time, thought to be even longer than 14 days.⁸ Those

⁴ See <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last viewed October 29, 2020).

⁵ See <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> (last viewed October 29, 2020).

⁶ See <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/> (last viewed October 29, 2020).

⁷ See <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html#:~:text=The%20incubation%20period%20for%20COVID,CoV%2D2%20infection.> (last viewed October 29, 2020).

⁸ See <https://www.acpjournals.org/doi/10.7326/M20-3012> (last viewed October 29, 2020).

people who eventually show symptoms can also spread the disease even in their pre-symptomatic state.⁹

42. COVID-19 can also exist on surfaces for days. COVID-19 remains active on plastic and stainless steel surfaces for up to three days, on cardboard for 24 hours, on copper for four hours, and is detectable in aerosols for up to three hours.¹⁰

43. All of these materials are used by Plaintiffs and otherwise present in the Insured Premises.

B. Plaintiffs' Employees and Athletes Contracted COVID-19 and Were Present in the Insured Premises, Causing the Insured Premises to be Closed Down

44. In early March, 2020, the Philadelphia Union reported that one of its athletes had tested positive for COVID-19. This was the first positive COVID-19 case in all of Major League Soccer.¹¹

45. Thereafter, additional Philadelphia Union athletes and staff members tested positive for COVID-19 in 2020. These athletes and staff members were present at the Insured Premises on multiple locations during the time period leading up to their positive test results. Individuals who came into contact with persons diagnosed with COVID-19 were also present at the Insured Premises on various dates in 2020.

46. Upon information and belief, individuals who were asymptomatic or pre-symptomatic and unknowingly carrying the coronavirus, including but not limited to team members, coaches, staff, employees and fans were present at the Insured Premises in 2020.

⁹ See https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_2 (last viewed October 29, 2020).

¹⁰ See <https://www.nih.gov/news-events/nih-research-matters/study-suggests-new-coronavirus-may-remain-surfaces-days> (last viewed October 29, 2020).

¹¹ See <https://www.usatoday.com/story/sports/mls/union/2020/04/01/coronavirus-philadelphia-union-player-first-mls-case-covid-19/5109563002/> (last viewed December 28, 2020).

47. Consequently, droplets and aerosols containing coronavirus spread from infected individuals to surfaces and the HVAC systems throughout the Insured Premises, thereby causing physical damage and alteration to property and harming the air quality therein.

48. Due to the extreme threat posed by COVID-19, Major League Soccer suspended all league and team activities on March 12, 2020.¹²

49. Due to the confirmed COVID-19 cases and confirmed COVID-19 presence at the Insured Premises, it became necessary to close Subaru Park, the adjacent practice fields, and Training Facility that comprise the Insured Premises on March 12, 2020. The staff that works in the office building was also sent home.

50. The Insured Premises were closed due to the presence of COVID-19.

51. Even after Subaru Park reopened to Philadelphia Union fans in a limited 15% capacity on October 11, 2020, the combined number of fans permitted all season was less than one game's worth of fans in a regular season.

C. **Federal, State, and Local Governments Issued Civil Authority Orders Because of COVID-19**

52. Due to the highly-contagious nature of COVID-19, in an effort to slow the spread of COVID-19, and as a consequence of physical loss or damage caused by COVID-19, federal, state, and local governments issued orders limiting the amount of people who could congregate in a group, requiring many businesses to close, and ordering individuals to stay at home except to participate in "essential" activities like going to the grocery store or going to a doctor for a pressing medical issue ("the Closure Orders").

¹² *Id.*

53. Under the Closure Orders, businesses that were deemed to be “non-essential” were required to be closed, with their employees working from home (if they were able to work at home, depending on the type of business—if not, they could not work).

54. Yet, even businesses that were labeled as “essential” under the Closure Orders have been severely affected—for example, restaurants could stay open under many Closure Orders, but were originally limited to take-out or delivery only.

55. Mass gatherings were and still are restricted under applicable Closure Orders.

56. The first confirmed cases of COVID-19 in Pennsylvania were reported on March 6, 2020.¹³

57. On March 19, 2020, Pennsylvania Governor Tom Wolf issued an indefinite Executive Order which prohibited the operation of businesses that are not “life sustaining.” The Order prohibited the operation of any place of business in the Commonwealth of Pennsylvania that is not a life sustaining business regardless of whether the business is open to members of the public. Plaintiffs’ Insured Premises were covered by this March 19, 2020 Executive Order.¹⁴

58. The March 19, 2020 Stay at Home Order ordered that individuals residing in Allegheny, Bucks, Chester, Delaware, Monroe, Montgomery, and Philadelphia counties stay at home at their places of residence.¹⁵

59. The March 19, 2020 Executive Order was subsequently amended to include residents of numerous other Pennsylvania counties and was to stay in effect through April 30, 2020.¹⁶

¹³ See <https://www.ydr.com/story/news/2020/03/06/coronavirus-in-pa-first-covid-19-case-confirmed-in-pennsylvania-wayne-delaware-county/4966026002/> (last visited December 28, 2020).

¹⁴ See <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200319-TWW-COVID-19-business-closure-order.pdf> (last visited December 28, 2020).

¹⁵ See <https://www.governor.pa.gov/newsroom/governor-wolf-and-health-secretary-issue-stay-at-home-orders-to-7-counties-to-mitigate-spread-of-covid-19/#:~:text=Rachel%20Levine%20today%20issued%20%E2%80%9Cstay,continue%20until%20April%206%2C%202020.> (last visited December 28, 2020).

