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New Jersey Performing Arts Center

**NEW JERSEY PERFORMING ARTS
CENTER,**

Plaintiff,

**CHUBB INSURANCE COMPANY OF NEW
JERSEY,**

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

DOCKET NO.:

Civil Action

CBLP Action

COMPLAINT AND JURY DEMAND

Plaintiff New Jersey Performing Arts Center (“NJ PAC”) brings this complaint against defendant Chubb Insurance Company of New Jersey (“Chubb”) and alleges as follows:

NATURE OF THIS LAWSUIT

1. NJ PAC is a non-profit organization that offers world-class performances, educational programs, and free events and festivals. NJ PAC opened more than 23 years ago in Newark, New Jersey and, today, employs approximately 100 full time staff and has more than 250 volunteers and 3,500 members. NJ PAC’s describes its mission as follows: “The New Jersey Performing Arts Center, by celebrating diversity, shall be America’s foremost urban presenter of arts and entertainment, a creative and effective leader in arts education for children, a convener of useful and enlightening civic engagement events, and a catalyst for economic development in its home city of Newark.” NJ PAC is a staple of arts, education, community engagement, and entertainment in the region, and also is home to the New Jersey Symphony

Orchestra. As one of the largest performing arts centers in the United States, NJPAC typically puts on more than 500 events annually and has welcomed over 10 million visitors and served 1.9 million students and families since its opening season in 1997.

2. The coronavirus (formally known as “severe acute respiratory syndrome coronavirus 2”) and the coronavirus disease 2019 (commonly known and referred to below as “COVID-19”) that it causes have wreaked havoc in Essex County, throughout the State of New Jersey, and around the country and world. Through January 2021, more than 26 million individuals have contracted COVID-19 and there have been nearly 450,000 tragic fatalities in the United States, including 21,500 in New Jersey alone.

3. In addition, the coronavirus and COVID-19 have caused direct physical loss or damage to properties throughout Essex County, including at NJPAC’s flagship performing arts center in Newark. The coronavirus and COVID-19 attach to physical surfaces and alter the physical condition of air in buildings, thereby causing physical change to property from safe and harmless to dangerous and lethal. The coronavirus has been actually present on and in the NJPAC property and there have been multiple confirmed cases of COVID-19 at its properties. As a result, NJPAC’s properties were rendered damaged, lost, uninhabitable, unusable, and unfit for the intended purpose.

4. Further, as a result of the damage caused by the coronavirus and COVID-19, the State of New Jersey, City of Newark, and other public health authorities have issued multiple civil orders prohibiting public access to NJPAC’s properties, requiring NJPAC to suspend its operations, and otherwise restricting NJPAC’s operations.

5. Thus, NJPAC’s operations have been impaired, and NJPAC has sustained various losses, including business income losses and other expenses and costs that NJPAC would not have otherwise needed to incur.

6. To manage the risk of damage to its properties and disruption to its operations, including caused by pandemics, NJPAC purchased a comprehensive “all risk” property insurance policy from Chubb for the policy period March 15, 2019 to March 15, 2020 (the “2019-2020

Policy”). A true and correct copy of the 2019-2020 Policy is attached as Exhibit A. The 2019-2020 Policy was renewed for the policy period March 15, 2020 to March 15, 2021 (the “2020-2021 Policy”). A true and correct copy of the 2020-2021 Policy is attached as Exhibit B. The 2019-2020 Policy and the 2020-2021 Policy collectively are referred to as the “Policies.”

7. Unlike other property insurance policies, including policies sold by Chubb to other policyholders, Chubb sold the Policies to NJPAC without a virus exclusion – a widely available exclusion that the insurance industry represented to state regulators it introduced specifically to bar coverage for losses resulting from viruses or pandemics.

8. Following the damage to NJPAC’s properties and the issuance of various civil orders restricting NJPAC’s operations, NJPAC submitted a claim to Chubb for its losses (the “Claim”). Despite the broad scope of coverage under the Policies and clear evidence that COVID-19 caused physical loss or damage to NJPAC’s properties, Chubb, without conducting a reasonable investigation and as part of a broader business practice, denied coverage and refused to pay any amounts to NJPAC for its losses.

