

**BEATTIE PADOVANO, LLC**  
**Arthur N. Chagaris, Esq., 000741975**  
**Mariya Gonor, Esq., 077462013**  
**50 Chestnut Ridge Road, Suite 208**  
**Montvale, New Jersey 07645-0244**  
**(201) 573-1810**  
**Attorneys for Plaintiff,**  
**GK Trading LLC**

GK TRADING, LLC, d/b/a APPAREL SOLUTIONS

Plaintiff,

vs.

CHUBB GROUP OF INSURANCE COMPANIES, CHUBB LTD, and FEDERAL INSURANCE COMPANY; ABC CORPORATIONS 1 TO 10; AND JOHN DOES 1 TO 10,

Defendant(s).

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION

BERGEN COUNTY

DOCKET NO.

CIVIL ACTION

**COMPLAINT  
WITH JURY DEMAND**

Plaintiff GK TRADING d/b/a APPAREL SOLUTIONS by way of Complaint against the Defendants, say:

**FACTS RELEVANT TO ALL CLAIMS**

1. Plaintiff brings this Declaratory Judgment action declaring that the Defendants Chubb Group of Insurance Companies, Chubb LTD and Federal Insurance Company must provide insurance coverage, under the unambiguous provisions of the Policy of Insurance (defined below) issued by Defendants to Plaintiff for the business losses and damages sustained by Plaintiff as a result of the COVID-19 pandemic and that Defendants' denial of coverage for the losses so sustained constitutes bad faith.

**PARTIES**

2. Plaintiff is a Limited Liability Company organized under the laws of the State of New Jersey, with a principal place of business located at 30 Technology Drive, Suite 1, Warren, New Jersey (hereinafter, the “New Jersey Location”).

3. Plaintiff designs, manufactures, and distributes women’s garments, apparel, and accessories to various retailers.

4. During the time relevant hereto, in addition to the New Jersey Location, Plaintiff operates a showroom to market its designs to various retailers, which showroom was located at 400 W 41<sup>st</sup> Street, Suite 2100, New York, New York (hereinafter, “New York Location”).

5. Upon information and belief, Chubb LTD. (“Chubb”) is a Swiss corporation that conducts business throughout the world and, substantially, in the State of New Jersey.

6. Upon information and belief, Chubb is the parent company of various subsidiaries that specialize in issuing property insurance.

7. Upon information and belief, Defendant Chubb Group of Insurance Companies (“Chubb Group”) is a corporation authorized to do business in New Jersey with a principal place of business at 202 B Hall’s Mill Road, P.O. Box 1650, Whitehouse Station, New Jersey 08889-1650.

8. Upon information and belief, Defendant Federal Insurance Company (“Federal”) is a corporation incorporated under the laws of the State of Indiana, writing insurance policies in New Jersey.

9. Upon information and belief, Defendant Federal is a subsidiary of Chubb.

10. John Does 1-10 are fictitious Defendants who are entities and/or individuals who have yet to be identified by Plaintiffs as defendants but whose identity as defendants may be

revealed during the period of discovery that will occur relative to this action and who may be liable for Plaintiffs' damages as referenced herein. Such individuals/entities may include, but are not necessarily limited to, insurance brokers, salespeople, agents, managers, owners, shareholders, agents, independent contractors, customer service representatives, and the like.

11. Unless otherwise specified, all allegations and counts set forth below are directed against all Defendants named herein, fictitious or otherwise.

### **CHUBB POLICY OF INSURANCE**

12. Upon information and belief the Defendants are duly qualified and licensed to issue insurance policies in this State.

13. Plaintiff entered into a contract of insurance with Defendants, whereby Plaintiff agreed to make payments to Defendants in exchange for Defendants' promise to indemnify Plaintiff for losses including, but not limited to, business income losses.

14. Plaintiff purchased a policy of insurance with the Defendants from an insurance broker located in Bergen County, Otterstedt Insurance Agency, Inc., of 540 Sylvan Avenue, Englewood Cliffs, NJ ("Policy").

15. As a result, Defendants issued to Plaintiff Policy No. 3598-77-64 ECE for the policy period from July 16, 2019 to July 16, 2020 ("the Policy").

16. Plaintiff purchased the Policy to protect its interests in the event a devastating and unforeseen event may occur that would cause its retail operations to involuntarily suspend its operations.

17. The Policy issued to Plaintiff is an "all risk" commercial property policy that covers loss or damage to the cover premises resulting from all risks other than those expressly excluded.