60. On April 1, 2020, the Pennsylvania Secretary of the Department of Health instituted a Stay at Home order for all persons residing in the Commonwealth of Pennsylvania.¹⁷

61. On April 5, 2020, the Pennsylvania Secretary of the Department of Health issued orders requiring building safety measures and cleaning protocols/guidelines that all businesses which were permitted to remain open had to abide by. These measures were in direct response to the actual presence of COVID-19 and the grave threat to health and safety presented by COVID-19.¹⁸

62. On April 25, 2020, Governor Wolf announced reopening metrics which called for a phased reopening by region after a region satisfied certain metrics, such as having fewer than fifty new confirmed cases per 100,000 people in the preceding fourteen days.

63. On May 1, 2020, Governor Wolf announced that twenty-four counties would begin to reopen as of May 8, 2020—Delaware County, where the Insured Premises are located, was not among the counties permitted to reopen.¹⁹

64. It was not until June 4, 2020, that Delaware County was included among the counties that could begin to reopen, albeit in a significantly limited capacity and with stringent social distancing requirements.²⁰

¹⁶ See <https://www.governor.pa.gov/newsroom/gov-wolf-and-sec-of-health-expand-stay-at-home-order-to-carbon-cumberland-dauphin-and-schuylkill-counties-extend-school-closures-indefinitely/#:~:text=Rachel%20Levine%20revised%20their%20%E2%80%9CStay,will%20continue%20until%20April%2030.> (last visited December 28, 2020).

¹⁷ See <https://www.governor.pa.gov/newsroom/gov-wolf-sec-of-health-pennsylvania-on-statewide-stay-at-home-order-beginning-at-8-pm-tonight-most-prudent-option-to-stop-the-spread/#:~:text=The%20statewide%20stay%20at%20home,business%20closures%20remain%20in%20effect.&text=Staying%20at%20home%20means%20you%20must%20stay%20at%20home.%E2%80%9D> (last visited December 28, 2020).

¹⁸ See <https://www.governor.pa.gov/wp-content/uploads/2020/04/20200405-SOH-Building-Safety-Measures.pdf> (last visited December 28, 2020).

¹⁹ See <https://www.governor.pa.gov/newsroom/gov-wolf-announces-reopening-of-24-counties-beginning-may-8/> (last visited December 28, 2020).

²⁰ See <https://www.governor.pa.gov/wp-content/uploads/2020/06/20200604-TWW-amendment-to-yellow-phase-order.pdf> (last visited December 28, 2020); <https://www.governor.pa.gov/wp-content/uploads/2020/04/20200415-SOH-worker-safety-order.pdf> (last visited December 28, 2020).

65. On July 15, 2020, Governor Wolf issued an Executive Order Directing Mitigation Measures, which included a ban on outdoor gatherings of more than 250 and on indoor gatherings of more than 25 for any business outside the retail food services industry.²¹ On October 6, 2020, Governor Wolf amended this July 15, 2020 order and laid out maximum occupancy restrictions which have and will continue to cripple Plaintiffs' ability to utilize their Insured Premises.²²

66. As a result of these orders, Subaru Park and Plaintiffs' other Insured Premises had to remain closed. None of Plaintiffs' businesses were or are considered "essential" or "life sustaining" under any of the Closure Orders or Stay at Home Orders.

67. Ultimately, with the limited exception of a handful of watch parties held with significantly reduced capacity during the July 2020 season tournament which were *not* ticketed revenue driving events, Plaintiffs were not able to reopen Subaru Park or its Insured Premises until October 11, 2020. Even when they did open Subaru Park to fans on October 11, 2020, they did so with extremely limited capacity. Plaintiffs' ability to accommodate their pre-COVID-19 number of paying customers was utterly decimated.

68. At the time of this filing, the applicable Closure Orders and Stay at Home Orders prohibit mass gatherings, like ones that were once routinely held at Subaru Park. Though the current orders have certain exceptions for professional sports teams to allow fans, if and as allowed by the Leagues in which the teams operate, the teams, including the Philadelphia Union, must still comply with CDC guidelines on social distancing, which highly impacts the amount of fans allowed to be inside of Subaru Park during any games or matches. Likewise, under the

²¹ See <https://www.governor.pa.gov/wp-content/uploads/2020/07/20200715-TWW-targeted-mitigation-order.pdf> (last visited December 28, 2020).

²² See <https://www.governor.pa.gov/wp-content/uploads/2020/10/20201006-TWW-amendment-to-targeted-mitigation-order.pdf> (last visited December 28, 2020).

current and applicable Closure Orders and Stay at Home Orders, training facilities are allowed to be opened under extremely strict guidelines.

69. As a result of the actual presence of COVID-19 at Plaintiffs' Insured Premises, the physical damage or loss caused by COVID-19, and the resulting Pennsylvania Closure Orders and Stay at Home Orders, Plaintiffs' ability to operate its business at the Insured Premises has been destroyed. Even where Plaintiffs have been permitted to resume some, but not all, of their business activities, Plaintiffs have come nowhere close to operating at their pre-COVID-19 level.

D. Plaintiffs' Business Was Interrupted and Their Events Cancelled Due to the Actual Presence of COVID-19

70. The actual presence of COVID-19 caused direct physical loss or damage to Plaintiffs' properties, by: (i) causing direct physical loss or damage to Subaru Park and the other Insured Premises; (ii) denying use of and damaging Subaru Park and the other Insured Premises; (iii) requiring physical repair and/or alterations to Subaru Park and the other Insured Premises; and (iv) by causing a necessary suspension of operations during a period of restoration.

71. Because of the spread and/or presence of COVID-19, the functional spaces in Subaru Park and the other Insured Premises have been diminished or entirely decimated by the spread and/or presence of COVID-19. For example, the Philadelphia Union, the Major League Soccer team which calls Subaru Park and the other Insured Premises its home, was scheduled to host eighteen (18) home matches at Subaru Park. However, due to the spread and/or actual presence of COVID-19 at Subaru Park and the other Insured Premises, the Philadelphia Union was only able to play nine (9) home games, only five (5) of which were able to host any fans (limited to 2,500 or fewer fans). The canceled games will not be rescheduled.