9. NJPAC brings this action for breach of contract, declaratory relief, and bad faith, and seeks a ruling that Chubb must provide coverage for NJPAC’s losses and pay other damages in an amount to be determined.

THE PARTIES

10. NJPAC is a New Jersey non-profit organization with its principal place of business in Newark, New Jersey in Essex County.

11. Chubb is a for-profit insurance company incorporated under the laws of New Jersey, with its principal place of business in Hunterdon County, New Jersey.

12. Upon information and belief, Chubb is a subsidiary of Chubb Limited, the Switzerland-incorporated holding company of the Chubb Group of Insurance Companies. Chubb Limited is the world’s largest publicly traded property and casualty insurance company operating in 54 countries and territories.

JURISDICTION AND VENUE

13. This Court has original jurisdiction of this action because it is an action at law with more than \$15,000 at issue; Chubb is organized under the laws of New Jersey; and Chubb engaged in or carried out business in New Jersey, including the sale of the Policies, to NJPAC, a New Jersey resident. There is a nexus between such business and this action because Chubb engaged in, and continue to engage in, substantial business activity in New Jersey.

14. Venue is proper in this Court under N.J. R. 4:3-2(a)(3) because NJPAC is a resident of and has its principal place of business in Essex County.

15. This lawsuit is properly included in the Complex Business Litigation Program, among other reasons, because the amount in controversy exceeds \$200,000. N.J. R. 4:102-2(a).

FACTUAL ALLEGATIONS

I. Before Its Sale Of The Policies, Chubb Recognized Its Potential Exposure For Pandemic-Related Losses

16. Chubb sells broad, comprehensive property insurance policies to commercial entities.

17. Before the COVID-19 pandemic, and before Chubb sold the Policies to NJPAC, Chubb and the Chubb Group of Companies recognized the possibility of a virus pandemic and the potential associated losses under their commercial property insurance policies.

18. In its filings with the Securities and Exchange Commission, Chubb Limited routinely acknowledged this reality. For example, in the 2019 Form 10-K filing for the fiscal year ending December 31, 2019, Chubb Limited revealed “We have substantial exposure to losses resulting from . . . catastrophic events, **including pandemics.**” (Emphasis added.) Chubb Limited also routinely stated in its annual filings that “catastrophes,” “including a global or other wide-impact pandemic” could cause significant losses and that the risk factors to the Chubb Group of Companies included “infection rates and severity of pandemics and their effects on our business operations and claims activity.”

19. Chubb also has known for a number of years that many courts, including courts in New Jersey, have found that the presence of a hazardous substance can constitute property damage. *See, e.g., Gregory Packaging, Inc. v. Travelers Property Casualty Co.*, 2014 WL 6675934 (D.N.J. Nov. 25, 2014), *Oregon Shakespeare Festival Ass'n v. Great Am. Ins. Co.*, 1:15-CV-01932-CL, 2016 WL 3267247, at *9 (D. Or. June 7, 2016), *vacated for other reasons*, 2017 WL 1034203 (D. Or. Mar. 6, 2017); *Essex Ins. Co. v. BloomSouth Flooring Corp.*, 562 F.3d 399, 405 (1st Cir. 2009); *Mellin v. N. Sec. Ins. Co.*, 167 N.H. 544, 550-51 (2015); *Western Fire Ins. Co. v. First Presbyterian Church*, 165 Colo. 34, 39-40 (1968).

20. Therefore, before the COVID-19 pandemic, Chubb understood that, absent a clear exclusion, its property insurance policy form could be interpreted to cover losses stemming from viruses and pandemics. Chubb further understood, and its parent company represented publicly, that it faced catastrophic losses under its commercial property insurance policies in the event of a global pandemic.

21. Recognizing this risk, Chubb, and the insurance industry more broadly, created policy language to limit their potential exposure to pandemic-related losses.

22. In 2006 following the SARS outbreak, the insurance industry led by Insurance Services Office (“ISO”) created a standard-form “virus or bacteria” exclusion in 2006 that bars coverage for “loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.” In so doing, ISO noted to state insurance regulators it was introducing the exclusion based on the insurance industry’s acknowledgement that viruses could cause property damage depending on the nature of the property:

“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.”

Ex. G.