18. Under the Policy, Defendants agreed to provide certain business interruption/property damage claim coverage for the New York Location and the New Jersey Location (collectively sometimes referred to as the “Covered Locations”).

19. Notably, Defendants failed to include explicit language in the Policy that excludes or limits any damages from a “virus or bacteria.” Unlike many all risk policies, Plaintiff’s Policy does not contain a viral or bacterial exclusion clause.

20. Plaintiff faithfully paid in full all policy premiums to Defendants, specifically to provide coverages for lost business income and extra expenses in the event of involuntary business interruption.

21. Based upon information and belief, Defendants accepted the policy premiums with no intention of providing any coverage to Plaintiff, or similarly situated policyholders, in the event of a loss from a virus pandemic and shutdown by a civil authority.

#### **BUSINESS LOSSES SUSTAINED BY PLAINTIFF**

22. The global COVID-19 pandemic has physically impacted both public and private property and physical spaces around the world, as well as the right of the general public to gather and utilize business locations. The currently-raging COVID-19 pandemic has been exacerbated by the fact that the virus physically infects and stays on surfaces of objects or materials, “fomites” for up to twenty-eight days. The scientific community in the United States, and indeed, across the world, including the World Health Organization, has recognized that the Coronavirus is a cause of physical loss and damage.

23. On or about March 11, 2020, World Health Organization (“WHO”) declared the COVID -19 outbreak a worldwide pandemic, citing the “alarming levels of spread and severity,

and by the alarming levels of inaction. We have therefore made the assessment that COVID-19 can be characterized as a pandemic.”

24. On March 16, 2020, the Centers for Disease Control and Prevention, issued to the American public guidance, for stopping the spread of COVID-19. This guidance advised individuals to adopt far-reaching social distancing measures, such as working from home, avoiding shopping trips and gatherings of more than 10 people, and staying away from bars, restaurants, and food courts.

25. Based on various scientific evidence, it was determined that coronavirus, a virus that causes the Covid-19 disease, is not only transmitted via human-to-human contact but is also transmitted through contaminated physical objects and/or surfaces.

26. Indeed, at least one of Plaintiff’s employees had been infected by the virus and was present at the Covered Premises while infected.

27. According to a study published in the New England Journal of Medicine, COVID-19 was detectable in aerosols for up to three hours, up to 24 hours on cardboard, and up to two to three days on plastic and steel. All these materials are used in the Plaintiff’s business operations.

28. New York City and New Jersey were the epicenter of the pandemic at the time that the loss occurred.

29. As of the date of this filing, approximately 1,634,271 New Yorkers have tested positive and 47,134 New York citizens have lost their lives. In addition, 769,109 New Jersians have tested positive and 22,874 New Jersey citizens have lost their lives.

30. As a result of the severe and pervasive spread of COVID-19 in the States of New York and New Jersey, by the order mandated by the Civil Authority, Plaintiff's Covered Locations were ordered to shut down.

31. More specifically, on or about March 21, 2020 the Governor of New Jersey in conjunction with the New York Governor issued a number of Executive Orders mandating that all residents stay at home except for necessary travel and mandated a shutdown of all "non-essential" business (hereinafter "Shutdown Orders").<sup>1</sup>

32. From the New Jersey Location, Plaintiff operates a warehouse and a shipping facility, from which it packages, prepares, and ships various orders to Plaintiff's customers.

33. From the New York Location, Plaintiff operates a showroom, where it models and markets its designs to its various customers.

34. Plaintiff's business was deemed non-essential under the Shutdown Orders and thus both Covered Locations were forced to close their respective on-site operations.

35. The business operations Plaintiff conducts out of the New Jersey Location and the New York Location **cannot** be conducted by Plaintiff's employees remotely.

36. The operations of the Covered Locations are essential for Plaintiff's business.

37. When Plaintiff is unable to conduct its business operations from the New Jersey Location, Plaintiff is unable to prepare, pack, and deliver its products to its customers.

38. When Plaintiff is unable to conduct its business operations from the New York Location, it is unable to secure new orders from its customers.

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<sup>1</sup> On or about March 21, 2020 Governor Phil Murphy issued Executive Order 107, closing all non-essential business in the State of New Jersey. On or about March 22, 2020 Governor Andrew M. Cuomo issued Executive Order 202.6 mandating the closure of all non-essential businesses in the State of New York.