72. The combined number of fans that Subaru Park was able to host for the drastically reduced number of Philadelphia Union home games was less than a single game's worth of fans that would attend in a regular, non-COVID-19-plagued year.

73. For Philadelphia Union home games, before the COVID-19 pandemic, Subaru Park was typically filled to capacity of 18,500 paying fans. In the five (5) home games held since Subaru Park was permitted to reopen in a limited capacity, Plaintiffs have been limited to hosting less than approximately 10,000 total paying fans in all games combined.

74. Almost all business operations of Plaintiffs', most of which involve large gatherings at the insured properties, were initially canceled, and some remain canceled.

75. All of Plaintiffs' business operations have been severely negatively impacted.

76. In 2020, the Philadelphia Union secured the Supporters' Shield, winning the first title in the Club's history. Ordinarily, this success would enable Plaintiffs to more regularly sell out home games at Subaru Park, obtain lucrative sponsorship deals, and to enjoy substantially increased merchandise sales to paying fans during the home games at Subaru Park. Plaintiffs have been severely limited in their ability to realize these sources of revenue that would have accompanied the Philadelphia Union's success due to COVID-19.

77. Plaintiffs have had to expend significant sums of money in order to repair the physical loss or damage and the infestation on the surface of their Insured Premises.

78. To repair the physical loss or damage and the infestation on the surfaces caused by COVID-19, Plaintiffs made numerous operational and physical changes and/or structural alterations to Subaru Park and the Insured Premises.

79. In order to reopen the stadium, numerous measures were taken to effectively eliminate staff-to-fan contact. Fans are now assigned to pre-paid socially distanced parking lots

nearest to their seating locations. Prior to entry, fans are required to have their temperature scanned and show mobile tickets after clearing walk through metal detectors which were installed to ensure a touchless security screening. Signage and audible prompts regarding the stadium's COVID-19 protocol are apparent throughout the stadium.

80. Upon entry to the stadium, there is a one-way traffic flow within the concourse. Additionally, there are one-way vomitories from the concourse to the seating area. Distancing markers and plexiglass are found at all points of sale, reception desks, and other locations where face to face contact cannot be avoided. Cashless payment options are required. For some games, the concourse was divided into two halves and fans were required to stay in their designated half of the concourse.

81. Many touchless hand sanitizing stations have been bolted and installed throughout the covered properties including at all entrance points. As noted above, new equipment, machines, and a computer system in place to measure individuals' temperatures and monitor people specifically for COVID-19 are in place at the entryway of Subaru Park. Protective shields/dividers are found at all concession stands and retail store checkout areas. The locker rooms, suites, press box, and other areas have been repurposed or remodeled to permit additional spacing for social distancing. Chairs, tables, and/or other furniture has been removed or relocated and all food and beverage items have been packaged. Additionally, seating is spaced out throughout the bowl to allow for six feet of distance in all directions of each party, and tickets and parking passes have been converted to an exclusively mobile format. Concessions are only permitted via credit or debit card.

82. Even the bathroom experience at the stadium involves touchless toilets, sinks, paper towels and hand sanitizer. Every other bathroom sink and urinal is blocked off.

83. The buffet at the Stadium Club Bar is temporarily discontinued and only drinks are offered there. The bar is operating at a reduced capacity of 100 people with strict social measures in place. The retail store now holds no more than 15 people at a time.

84. Increased cleaning efforts to all surfaces, particularly high touch surfaces, are frequently implemented by dedicated staff members throughout the Insured Premises using electrostatic sprayers. Plaintiffs are also considering implementing changes to the HVAC systems and components.

85. The Philadelphia Union's training schedule was also dramatically altered in order to return to team training by way of a phased approach. Between May and August 2020, the team shifted from a voluntary phase of individual training to small group training with cohorts of three (3) to five (5) athletes using a gridding system with no more than six (6) players per field and, eventually, to full team training. During the initial phases of this revised schedule, the team practiced out of Wilmington and New Castle Delaware. At the Chester Training Facility, the drinking fountains have been blocked to reduce touch contact risks and players are only permitted to eat packaged foods. Each player is assigned a water bottle or sports drink to be placed upright to avoid the risk of infestation.

86. Thus, because the spread and presence of COVID-19 altered the structure of the physical spaces and property surfaces of the Insured Premises, there have been even more obvious structural alterations, changes and/or repairs made to Subaru Park and the other Insured Premises so that Plaintiffs can continue their businesses as much as possible after experiencing direct property damage caused by COVID-19 and so that Plaintiffs may avoid the imminent threat of further property damage.

87. Plaintiffs have suffered substantial losses due to the actual physical presence of COVID-19 and the ongoing threat of immediately impending COVID-19, which forced the closure of Subaru Park and the other Insured Premises, and the subsequent Closure Orders which kept these properties closed in full for months, severely limiting their function and ability to accommodate paying customers and fans when they were permitted to reopen.

E. Plaintiffs’ “All-Risks” Policy Covers Plaintiffs’ Claims

88. Federal Insurance Company, who sold the Policy to Plaintiffs, is a wholly-owned subsidiary of Defendant Chubb INA Holdings Inc. Defendant Chubb INA Holdings Inc. is owned by Chubb Group Holdings Inc.

89. The Policy is an All-Risks policy, meaning that it provides coverage for damage to property and lost income from all types of risks unless they are specifically excluded.²³ . . .”

90. Plaintiffs’ insured locations under the Policy include the Subaru Park stadium located at One Stadium Drive, the Training Fields and Facility located at 2525 Seaport Drive and the Wharf at Rivertown Office Building located at 2501 Seaport Drive (“the Office Building”).