23. For years, Chubb has had several exclusions it often adds to property insurance policies to bar coverage for viruses and disease-causing agents. Before its sale of the Policies, Chubb understood that it could use these widely-available exclusions to limit potential liability for pandemic-related losses. Nonetheless, Chubb decided not to do so for NJPAC’s insurance program, selling NJPAC broad all-risk property insurance and intentionally omitting any exclusion associated with viruses or pandemics.

II. Chubb Sold NJPAC a Broad, Comprehensive All-Risk Insurance Policy

24. As a performing arts center, NJPAC generates revenue primarily through ticket sales and associated fees, food services commissions, parking space rentals, venue rentals, social and corporate event rentals, graduation rentals, and artist merchandise sales.

25. Before selling NJPAC property insurance, Chubb completed, and had multiple opportunities to undertake, a detailed review of NJPAC’s operations and the potential risk and losses in insuring NJPAC. Given NJPAC’s operations rely on crowds gathering in confined spaces, Chubb understood, or should have understood, that a global pandemic involving a lethal virus that physically spreads easily could result in significant losses to NJPAC covered by the Policies.

26. Nonetheless, in exchange for the hundreds of thousands of dollars NJPAC has paid in premiums, Chubb made the business decision to sell the Policies to NJPAC. NJPAC has paid all premiums due under the Policies.

27. Chubb drafted the language of the Policies and wrote the Policies using its “Customarq Series” policy form. Chubb marketed the Customarq form as “a Chubb’s hallmark that sets the standard for the industry” and that contains “features that respond to 21st century

issues.”

28. The Policies are “all-risk” insurance policies under which Chubb promised, in exchange for substantial premiums, to insure NJPAC for losses and catastrophes, including the interruption of its operations. The 2019-2020 Policy contains a loss limit of insurance of \$284,177,674, including separate limits of insurance for specific types of losses.

29. The Policies insures, among other locations, NJPAC’s performing arts center at One Center Street, Newark, New Jersey.

30. The Policies consist of several individual forms and endorsements that set forth the terms and conditions of the insurance coverage. The Policies include, among other coverages, insurance for losses caused by property damage as well as financial losses caused by business interruption.

31. The coverage for business interruption loss is set forth in the Policies in the “Business Income With Extra Expense” coverage form. *See* Exs. A-B at 60, “Business Income With Extra Expense” Endorsement, Form 80-02-1004 (Rev. 3-19).

32. The “Business Income With Extra Expense” coverage form provides coverage for “**business income** loss due to the actual impairment of [NJPAC’s] **operations**.” Exs. A-B at 60. It also covers “**extra expense**” incurred by NJPAC “due to the actual or potential impairment of NJPAC’s **operations**.” *Id.* “Business income,” “extra expense,” and “operations” are defined terms in the Policies. Exs. A-B at 110, 112, 119. “Impairment” is not defined in the Policies.

33. The “Business Income With Extra Expense” coverage form sets forth several circumstances under which Chubb pays NJPAC’s business income loss and extra expense, including, but not limited to, the following:

- a. The Policies obligate Chubb to pay “**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**.” Exs. A-B at 60. The Policies provide that “[t]his actual or potential impairment of **operations** must be caused by or result from direct physical loss or damage by a **covered**

peril to property.” *Id.*

b. The Policies obligate Chubb to pay business income loss and extra expense “directly caused by the prohibition of access to: your premises . . . by a civil authority. 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 . . . by a **covered peril**, provided such property is within one mile . . . [.]” Exs. A-B at 63-64.

c. The Policies obligate Chubb to pay business income loss and extra expenses if the “actual impairment of your **operations** [is] caused by or result[s] from the presence of **fungus** at your premises . . . [.]” Exs. A-B at 61. Fungus is defined as “A. (1) mildew, mold or other fungi; (2) other microorganisms; or (3) any mycotoxin, spores, or other by-products of the foregoing; or B. colony or group of any of the foregoing.” Exs. A-B at 113-114.

d. The Policies obligate Chubb to pay business income loss and extra expense if ingress to or egress from NJPAC’s premises is prevented “due to direct physical loss or damage by a **covered peril**” to property within one mile. Exs. A-B at 62.

e. The Policies obligate Chubb to pay business income loss and extra expense due to impairment of operations “caused by or result[ing] from direct physical loss or damage by a **covered peril to property** . . . of a **dependent business premises.**” Exs. A-B of 64.