39. Since the issuance of the Shutdown Orders, and as of March 21, 2020, Plaintiff has been unable to operate its business in the ordinary course of business and sustained losses totaling not less than \$3,000,000.00 (hereinafter the “Loss”). Plaintiff’s losses are continuing.

40. The COVID-19 microbial matter attaches to surfaces within properties, causing the spread of the virus and rendering the property physically damaged.

41. Here, the microbial matter propagated attached to the surfaces within New Jersey Premises and New York Premises, thereby causing direct physical loss and damaged to the subject properties.

42. The pervasive spread of the virus causing COVID-19, its release in Plaintiff’s New York Location, and New Jersey Location, and the surrounding areas within 1000 feet of the subject locations, as well as the closure by the Civil Authorities caused physical damages to the Covered Premises (within the meaning of the Policy).

43. As a result of the damages to Plaintiff’s Covered Premises and disruption of Plaintiff’s business operations, Plaintiff incurred substantial losses of its business income.

44. To date, even though some of the limitations imposed by the Shutdown Orders were relaxed to an extent, Plaintiff continues to suffer business losses.

45. In addition, many travel restrictions were imposed by civil authorities limiting the ability of individuals to travel from state to state and requiring a fourteen-day quarantine period for certain inter-state travel.

**PLAINTIFF’S CLAIM TO CHUBB AND CHUBBS  
BAD FAITH DENIAL OF COVERAGE**

46. The Policy is an “all risk” commercial property policy that covers loss or damage to the covered premises resulting from all risks other than those expressly excluded. *See Port Auth. of New York & New Jersey v. Affiliated FM Ins. Co.*, 311 F.3d 226, 234 (3d Cir. 2002)

47. The coverage under the Policy is available under at least four separate bases, which are cited herein for illustration but not limitation purposes as other reasons for coverage may exist under this Policy, as on-going discovery may reveal.

48. First, coverage under the Policy is available because Plaintiff suffered direct physical loss or damage to the New Jersey Premises and New York Premises as a result of the Covid-19 outbreak.

49. Numerous cases throughout the United States hold that release – or threatened release – of virus, bacteria, or other contaminant – constitute physical damage to insured’s property.

50. As drafter of the Policy, Chubb could have excluded such losses from coverage. It did not.

51. In Addition, as per the applicable caselaw, an insurance policy is deemed a contract of adhesion, and policy terms are to be construed against the drafter.

52. Indeed, Plaintiff’s Policy does not contain a viral exclusion present in many other all-risk policies issued after 2003 SARS outbreak.

53. Plaintiff’s reasonable expectations in connection with the purchase of this Policy - without a viral exclusion – were that in the event of a catastrophic, unforeseen event causing an involuntarily closure, serious curtailment and interruption of its business, the losses it sustained would be covered by the Policy.

54. In addition, coverage under this Policy exists on a separate basis under the policy because the access to the Covered Locations were prohibited by a civil authorities.

55. The Policy provides, on Form 80-02-1004, Additional Coverages under the heading of “Civil Authority;”



We will pay for the actual: business income loss; or extra expense, you incur due to the actual impairment of your operations, directly caused by the prohibition of access to: your premises; or a dependent business premises, by a civil authority.

56. Also, coverage under this policy is available under the Business Income Coverage and Extra Expense sections of the policy.

57. The Business Income With Expense Coverage Form, Form 80-02-1004, states as follows:

*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 shown under Any Other Location 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 at unspecified premises.  
(Emphasis supplied).*

58. Accordingly, and in compliance with the terms of the Policy, Plaintiff submitted a claim for reimbursement of the losses in connection with this policy.

59. On or about May 19, 2020, Defendants requested additional information in connection with this claim. That request for additional information is attached hereto as **Exhibit A**.

60. On or about May 27, 2020, Plaintiff provided additional information in response to Defendants' request.

61. For nearly two months, Defendants claimed to investigate the claim as to whether it was covered by the Policy.

62. On June 5, 2020, Defendants denied coverage for the Loss. The denial letter is attached hereto as **Exhibit B**.

63. Defendants purported reason for the denial was because "the impairment of your operations was not due to direct physical loss or damage to property at or within 1,000 feet of

your premises” but rather “it is Chubb’s conclusion that all non-essential businesses were required to cease all activities at facilities located within New York State and New Jersey State except minimum basic operations to slow the spread of COVID-19 to the maximum extent possible.”