91. Although Federal drafted the Policy, upon information and belief, the key policy terms were approved by Chubb INA and/or Chubb Group.

92. Likewise, key underwriting and binding decisions pertinent to the Policy, including the decision not to include a “virus” exclusion in the Policy and, ultimately, to disclaim coverage without conducting a fair, reasonable, or adequate investigation, are believed to have involved all three Defendants.

²³ None of the exclusions in the Policy apply to Plaintiffs’ claims.

1. COVID-19 Triggered Coverage under the “All-Risks” Policy

93. Coverage under the Policy is triggered due to the actual presence of COVID-19 at Subaru Park, the Training Fields and Facility and the Office Building and the ongoing threat of immediately impending COVID-19 and resulting loss or damage.

94. Furthermore, the presence of COVID-19 on property within 1,000 feet of Subaru Park, the Training Fields and Facility and the Office Building triggers coverage under the Policy.

95. COVID-19 has caused (and continues to cause) direct physical loss and physical damage, as described above, to property, including Plaintiffs’ properties.

96. Additionally, COVID-19 has caused (and continues to cause) Plaintiffs to experience covered business interruption losses.

97. Due to the losses covered by the Policy, Plaintiffs submitted claims to Defendants.

98. Despite Plaintiffs’ adherence to all terms of the Policy in accordance with the contract terms, Defendants, through Chubb Insurance Senior Claim Examiner Elmer Wells, denied Plaintiffs’ claims for Business Interruption losses by letter dated June 17, 2020. A copy of this letter is attached hereto as **Exhibit 2**.

99. Defendants sent this letter denying coverage and benefits owed under the Policy without conducting any meaningful investigation and in spite of clear policy language granting coverage for Plaintiffs’ losses. Defendants never even visited the insured locations to assess whether the insured locations sustained property damage or losses of any kind.

100. Defendants’ letter misstates that Plaintiffs did not sustain direct physical loss or damage to property at or within 1,000 feet of their premises and that no civil authority impacted Plaintiffs’ operations due to direct physical loss or damage to property.

101. Defendants’ letter also erroneously invokes the “Acts or Decisions” Exclusion despite the fact that the exclusion expressly “does not apply to ensuing loss or damage caused by or resulting from a peril not otherwise excluded.” Coronavirus is a cause of loss which is not excluded by any provision of the Policy.

2. Multiple Coverages Are Triggered Under the “All-Risks” Policy

102. The Policy’s Premises Coverages contain a prefatory clause providing that the coverages are triggered not only by direct physical loss or damage to the actual premises shown in the Policy Declarations, but also by direct physical loss or damage within 1,000 feet of those premises. See **Exhibit 1** at 59.

103. This 1,000-foot extension of the insured premises for purposes of Business Income with Extra Expense Coverage is independent from the Ingress and Egress and Civil Authority coverages, both of which include a one-mile radius as part of their respective grant of coverages. The prefatory clause specifically provides:

Premises Coverages	The following Premises Coverages apply only at those premises for which a Limit Of Insurance applicable to such coverages is shown in the Declarations. Except as otherwise provided, direct physical loss or damage must: <ul style="list-style-type: none">• be caused by or result from a covered peril; and• occur at, or within 1,000 feet of, the premises, other than a dependent business premises, shown in the Declarations.
---------------------------	--

104. As set forth more particularly below, other pertinent coverages are also triggered under the Policy, including but not limited to, the Business Income and Extra Expense, Ingress and Egress, Civil Authority, Dependent Business, Preservation of Property and Extra Expense Coverages.

*Business Income And
Extra Expense*

We will pay for the actual:

- **business income** loss you incur due to the actual impairment of your **operations**; and
- **extra expense** you incur due to the actual or potential impairment of your **operations**, during the **period of restoration**, not to exceed the applicable Limit Of Insurance for Business Income With Extra Expense shown in the Declarations.

This actual or potential impairment of **operations** must be caused by or result from direct physical loss or damage by a **covered peril to property**, unless otherwise stated.

This Premises Coverage applies only at those premises:

- where you incur a **business income** loss or **extra expense**; and
- for which a Limit Of Insurance for Business Income With Extra Expense is shown in the Declarations.

If a Limit Of Insurance for Business Income With Extra Expense is shown as applicable to a premises in the Declarations, such limit reflects your total Limit Of Insurance at that premises and the Limit Of Insurance for Extra Expense shown in the Supplementary Declarations – Property does not apply.

a. *Defendants Should Compensate Plaintiffs for Their Losses Because COVID-19 Triggered the Policy’s Business Income and Extra Expense Coverage.*

105. Under the Policy, Defendants promised to pay Plaintiffs Business Income and Extra Expense Coverage due to the impairment of their operations during the period of restoration caused by “direct physical loss or damage” to the insured properties as follows:.

See **Exhibit 1** at 59.

106. Due to the spread and actual presence of COVID-19 at Subaru Park, the Training Fields and Facility and the Office Building, Plaintiffs have suffered Business Income and Extra Expense losses as a direct result of physical loss and damage that is insured by the Policy as described above.

107. The “Period of Restoration” began on or about March 12, 2020, when Major League Soccer suspended all games effective immediately and will continue until the covered properties can be made ready for normal full-capacity operations.

b. Defendants Should Compensate Plaintiffs for Their Losses Because COVID-19 Triggered the Policy's Ingress And Egress Coverage.