f. The Policies obligate Chubb to pay business income loss and extra expense due to impairment of operations “directly caused by the prohibition of access to premises . . . by a civil authority.” Exs. A-B at 67. This coverage does not require a physical loss or damage. *Id.* Rather, the “[t]his prohibition must be the direct result of a peril” that “has occurred at or within 1,000 feet of such premises.” *Id.*

34. The Policies also obligate Chubb to pay other costs and expenses under certain scenarios, including the following:

a. Building or Personal Property, requiring to Chubb for “direct physical loss

or damage to: **building**; or **personal property**, caused by or resulting from a peril not otherwise excluded.” Exs. A-B at 31.

b. Fungus Clean-up or Removal, requiring Chubb to pay “the costs you incur to clean up, remove, restore or replace covered property because of the presence of **fungus** at the premise . . . [.]” Exs. A-B at 32.

c. Contractual penalties, requiring Chubb to pay “contractual penalties you are legally liable to pay under the written provisions of a contract due to a material breach of that contract” that is “the direct result of direct physical loss or damage by a **covered peril to property**.” Exs. A-B at 61.

d. Preparation of Loss Fees, requiring Chubb to pay the “reasonable and necessary expenses and fees incurred following covered loss or damage to certify your **business income** loss or **extra expense**.” Exs. A-B.

e. Loss Prevention Expenses, requiring Chubb to pay “the reasonable and necessary costs you incur to protect [the] building [or] personal property at the premises . . . from imminent direct physical loss or damage caused by or resulting from a peril not otherwise excluded.” Exs. A-B at 33-34.

35. The phrase “direct physical loss or damage” is not defined in the Policies. *See generally* Exs. A-B.

36. Many such comprehensive insurance policies have express exclusions for losses caused by or arising from the spread of viruses of disease-causing pathogens. Importantly, the Policies sold by Chubb **do not** have any such exclusion or other language purporting to exclude loss or damage caused by or resulting from any virus.

37. Chubb understood that standard-form exclusions to bar coverage for losses resulting from viruses and pandemics were widely available and, indeed, Chubb commonly used such exclusions in property insurance policies it sold to other insureds. Chubb could have included such an exclusion in the Policies, but chose not to do so. In view of Chubb’s deliberate omission of such an exclusion, the Policies do not limit coverage, and under certain

circumstances requires Chubb to pay, for losses resulting from viruses, pandemics, or communicable diseases.

38. NJPAC reasonably believed and expected that Chubb would pay for NJPAC's business income and other losses when it was forced to suspend operations due to property damage or civil authority orders resulting from a pandemic.

III. NJPAC Sustained Loss Falling Within The Scope Of The Policies' Coverage Following The COVID-19 Pandemic

39. The first reported cases of COVID-19 were diagnosed in or around December 2019 in the city of Wuhan, in the Hubei Province in China.

40. In or around January 2020, the coronavirus and COVID-19 rapidly began to spread across the United States. On March 11, 2020, recognizing the alarm levels of spread, the World Health Organization ("WHO") declared COVID-19 a pandemic.

41. New Jersey has been on the front lines of the coronavirus since at least January 2020 given that Newark Liberty International Airport serves as major hub for foreign travelers. <https://www.northjersey.com/story/news/health/2020/03/10/coronavirus-new-jersey-timeline-events-covid-covid-19/4964918002/>. On March 4, 2020, the first individual in New Jersey was diagnosed with COVID-19 but it is now believed that the coronavirus was spreading in New Jersey as early as January 2020. <https://www.nj.com/coronavirus/2020/05/coronavirus-was-spreading-in-nj-much-earlier-than-first-thought-maybe-as-early-as-january.html>.

42. As of January 31, 2021, in the United States, more than 25 million people have been diagnosed with COVID-19, and more than 430,000 have died. Worldwide, there have been more than 100 million confirmed cases and more than 2 million deaths.

43. COVID-19 is a disease caused by the coronavirus. [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-\(covid-2019\)-and-the-virus-that-causes-it](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it). The coronavirus is a physical, single-stranded RNA virus that measures 29,881 base pairs in length. <https://www.ncbi.nlm.nih.gov/nuccore/MT263458>.