64. Chubb also claimed “there was no prohibition of access to a premises shown in the Declarations by a civil authority.”

65. Chubb further claimed that “even assuming that access to your premises was prohibited, which it was not, such prohibition was not the direct result of the fact that COVID-19 had occurred at or within 1,000 feet of your premises.” Chubb failed to state what investigation it conducted to determine that there was no outbreak of Covid-19 within 1000 feet of Plaintiff’s business premises.

66. Chubb also cited a reason for the denial by stating that the closures were not “the direct result of an imminent occurrence of COVID-19 which applies to a geographic area of less than 1,000 square feet or only to your premises. Instead, the orders referenced above were designed to reduce the spread of COVID-19 generally in the states of New York and New Jersey, and not because the virus was discovered within 1,000 feet of your premises.”

67. Defendants’ conclusions are contrary to controlling law, facts, common sense and the plain reading of the policy.

68. The Defendants’ denial on the basis that COVID-19 was not the result of a physical loss is a false and potentially fraudulent misrepresentation that could endanger policyholders, such as Plaintiff, and the public.

69. Defendants’ claim that the virus is not within 1,000 feet of the Covered Premises is demonstrably false and is contrary to common sense.

70. The New York Times has engaged in a comprehensive effort to track details about every reported case in the United States, collecting data for New York City and the locations of confirmed cases. That data shows that as of the filing of the Complaint there were 501 confirmed cases of individuals residing in the designated zip code where the New York Location is located, that is zip code 10036, which comprises a .44 square mile area.<sup>2</sup>

71. Midtown Manhattan is one of the most densely trafficked areas in the United States of America with daily pedestrian traffic often exceeding 30,000 individuals in the surrounding area of the New York Location,<sup>3</sup> such that it is statistically impossible for an individual carrying virus to not come within 1,000 feet of the New York Location during the over two month period Defendants purportedly were investigating Plaintiff's claim.

72. Furthermore, New Jersey Executive Order, mandated the shutdown of non-essential business, thereby prohibiting access to Plaintiff's New Jersey Location for the purposes of conducting business therefrom, the only reason why Plaintiff obtained and insured New Jersey Location.

73. Indeed, failure to follow the New Jersey Executive Orders results in serious financial potentialities as well criminal penalties.

74. In addition, upon information and belief, in at least one instance where the New Jersey Executive Order was violated by a business, the State of New Jersey affected a physical

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<sup>2</sup> See New York Times Coronavirus Map and Case Count, accessed August 3, 2020 (<https://www.nytimes.com/interactive/2020/nyregion/new-york-city-coronavirus-cases.html>)

<sup>3</sup> See NYC Open Data Bi-Annual Pedestrian Counts, accessed August 3, 2020 (<https://data.cityofnewyork.us/Transportation/Bi-Annual-Pedestrian-Counts/2de2-6x2h>)

lock down of the business premises and the owners were subsequently charged with criminal summonses when the establishment did not comply with its restrictions.<sup>4</sup>

75. Upon information and belief, the same penalties apply to violations of the New York Executive Order.

76. Therefore, Defendants claim that “there was no prohibition of access to a premises shown in the Declarations by a civil authority” is a false and potentially fraudulent misrepresentation, and one that encourages policyholders such as Plaintiff to violate the laws as established by the State of New Jersey and the State of New York to the detriment and welfare of the public.

77. On June 23, 2020, Plaintiff appealed Defendants’ denial explaining that the denial was contrary to the controlling law and therefore was wrongful and in bad faith.

78. On July 9, 2020, Defendants informed Plaintiff that it would not reconsider its denial and will not pay for the Loss.

79. Defendants’ failure to cover the Loss is also contrary to the reasonable expectations of the Plaintiffs in connection with the purchase of the Policy.

80. Therefore, Plaintiff brings this Declaratory Judgment Action for a determination that Defendants are obligated to provide coverage for the Loss under the Policy provisions cited above as well as any other provision of the Policy which may apply to this Loss, as well as other relief.

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<sup>4</sup> See <https://www.nj.com/coronavirus/2020/07/judge-fines-gym-owners-who-challenged-gov-murphys-shutdown.html>

**COUNT I**

**DECLARATORY JUDGMENT**

81. Plaintiff repeats and realleges all allegations set forth in all preceding paragraphs as if fully set forth herein.

82. Plaintiff's Policy is a contract under which Defendants were paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the Policy.