<i>Ingress And Egress</i>	<p>We will pay for the actual:</p> <ul style="list-style-type: none">• business income loss you incur due to the actual impairment of your operations; and• extra expense you incur due to the actual or potential impairment of your operations, <p>when existing ingress to or egress from a premises shown in the Declarations is prevented due to direct physical loss or damage by a covered peril to property, provided such property is within:</p> <ul style="list-style-type: none">• one mile; or• the applicable miles shown in the Declarations, <p>from such premises, whichever is greater.</p> <p>This Premises Coverage will begin at the time of direct physical loss or damage and will continue until the expiration of 30 consecutive days thereafter or whenever your business income coverage ends, whichever occurs first.</p> <p>This Premises Coverage does not apply if the:</p> <ul style="list-style-type: none">• direct physical loss or damage is caused by or results from earthquake or flood; or• ingress to or egress from your premises is prohibited by civil authority. <p>The most we will pay for this Premises Coverage is the applicable Limit Of Insurance for Ingress And Egress shown under Business Income in the Declarations.</p>
---------------------------	--

108. Under the Policy, Defendants promised to pay Plaintiffs Business Income and Extra Expenses that result when ingress and egress to the insured premises is prevented due to “direct physical loss or damage” to property within one mile of the insured premises as follows:
See **Exhibit 1** at 61.

109. Due to COVID-19 and the physical loss and damage of COVID-19 at other nearby properties, Plaintiffs’ businesses have been interrupted because of the total or partial prevention of ingress or egress to and from Subaru Park, the Training Fields and Facility and the Office Building.

110. The business interruption losses caused by the prevention of ingress or egress to and from Subaru Park, the Training Fields and Facility and the Office Building are covered under the Policy.

c. Defendants Should Compensate Plaintiffs for Their Losses Because COVID-19 Triggered the Policy's Civil Authority Coverage.

111. Under the Policy, Defendants promised to pay Plaintiffs Business Income and Extra Expense incurred when access to the insured premises is prohibited by order of a Civil Authority as follows:

<i>Civil Authority</i>	<p>We will pay for the actual:</p> <ul style="list-style-type: none">• business income loss you incur due to the actual impairment of your operations; and• extra expense you incur due to the actual or potential impairment of your operations, directly caused by the prohibition of access to: <ul style="list-style-type: none">• your premises; or• a dependent business premises, <p>by a civil authority.</p> <p>This prohibition of access by a civil authority must be the direct result of direct physical loss or damage to property away from such premises or such dependent business premises by a covered peril, provided such property is within:</p> <ul style="list-style-type: none">• one mile; or• the applicable miles shown in the Declarations, <p>from such premises or dependent business premises, whichever is greater.</p>
------------------------	---

See **Exhibit 1** at 63.

112. Due to the actual physical presence of COVID-19 at and nearby Subaru Park, the Training Fields and Facility and the Office Building, and the resulting direct physical loss or damage, the Pennsylvania Governor and Secretary of Health issued orders which limited, restricted, and/or prohibited access to the insured premises.

113. Consequently, Plaintiffs have suffered actual losses and incurred extra expenses. The Policy affords coverage to Plaintiffs due to the Closure Orders which have caused substantial losses and extra expenses to Plaintiffs.

d. Defendants Should Compensate Plaintiffs for Their Losses Because COVID-19 Triggered the Policy’s Dependent Business Coverage.

114. Under the Policy, Defendants promised to pay Plaintiffs Business Income and Extra Expense incurred when Dependent Business Premises experience direct physical loss or damage” as follows:

<i>Dependent Business Premises</i>	<p>We will pay for the actual:</p> <ul style="list-style-type: none">• business income loss you incur due to the actual impairment of your operations; and• extra expense you incur due to the actual or potential impairment of your operations, <p>during the period of restoration, not to exceed the applicable Limit Of Insurance for Dependent Business Premises shown under Business Income in the Declarations.</p> <p>This actual or potential impairment of operations must be caused by or result from direct physical loss or damage by a covered peril to property or personal property of a dependent business premises at a dependent business premises.</p> <p>You may purchase higher limits for specific dependent business premises only by showing such premises in the Declarations. Such higher limits apply to actual business income loss or extra expense only if the covered direct physical loss or damage occurs at such dependent business premises.</p> <p>This Additional Coverage does not apply if the direct physical loss or damage is caused by or results from earthquake or flood.</p>
------------------------------------	--

See **Exhibit 1** at 63.

115. The Policy defines “dependent business premises” as “premises operated by a person or organization other than you on whom you or others depend to deliver materials or services to you ...or attract customers to your business.” See **Exhibit 1** at 110. Subaru Park, the Training Fields and Facility and the Office Building rely upon other entertainment venues, vendors and advertising companies to deliver services and to attract customers.

116. Each such Dependent Business Premises suffered “direct physical loss or damage” which required them to close, and in turn, caused Plaintiffs to incur business income and extra expense.

117. Not only were these Dependent Business Premises forced to close, but the worldwide sports calendar as a whole was drastically affected as a result of COVID-19.

Naturally, Plaintiffs' fans were unable to gather at any one of the Dependent Premises to watch them play and forced Plaintiffs to incur a high volume of covered losses.

e. Defendants Should Compensate Plaintiffs for Their Losses Because They Have Incurred Costs and Sustained Actual Loss to Protect and Preserve Insured Property.

118. Due to the actual presence and spread of COVID-19 causing direct physical loss or damage, and the ongoing threat of immediately impending physical loss or damage (as described above) at Subaru Park, the Training Fields and Facility and the Office Building, Plaintiffs incurred costs to temporarily protect or preserve their insured property, including all costs associated with having to close down Subaru Park, the Training Fields and Facility and the Office Building and the costs to make the properties safe. The Policy provides coverage for such costs to the extent they are reasonable and necessary.

119. The Policy specifically required Plaintiffs to proceed as follows:

Take every reasonable step to protect the covered property from further loss or damage, and keep a record of your expenses necessary to protect such covered property for consideration in the settlement of the claim. This will not increase any Limit Of Insurance. However, we will not pay for any subsequent loss or damage resulting from a peril that is not a covered peril. Also, if feasible, set the lost or damaged property aside and in the best possible order for examination.