44. The coronavirus spreads rapidly and easily in the air and on surfaces, and COVID-19 is known to be highly contagious.

45. Both the WHO and the Centers for Disease Control and Prevention (“CDC”) have recognized that the coronavirus can attach to surfaces, such as tables, doorknobs, and handrails, and can remain contagious on surfaces for days. Scientific studies have found that the coronavirus can survive on certain surfaces for nearly a month. Jessie Hellman, *COVID-19 virus can survive on some surfaces for nearly a month in lab conditions*, The Hill (Oct. 12 2020), <https://thehill.com/homenews/media/520647-covid-19-virus-can-survive-onsome-surfaces-for-nearly-a-month-in-lab>; *see also Public Health Responses to COVID-19 Outbreaks on Cruise Ships — Worldwide, February–March 2020*, Centers for Disease Control and Prevention (Mar. 27, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm>.

46. Similarly, a study published in *The New England Journal of Medicine* by a team of researchers from UCLA, Princeton University, the National Institute of Allergy and Infectious Diseases, and the CDC confirmed that the coronavirus can remain present up to 24 hours on cardboard and up to three days on plastic and stainless steel. Neeltje van Doremalen, *et al.*, *Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1*, NEW ENG. J. MED. (Mar. 17, 2020), <https://www.nejm.org/doi/full/10.1056/NEJMc2004973>. The study further confirmed that people can become infected with COVID-19 through contact with surfaces or objects used by infected individuals. *Id.*

47. Once on surfaces, the coronavirus creates grave danger. For example, the World Health Organization explained “[t]he disease can spread from person to person through small droplets from the nose or mouth which are spread when a person with COVID-19 coughs or exhales. These droplets land on objects and surfaces around the person. Other people then catch COVID-19 by touching these objects or surfaces, then touching their eyes, nose or mouth.” <https://www.who.int/news-room/q-a-detail/q-a-on-on-covid-19-for-older-people>.

48. Besides spread through surfaces, the coronavirus and COVID-19 are now known to spread by airborne transmission – particular indoors. Aerosol particles exhaled during talking

and normal breathing can stay suspended in the air for long periods of time and remain infectious. *See, e.g.,* Lidia Morawska, Donald K Milton, *et al., It Is Time to Address Airborne Transmission of Coronavirus Disease 2019 (COVID-19)*, CLINICAL INFECTIOUS DISEASES, Volume 71, Issue 9, <https://academic.oup.com/cid/article/71/9/2311/5867798?login=true>. The CDC has recognized that “small droplets and particles can linger in the air for minutes to hours” and can infect people who are greater than six feet away even “after the person has left the space.” *How COVID-19 Spreads*, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>. The problem is compounded by the fact that even individuals with no symptoms can spread the virus.

49. Virologists, doctors, and scientists have confirmed that the presence of the coronavirus and COVID-19 in buildings can create a deadly risk. This recognizes that the coronavirus and COVID-19 can cause physically change properties. Surfaces that previously were safe and harmless become dangerous and lethal. Air in buildings that previously was safe and breathable becomes dangerous and potentially deadly.

50. Even though the virus and COVID-19 is invisible to the naked eye, the presence of the virus and disease is just as dangerous as, if not more dangerous than, damage from fires, fumes, or vapors. Given the lethal risk presented both in the air and on surfaces, the presence of coronavirus and COVID-19 can render properties and buildings damaged, lost, unsafe, uninhabitable for occupancy or use, and unfit for their intended purpose. The danger is particularly acute for properties used as theaters and performing art space, which necessarily involves crowds coming together in confined spaces.

51. Thousands of people travel, often long distances, to NJPAC. Prior to March 2020, countless individuals, asymptomatic, pre-symptomatic, or otherwise, were present at NJPAC and may have unknowingly spread the virus onto NJPAC property and to other people in NJPAC.

52. Beginning no later than March 2020, the coronavirus and COVID-19 are known to have been physically present at NJPAC’s Newark, New Jersey center—on surfaces and in the

air within the facility. No fewer than eight employees at NJPAC's facilities have tested positive for COVID-19.