83. Due to the COVID-19 outbreak, Executive Orders of the New Jersey and New York Governors, as is set forth in more details above, Plaintiff suffered a Loss covered by the Policy.

84. Plaintiff is and at all times has been compliant with all applicable provisions of the Policies and/or those provisions have been waived by Chubb or Chubb is estopped from asserting them.

85. Defendants, on the other hand, have abrogated their insurance coverage obligations under the clear and unambiguous Policy terms.

86. By denying to pay for the loss, Defendants breached its coverage obligations under the Policies.

87. As a result of Defendants breaches of Policy, Plaintiff has sustained substantial damages for which Defendants are liable in the amount to be established at trial.

WHEREFORE, Plaintiff demands judgment against the Defendants as follows:

- a. Issuing a Declaratory Judgment declaring the Parties' rights and obligations under the Policy;
- b. Awarding Plaintiff compensatory damages;

- c. Awarding Plaintiff counsel fees, and costs of suit as expressly permitted under *Rule 4:42-9(a)(6)*;
- d. Any other applicable consequential, incidental, nominal, exemplary, expectation, and punitive damages, and
- e. For such other relief as the Court deems just and proper.

## **COUNT II**

### **BAD FAITH DENIAL OF COVERAGE**

88. Plaintiff repeats and realleges all allegations set forth in all preceding paragraphs as if fully set forth herein.

89. Plaintiff faithfully paid in full all policy premiums to Defendants, specifically to provide coverages for lost business income and extra expenses in the event of involuntary business interruption.

90. Based upon information and belief, Defendants accepted the policy premiums with no intention of providing any coverage to Plaintiff, or similarly situated policyholders, in the event of a loss from a virus pandemic and shutdown by a civil authority.

91. The Loss set forth above are clearly and unambiguously covered under the terms of the Policy.

92. Plaintiff submitted a claim for reimbursement of the losses in connection with the Policy.

93. The Defendants lack any fairly debatable reason for denying coverage under the Policy.

94. For nearly two months, Defendants claimed to investigate the claim as to whether it was covered by the Policy before issuing a denial letter on June 5, 2020.

95. As set forth above, the reasons set forth in Defendants June 5, 2020 denial letter are contrary to the facts and constitute false and potentially fraudulent misrepresentations, evidencing bad faith.

96. The Defendants have a duty of good faith to Plaintiff in processing a first-party claim.

97. The Defendants failed to fulfill that duty to Plaintiff.

98. Plaintiff alerted the Defendants to the applicable case law interpreting subject Policy terms. Yet, despite being alerted to the applicable case law the Defendants knowingly and/or recklessly disregarded the absence of reasonable basis to deny Plaintiff's claim.

WHEREFORE, Plaintiff demands judgment against the Defendants as follows:

- a. Issuing a Declaratory Judgment that Defendants acted in Bad Faith in connection with their denial of coverage with respect to the Policy;
- b. Awarding Plaintiff compensatory damages;
- c. Awarding Plaintiff counsel fees, and costs of suit as expressly permitted under *Rule 4:42-9(a)(6)*;
- d. Any other applicable consequential, incidental, nominal, exemplary, expectation, and punitive damages, and
- e. For such other relief as the Court deems just and proper.

### **COUNT III**

#### **BREACH OF CONTRACT**

99. Plaintiff repeats and realleges all allegations set forth in all preceding paragraphs as if fully set forth herein.

100. Plaintiff entered into a contract of insurance with Defendants, whereby Plaintiff agreed to make payments to Defendants in exchange for Defendants' promise to indemnify Plaintiff for losses including, but not limited to, business income losses.

101. Plaintiff faithfully paid in full all policy premiums to Defendants, specifically to provide coverages for lost business income and extra expenses in the event of involuntary business interruption.

102. Per the Policy, Defendants to pay for loss of business income due to the necessary suspension of its operations.

103. Plaintiff has complied with all applicable provisions of the Policy.

104. Defendants breached their coverage obligations under the Policy by:

- a. accepting Plaintiff's premiums with no intention of providing any coverage to Plaintiff, or similarly situated policyholders, in the event of a loss from a virus pandemic and shutdown by a civil authority;
- b. issuing a denial of applicable coverages;
- c. failing to promptly and reasonably adjust the claim;
- d. failing to timely indemnify Plaintiffs for the loss of business income that it incurred;

105. As a result of Defendants' breaches of the Policy, Plaintiff sustained losses.

WHEREFORE, Plaintiff demands judgment against the Defendants as follows:

- a. Issuing a Declaratory Judgment declaring the Parties' rights and obligations under the Policy;
- b. Awarding Plaintiff compensatory damages;



- c. Awarding Plaintiff counsel fees, and costs of suit as expressly permitted under *Rule 4:42-9(a)(6)*;
- d. Any other applicable consequential, incidental, nominal, exemplary, expectation, and punitive damages, and
- e. For such other relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demands a trial by jury as to all issues raised herein.