See **Exhibit 1** at 102.

120. The costs incurred by Plaintiffs as set forth above were reasonably necessary because they prevented further insured physical loss or damage.

121. Accordingly, under the Policy, Defendants must compensate Plaintiffs for those costs.

f. Defendants Should Compensate Plaintiffs for Their Losses Because COVID-19 Triggered the Policy's Extra Expense Coverage.

122. The actual physical presence and spread of COVID-19 at Subaru Park, the Training Fields and Facility and the Building has caused Plaintiffs to incur reasonable and necessary extra expenses because of the resulting impairment of operations and in an effort to continue, as nearly normal as practicable, the conduct of Plaintiffs' businesses.

123. The Policy provides coverage for such extra expenses as follows:

<i>Extra Expense</i>	<p>We will pay for the actual extra expense you incur due to the actual or potential impairment of your operations during the period of restoration, not to exceed the applicable Limit Of Insurance for Extra Expense shown in the Declarations.</p> <p>This actual or potential impairment of operations must be caused by or result from direct physical loss or damage by a covered peril to property unless otherwise stated.</p> <p>This Premises Coverage applies only at those premises:</p> <ul style="list-style-type: none">• where you incur an extra expense loss; and• for which a Limit Of Insurance for Extra Expense is shown in the Declarations.
----------------------	---

See **Exhibit 1** at 73.

124. Plaintiffs have incurred extra expenses in addition to the expenses they would have normally incurred in conducting their businesses without the presence of COVID-19. Plaintiffs incurred these extra expenses due to the impairment of their operations caused by the direct physical loss or damage resulting from COVID-19.

125. They are therefore entitled to coverage for such reasonable and necessary extra expenses.

g. Plaintiffs' Losses Trigger Other Coverages.

126. In addition to the losses and coverages described above, Plaintiffs' COVID-19 losses are covered under any and all other coverages under the Policy that may apply. These include, but are not limited to, Preparation of Loss Fees. See **Exhibit 1** at 66.

3. No Exclusion Applies Which Affects Coverage

127. The Policy contains no exclusion which limits or bars coverage for the actual presence of COVID-19 or the threat created by that presence at and near Subaru Park, the Training Fields and Facility and the Office Building, the physical loss and damage to the Insured Premises, and/or the business interruption losses which have resulted and will continue to result from the physical loss and damage to property.

128. To the extent the Court finds that any exclusion(s) apply, they are unenforceable.

4. The Policy's Pollutant Clean-Up or Removal Exclusion Does Not Apply

129. Although the Business Income With Extra Expense coverage in the Policy includes a "Pollutant Clean-Up or Removal" exclusion, labeled a "Loss Payment Limitation," that exclusion does not apply to Plaintiffs' claims.

130. The Pollutant Clean-Up or Removal exclusion applies to extra expense incurred to clean up or remove "Pollutants" from land or a building, or incurred for "testing for, monitoring, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of **pollutants**." See **Exhibit 1** at p.70. Thus the exclusion only potentially applies to certain "extra expenses," not any of the business interruption or other losses claimed by Plaintiffs.

131. Notably absent from the definition of the Policy's definition of "**Pollutants**" is the term "virus."²⁴ In fact, the definition does not refer to any biological materials, bacteria, pathogens, or organisms of any kind. The term "**Pollutants**" under the policy cannot reasonably be interpreted to include virus.

²⁴ The Policy defines "**Pollutants**" to mean "any solid, liquid gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fibers, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed. **Pollutants** does not mean fungus." See **Exhibit 1** at 123.

132. Furthermore, the exclusion specifically exempts any “extra expense that you incur to the extent it reduces the amount of a covered business income loss that otherwise would have been payable under this contract.” See **Exhibit 1** at p.70. Because Plaintiffs’ extra expenses were incurred to respond to and reduce covered business income loss, the exclusion would not apply to those expenses.

133. Moreover, as noted above, the Acts or Decisions exclusion referenced in Defendants’ letter of June 17, 2020 is wholly inapplicable, when it appears in the Building and Personal Property coverage form, not the Business Income with Extra Expenses coverage form, and where, as here, COVID-19 is a cause of loss independent from the relevant civil authority orders.

134. At the same time, the Policy does not include, and is not subject to, any exclusion for losses caused by the spread of viruses or communicable diseases.

135. The lack of a virus or communicable disease exclusion is significant because the insurance industry has recognized that the presence of virus constitutes physical damage to property since at least 2006. When preparing so-called “virus” exclusions to be placed in some policies, but not others, the insurance industry drafting arm, The Insurance Services Office (“ISO”), circulated a statement to state insurance regulators that included the following:

Disease-causing agents may render a product impure (change its quality or substance), or enable the spread of disease by their presence on interior building surfaces or the surfaces of personal property. When disease-causing viral or bacterial contamination occurs, potential claims involve the cost of replacement of property (for example, the milk), cost of decontamination (for example, interior building surfaces), and business interruption (time element) losses. Although building and personal property could arguably become contaminated (often temporarily) by such viruses and bacteria, the nature of the property itself would have a bearing on whether there is actual property damage. An allegation of

property damage may be a point of disagreement in a particular case.