53. The actual presence of the coronavirus and COVID-19 caused direct physical loss or damage to NJPAC's properties, and rendered NJPAC's properties unsafe, uninhabitable for occupancy or use, and unfit for their intended purpose. As a direct result of this direct physical loss or damage to NJPAC's properties, NJPAC's operations were impaired. NJPAC's continued operations would have resulted in visitors, employees, vendors, contractors, and other individuals being exposed to the coronavirus and unquestionably would have resulted in a substantial number of fatalities.

54. NJPAC's operations also were impaired when ingress to or egress from NJPAC's properties was prevented due to direct physical loss or damage both at and within one mile of NJPAC's properties.

55. In addition, several civil authority orders were issued by state and local authorities that impaired NJPAC's ability to operate. On March 9, 2020, New Jersey Governor Philip Murphy issued Executive Order No. 103, declaring "a Public Health Emergency and State of Emergency . . . in the State of New Jersey" due to COVID-19, "a contagious, and at times fatal, respiratory disease."

56. Executive Orders signed by Governor Murphy after March 9, 2020 closed all non-essential for-profit and non-profit businesses in New Jersey, and required the closure of NJPAC.

57. On March 16, 2020, Governor Murphy issued Executive Order No. 104 in response "to the public health hazard posed by [COVID-19]." In light of "many individuals [coming] into contact with common surfaces at . . . entertainment centers [and] suspending operations at these businesses [being] part of the State's mitigation strategy to combat COVID-19 and reduce the rate of community spread," Governor Murphy ordered "[a]ll gatherings of persons in the State of New Jersey [to] be limited to 50 persons or fewer" and closed "to members of the public, effective 8:00 p.m. on Monday, March 16, 2020 [e]ntertainment centers, including but not limited to . . . **performing arts centers.**" (Emphasis added).

58. On March 21, 2020, in further response to COVID-19, Governor Murphy issued Executive Order No. 107, ordering all “New Jersey residents [to] remain home or at their place of residence” unless seeking an essential service. That Executive Order also provided: “The brick-and-mortar premises of all non-essential retail businesses must close to the public as long as this Order remains in effect.”

59. Government Murphy repeatedly has extended the restrictions on the ability of entertainment centers and performing arts centers, such as NJPAC, to operate. *See, e.g.*, Executive Order Nos. 119, 138, 151.

60. On March 25, 2020, Newark Mayor, Ras Baraka, announced “a strict City-wide ‘shelter-in-place’ mandate” and an “all-city quarantine.”

61. In addition, NJPAC is less than 10 miles from New York City, and a significant portion of NJPAC’s revenue is derived from customers who live or work in New York City. In March 2020, several civil authority orders were issued from state and local authorities in New York State and New York City. These civil authority orders generally were analogous to those issued in New Jersey. As one example, Executive Order No. 100, issued by New York City Mayor Bill de Blasio, found that COVID-19 “**physically is causing property loss and damage,**” and ordered that “all entertainment venues, including those with seating capacity below 500, are hereby closed effective Monday, March 16, 2020.”

62. These various civil authority orders, and others, recognize that the coronavirus and COVID-19 cause physical damage and loss to property. The orders further confirm that they were issued in whole or in part because of the presence of the coronavirus and the consequent loss and damage to property in and around Newark, New Jersey, including within one mile of NJPAC’s properties. The various civil orders also prohibited access to NJPAC’s properties and resulted from a peril that has occurred at or within 1,000 feet of NJPAC’s premises.

63. As of the date of this Complaint, NJPAC’s ability to operate has not been restored and remains restricted, and it is unknown when NJPAC and other performing arts centers or theaters will be permitted to reopen in any capacity let alone at full capacity.

64. Due to the coronavirus, COVID-19, the subsequent actions and orders of state and local civil authorities, and the need to mitigate its losses and damage, NJPAC has sustained significant losses and costs that are covered under one or more of Policies including, but not limited to, business income losses; extra expense; costs and expenses for cleaning and sanitization to respond to and remove the coronavirus and COVID-19 from physical surfaces; and costs to protect its properties from imminent direct physical loss or damage caused by or resulting from a peril.

IV. Chubb Breaches the Terms of the Policies in its Blanket Refusal to Pay COVID-19 Claims

65. NJPAC timely notified Chubb of its losses and forwarded a copy of relevant documentation.

66. Chubb was obligated to conduct a reasonable and detailed investigation of NJPAC's claims and fully inquire into the facts supporting NJPAC's claims. Instead, on May 20, 2020, Chubb, without engaging in any meaningful investigation, sent NJPAC a letter denying coverage for all of NJPAC's losses under the Policies. A true and correct copy of Chubb's May 20, 2020 letter is attached as Exhibit C.

67. Given that Chubb ignored relevant facts and authority in reaching its denial, on June 9, 2020, NJPAC responded to Chubb's letter. Therein, NJPAC explained why Chubb should reverse its decision to deny coverage. NJPAC provided information that NJPAC had the confirmed presence of the coronavirus and COVID-19 at its properties and explained how this caused physical and damage to the properties and impaired NJPAC's operations. NJPAC also cited numerous civil authority orders due to the effects of the coronavirus and COVID-19 that impaired NJPAC's operations. A true and correct copy of NJPAC's June 9, 2020 letter is attached as Exhibit D.

68. Nonetheless, on August 11, 2020, Chubb, without considering any additional facts or engaging in further discussion, sent NJPAC a letter maintaining its denial of coverage for any

of NJPAC's losses. A true and correct copy of Chubb's August 11, 2020 letter is attached as Exhibit E.

69. Upon information and belief, Chubb has adopted a general practice of denying all COVID-19 claims across the board under its commercial property insurance policies – irrespective of the facts of the claim. Chubb Limited posted to its website a “Final – March 26, 2020” notice, which apparently has since been deleted, that states in part:

Business interruption insurance generally covers losses to your business' income that result from disruption of your business. The disruption must be caused by physical loss or damage to your property by a “covered peril.” The presence of an infectious agent or communicable disease at a location where there is covered property generally will not mean that property has suffered “physical loss or damage” under your policy. Generally, “physical loss or damage” means that the physical structure or physical characteristics of the property have been altered by a “covered peril”. Loss of use, or diminished value of property that has not been physically altered will not be considered “physical loss or damage.”

Ex. F.

70. At the same time, Chubb proclaims on its website that “[o]ur hearts go out to those affected by the COVID-19 pandemic. We have been — and stand ready to continue — supporting our clients, distribution partners and communities. We have put together several helpful resources to keep you informed and better assist you in this unprecedented time.” <https://www.chubb.com/microsites/covid19-resource-center/index.html>.

71. Chubb's conduct conflicts with representations it has made to the public and in its marketing materials about its claims practices. For example, Chubb touts on its website that its claims handling is “different” from other insurance carriers, explaining “[w]e don't just process claims, we make things right. We hope you never need to file a claim with us. But if you do, that's our opportunity to show you what “craftsmanship” means in service to you. It means a quick response when you need it most. It means Chubb people working with empathy, integrity and our legendary attention to detail to make you whole. It means we honor the promises we've

made to you.” <https://www.chubb.com/us-en/claims/claims-difference.html>.

72. Rather than living up to these commitments, upon information and belief, Chubb made the business decision to deny all business income loss claims under its property insurance policies and denied NJPAC’s claim without a meaningful investigation during NJPAC’s direst time of need.

73. In view of the policy language, the pertinent facts, and relevant legal authority, Chubb’s denial of coverage is without reasonable basis.

FIRST CAUSE OF ACTION

(Breach of Contract)

74. NJPAC incorporates each of the allegations in paragraphs 1 through 73 into Count I.

75. NJPAC has complied with any and all conditions required under the Policies, except as otherwise excused or waived.

76. Under the Policies, Chubb agreed to provide coverage as set forth in the various subsections of the Policies listed above.

77. NJPAC has submitted a claim for losses, including business income losses and extra expense, that are covered under the subsections outlined above.

78. No exclusions bar coverage for NJPAC's losses.

79. Chubb has refused to pay NJPAC for its losses and thereby breached its contractual obligations to NJPAC under the Policies.

80. NJPAC has suffered, and continues to suffer, damages because of Chubb's breaches.

81. WHEREFORE, NJPAC demands entry of judgment awarding:

- a. Damages to NJPAC as a result of the breaches of contract by Chubb in an amount to be determined at trial;
- b. Pre-judgment and post-judgment interest at the maximum legal rate;
- c. Fees and costs incurred in this action; and
- d. Such other relief as this Court may deem just and proper.