136. Indeed, many governmental bodies specifically found that COVID-19 causes property damage when issuing Closure Orders. *See* N.Y.C. Emergency Exec. Order No. 100, at 2 (Mar. 16, 2020)²⁵ (emphasizing the virulence of COVID-19 and that it “physically is causing property loss and damage”); N.Y.C. Emergency Exec. Order No. 103 at 1 (March 25, 2020)²⁶ (“actions taken to prevent the spread of COVID-19 “have led to property loss and damage”); Harris Cty. Tex. Office of Homeland Security & Emergency Mgmt., Order of Cty. J. Lina Hidalgo, at 2 (Mar. 24, 2020)²⁷ (emphasizing that the COVID-19 virus can cause “property loss or damage” due to its contagious nature and transmission through “person-to-person contact, especially in group settings”); Napa Cty. Cal. Health & Human Service Agency, Order of the Napa Cty. Health Officer (Mar. 18, 2020)²⁸ (issuing restrictions based on evidence of the spread of COVID-19 within the Bay Area and Napa County “and the physical damage to property caused by the virus”); City of Key West Fla. State of Local Emergency Directive 2020-03, at 2 (Mar. 21, 2020)²⁹ (COVID-19 is “causing property damage due to its proclivity to attach to surfaces for prolonged periods of time”); City of Oakland Park Fla. Local Public Emergency Action Directive, at 2 (Mar. 19, 2020)³⁰ (COVID-19 is “physically causing property damage”); Panama City Fla. Resolution No. 20200318.1 (Mar. 18, 2020)³¹ (stating that the resolution is necessary because of COVID-19’s propensity to spread person to person and because the “virus physically is causing property damage”); Exec. Order of the Hillsborough Cty. Fla. Emergency

²⁵ <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-100.pdf>

²⁶ <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-103.pdf>

²⁷ https://www.taa.org/wp-content/uploads/2020/03/03-24-20-Stay-Home-Work-Safe-Order_Harris-County.pdf

²⁸ <https://www.countyofnapa.org/DocumentCenter/View/16687/3-18-2020-Shelter-at-Home-Order>

²⁹ https://www.cityofkeywest-fl.gov/egov/documents/1584822002_20507.pdf

³⁰ <https://oaklandparkfl.gov/DocumentCenter/View/8408/Local-Public-Emergency-Action-Directive-19-March-2020-PDF>

³¹ <https://www.pcgov.org/AgendaCenter/ViewFile/Item/5711?fileID=16604>

Policy Group, at 2 (Mar. 27, 2020)³² (in addition to COVID-19’s creation of a “dangerous physical condition,” it also creates “property or business income loss and damage in certain circumstances”); Colorado Dep’t of Pub. Health & Env’t, Updated Public Health Order No. 20-24, at 1 (Mar. 26, 2020)³³ (emphasizing the danger of “property loss, contamination, and damage” due to COVID-19’s “propensity to attach to surfaces for prolonged periods of time”); Sixth Supp. to San Francisco Mayoral Proclamation Declaring the Existence of a Local Emergency, 26 (Mar. 27, 2020)³⁴ (“This order and the previous orders issued during this emergency have all been issued ... also because the virus physically is causing property loss or damage due to its proclivity to attach to surfaces for prolonged periods of time”); and City of Durham NC, Second Amendment to Declaration of State of Emergency, at 8 (effective Mar. 26, 2020)³⁵ (prohibiting entities that provide food services from allowing food to be eaten at the site where it is provided “due to the virus’s propensity to physically impact surfaces and personal property”).

137. Plaintiffs’ damages include, but are not limited to: the reduction of revenue and income related to the cancellation and/or indefinite postponements of Philadelphia Union home games, concerts, private special events, tours, youth camps, and public training camps. Plaintiffs’ damages further include, but are not limited to, the reduction of revenue and income related to: the fact that the Philadelphia Union had games with limited or no fans; the stadium retail stores’ and concession stands’ limited sales due to the cancelled events and/or fan-free events or limited-fan events; the cancellation, reduction, or seasonal postponement of brand

³²<https://www.hillsboroughcounty.org/library/hillsborough/mediacenter/documents/administrator/epg/saferathomeorder.pdf>

³³ <https://www.pueblo.us/DocumentCenter/View/26395/Updated-Public-Health-Order---032620>

³⁴ https://sfgov.org/sunshine/sites/default/files/sotf_061020_item3.pdf

³⁵https://durhamnc.gov/DocumentCenter/View/30043/City-of-Durham-Mayor-Emergency-Dec-Second-Amdmt-3-25-20_FINAL

sponsorships due to the cancelled or limited-capacity or fan-free events and games; the lack of the ability to have sponsor activations at the Training Fields and Facility due to the training camp being closed to the public; and a sizable increase in travel expenses. Significantly, Plaintiffs damages are further related to the inability to profit from the Philadelphia Union's success in clinching the overall record of Major League Soccer for the 2020 regular season and winning the Supporters' Shield because of direct physical loss or damage brought about by COVID-19. Plaintiffs will continue to suffer damages if other scheduled events and games are cancelled or limited in the future due to COVID-19.

V. CLAIMS ALLEGED

COUNT I Declaratory Judgment

138. Plaintiffs, Keystone Sports and Entertainment LLC, FC Pennsylvania Stadium LLC, Pennsylvania Professional Soccer LLC, Rivertown Developers, L.P., Rivertown TCI, L.P., and KSE U2 LLC, incorporate by reference the allegations contained in Paragraphs 1-137 above, as if set out in full herein.

139. Plaintiffs seek the Court's declaration of the parties' rights and duties under the Policy pursuant to the Pennsylvania Declaratory Judgments Act, 42 Pa. Const. Stat §§7531-7541.

140. A justiciable controversy exists between Plaintiffs and Defendants regarding the availability of coverage under the Policy for Plaintiffs' claims.

141. The controversy between Plaintiffs and Defendants is ripe for judicial review.

142. Therefore, Plaintiffs seek a declaration from this Court that:

- a. The various Policy coverage provisions identified in this Complaint are triggered by Plaintiffs' claim;
- b. No Policy exclusions apply to prohibit or limit coverage for Plaintiffs' claims; and

c. The Policy covers Plaintiffs' claim.