SECOND CAUSE OF ACTION

(Declaratory Judgment)

82. NJPAC incorporates each of the allegations in paragraphs 1 through 73 into Count II.

83. NJPAC has complied with any and all conditions required under the Policies,

except as otherwise excused or waived.

84. Under the Policies, Chubb agreed to provide coverage as set forth in the various subsections of the Policies listed above.

85. NJPAC has submitted a Claim for losses that are covered and may incur additional future losses, including business income losses and extra expense, that are covered under the Policies.

86. No exclusion bars coverage for NJPAC's losses.

87. Chubb has denied coverage for NJPAC's loss under the Policies and has indicated that it also will deny coverage for future losses and costs.

88. As a result of the foregoing, there is an actual and justiciable controversy concerning Chubb's obligations under the Policies. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. NJPAC seeks a declaration that its losses are covered under the Policies.

89. WHEREFORE, NJPAC seeks entry of judgment as follows:

a. For a declaration that NJPAC's losses are covered under the relevant subsections of the Policies;

b. For a declaration that Chubb must fully pay for all existing and future losses at issue in this action under the Policies;

c. For NJPAC's fees and costs incurred in this action; and

d. For such other relief as this Court may deem just and proper.

THIRD CAUSE OF ACTION

(Bad Faith)

90. NJPAC incorporates each of the allegations in paragraphs 1 through 73 into Count III.

91. New Jersey law imposes upon Chubb a covenant of good faith and fair dealing regarding the Policies.

92. As part of this covenant, Chubb was obligated to conduct fair, reasonable, and thorough investigations of claims submitted under the Policies using sufficiently trained and motivated adjusters. Chubb also was obligated to do nothing to frustrate NJPAC's rights under the Policies.

93. Chubb breached its covenant of good faith and acted in bad faith by, among other things,

a. undertaking an inadequate investigation before denying NJPAC coverage under the Policies;

b. denying NJPAC coverage with knowledge or reckless disregard of the facts that its denial constituted an unreasonable failure to honor its contractual obligations,

c. knowingly or recklessly basing its denial of coverage on frivolous grounds unsupported by fact and for which the law weighs heavily against, and in doing so, showing no regard for NJPAC;

d. misrepresenting the coverage available under the Policies;

e. forcing NJPAC to litigate to obtain coverage under the Policies; and

f. adopting an unfair business practice of denying all business interruption claims for COVID-19-related losses, irrespective of the facts of the claims.

94. NJPAC has incurred and continues to incur consequential damages including ongoing expenses and attorneys' fees due to Chubb's bad faith conduct.

95. These consequential damages were within the contemplation of, and foreseeable by, NJPAC and Chubb at the time the Policies were sold, and were a natural and probable result of Chubb's bad faith conduct.

96. WHEREFORE, NJPAC seeks entry of judgment as follows:

a. Compensatory and consequential damages in an amount to be determined at trial;

b. Pre-judgment and post-judgment interest at the maximum legal rate;

- c. Fees and costs incurred in this action;
- d. Exemplary and punitive damages; and
- e. Such other relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

97. NJPAC hereby demands a trial by jury on all issues so triable.

Dated: February 16, 2021

LOWENSTEIN SANDLER LLP

By: /s/ Lynda A. Bennett

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RULE 4:5-1 CERTIFICATION

It is hereby certified that this matter is not the subject of any other action pending in any court, is not the subject of any pending arbitration proceeding, and none is contemplated.

It is further certified that to the best of my knowledge, information, and belief, I am not aware of any nonparties who should be joined in the action.

It is further certified that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

LOWENSTEIN SANDLER LLP

By: /s/ Lynda A. Bennett
Lynda A. Bennett

DESIGNATION OF TRIAL COUNSEL

In accordance with Rule 4:25-4, Plaintiff hereby designates Lynda A. Bennett as trial counsel in this action.

LOWENSTEIN SANDLER LLP

By: /s/ Lynda A. Bennett
Lynda A. Bennett

RULE 1:38-7(b) CERTIFICATION

In accordance with Rule 4:25-4, Plaintiff hereby designates Lynda A. Bennett as trial counsel in this action.

LOWENSTEIN SANDLER LLP

By: /s/ Lynda A. Bennett
Lynda A. Bennett