COUNT II
Breach of Contract and Duty of Good Faith and Fair Dealing

143. Plaintiffs, Keystone Sports and Entertainment, LLC, FC Pennsylvania Stadium LLC, Pennsylvania Professional Soccer LLC, Rivertown Developers, L.P., Rivertown TCI, L.P., and KSE U2 LLC, incorporate by reference the allegations contained in Paragraphs 1-142 above as if set out in full herein.

144. The Policy constitutes a valid and existing contract of insurance requiring Defendants to properly compensate Plaintiffs for their losses.

145. Any ambiguity in its terms or doubts as to the application of coverage is to be resolved in favor of Plaintiffs and coverage granted in accordance with their reasonable expectations.

146. Despite Plaintiffs reasonably believing and relying on the terms of the Policy to confer coverage in the event that they were forced to cease and/or reduce operations as a result of the loss or damage of the Insured Premises brought about by viruses such as COVID-19 and Closure Orders issued because of said loss or damage brought about by viruses such as COVID-19, Defendants have breached the Policy and violated their duty of good faith and fair dealing by failing to pay Plaintiffs for their business interruption losses.

147. Plaintiffs sustained damages due to the actual physical presence of COVID-19, the existence and ongoing threat and spread of COVID-19, and the Closure Orders prohibiting large gatherings resulting from COVID-19, but Defendants have failed to comply with their obligations and have failed to compensate Plaintiffs for their claim.

148. As a direct and foreseeable result of Defendant's breach of contract and duty of good faith and fair dealing, Plaintiffs have been deprived of the benefits due to them as a result

of their covered loss, including but not limited to the Business Income and Extra Expense, Ingress and Egress, Civil Authority, Dependent Business, Preservation of Property and Extra Expense Coverage.

149. Additionally, Plaintiffs have suffered other consequential damages by reason of damage to their business operations for an amount in excess of the coverage set forth in the Policy, including but not limited to damage to, their business operations, reduction in value, profitability of business operations and assets, and the ability to capitalize on their winning 2020 regular season record.

150. Plaintiffs have been required to retain the services of attorneys to commence this action and are further entitled to attorneys' fees and costs.

VI. REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendants as follows:

- 1) A declaration from this Court that:
 - a. The various coverage provisions identified in this Complaint are triggered by Plaintiffs' claims;
 - b. No exclusion in the Policy applies to prohibit or limit coverage for Plaintiffs' claims; and
 - c. The Policy covers Plaintiffs' claims.
- 2) For actual, special, compensatory, and consequential damages against Defendants in an amount to be proved at trial in excess of the \$50,000 jurisdictional threshold;
- 3) Pre- and post-judgment interest as provided by law;
- 4) An award of attorneys' fees and cost of suit incurred; and

5) For such other and further relief as the Court deems proper.

VII. JURY TRIAL DEMANDED

Plaintiffs respectfully request a trial by jury on all issues so triable.

Date: January 2, 2021

Respectfully submitted,

/s/ Robert J. Mongeluzzi

Robert J. Mongeluzzi; ID No. 36283

Jeffrey P. Goodman; ID No. 309433

Marni S. Berger; ID No. 309303

Samuel B. Dordick; ID No. 322647

**SALTZ MONGELUZZI &
BENDESKY P.C.**

One Liberty Place

1650 Market Street, 52nd Floor

Philadelphia, PA 19103

Telephone: 215-496-8282

rmongeluzzi@smbb.com

jgoodman@smbb.com

mberger@smbb.com

sdordick@smbb.com

Adam J. Levitt

Amy E. Keller*

Daniel R. Ferri*

Mark Hamill*

Laura E. Reasons*

DICELLO LEVITT GUTZLER LLC

Ten North Dearborn Street, Sixth Floor

Chicago, Illinois 60602

Telephone: 312-214-7900

alevitt@dicellolevitt.com

akeller@dicellolevitt.com

dferri@dicellolevitt.com

mhamill@dicellolevitt.com

lreasons@dicellolevitt.com

Kenneth P. Abbarno*
Mark A. DiCello*
Mark Abramowitz*
DICELLO LEVITT GUTZLER LLC
7556 Mentor Avenue
Mentor, Ohio 44060
Telephone: 440-953-88
kabbarno@dicellolevitt.com
madicello@dicellolevitt.com
mabramowitz@dicellolevitt.com

Mark Lanier*
Alex Brown*
Skip McBride*
THE LANIER LAW FIRM PC
10940 West Sam Houston Parkway North
Suite 100
Houston, Texas 77064
Telephone: 713-659-5200
WML@lanierlawfirm.com
alex.brown@lanierlawfirm.com
skip.mcbride@lanierlawfirm.com

Timothy W. Burns*
Jeff J. Bowen*
Jesse J. Bair*
Freya K. Bowen*
BURNS BOWEN BAIR LLP
One South Pinckney Street, Suite 930
Madison, Wisconsin 53703
Telephone: 608-286-2302
tburns@bbblawllp.com
jbowen@bbblawllp.com
jbair@bbblawllp.com
fbowen@bbblawllp.com

Douglas Daniels*
DANIELS & TREDENNICK
6363 Woodway, Suite 700
Houston, Texas 77057
Telephone: 713-917-0024
douglas.daniels@dtlawyers.com

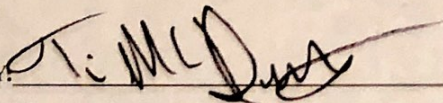
*Applications for admission *pro hac vice* to be filed.

VERIFICATION

I, Tim McDermott, President of Keystone Sports and Entertainment LLC, hereby verify that the facts set forth within the Complaint are true and correct to the best of my knowledge, information and belief. This Verification is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

KEYSTONE SPORTS AND ENTERTAINMENT LLC

Dated: 1/01/2021

BY: 
Tim McDermott, President