**BEATTIE PADOVANO, LLC**  
Attorneys for Plaintiff

Dated: February 24, 2021

B: */s/ Arthur Chagaris*  
ARTHUR N. CHAGARIS

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to Rule 4:25-4, Arthur N. Chagaris, Esq. is designated as trial counsel in this matter.

**BEATTIE PADOVANO, LLC**  
Attorneys for Plaintiff

Dated: February 24, 2021

By: */s/ Arthur Chagaris*  
ARTHUR N. CHAGARIS

**NOTICE PURSUANT TO R. 1:5-1(a) AND R. 4:18-4(c)**

Take notice that, pursuant to Rule 1:5-1(a) and Rule 4:18-4(c), Plaintiffs hereby demands that each party named in the Complaint that serves or receives pleadings of any nature (including discovery requests) to or from any other party to the action, forward copies of same along with any documents provided in answer or response thereto to counsel for Plaintiffs and take notice that this is a continuing demand.

**BEATTIE PADOVANO, LLC**  
Attorneys for Plaintiff

Dated: February 24, 2021

By: /s/Arthur Chagaris  
ARTHUR N. CHAGARIS

**CERTIFICATION PURSUANT TO R. 4:5-1**

The undersigned certifies that, upon their initial review of this matter, the matters in controversy in this action are not the subject of any other action pending in any other court or of a pending arbitration proceeding, that no other action or arbitration proceeding is currently contemplated and that they are unaware of any other parties who currently should be joined to this action.

**BEATTIE PADOVANO, LLC**  
Attorneys for Plaintiff

Dated: February 24, 2021

By: /s/Arthur Chagaris  
ARTHUR N. CHAGARIS

# EXHIBIT A

**From:** [Lopriore, Shawn R](#)  
**To:** [sgupta@allureco.com](mailto:sgupta@allureco.com); [US Property Claims](#)  
**Cc:** [Gonor, Mariya](#)  
**Subject:** RE: Claim#076920008751 // GK Trading Llc Dba Apparel Solutions - Federal Insurance Company  
**Date:** Tuesday, May 19, 2020 1:29:25 PM

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Dear Ms. Gupta,

I am currently working to finalize the coverage review for your claim. However, I require additional information and clarifications from you regarding the above referenced claim. As such, when you have a free moment, please review and respond to the questions below. However, should you prefer all future communications to be directed to Beattie Padovano, LLC, please provide a copy of the Letter Of Representation to me.

- Which policy locations are you claiming that are affected by this loss? If not all, please specify the locations affected. You may refer to your policy's Premises Schedule and include the corresponding location number OR you may provide the address.
- Has there been any physical prohibition of access to your business location(s)? This may include physical barriers for entering the vicinity of your business location or physical blocks preventing you or your employees for entering the building.
- Have you or any of your employees been into the office location? If yes, please advise as to what the nature of their activities have been (i.e. Check mail, e-commerce sales/shipping, check on the property, etc.)
- Has your business sustained any physical damages? If yes, please describe the physical damages to the building and/or personal property you sustained in this loss?
- Do you have any **Dependent Business Premises\***? If, yes, has there been any damage to the Dependent Business Premises? Is there any physical prohibition of access to the **Dependent Business Premises**?

**\*Dependent Business Premises** is:

Dependent Business Premises means premises operated by others on whom you depend to: deliver materials or services to you or to others for your account (contributing premises); accept your products or services (recipient premises); manufacture products for delivery to your customers under contract of sale (manufacturing premises); or attract customers to your business (leader premises).

Dependent business premises does not mean any:

- A. premises operated by others on whom you depend to:
1. deliver utility services to you; or
  2. accept utility services from you; or
- B. premises of on-line access providers.

Please do not hesitate to contact me if you have any outstanding questions and/or concerns regarding your claim or this correspondence. Otherwise, I will await your responses to the above questions.

Sincerely,

[Redacted]

**Shawn R. Lopriore**

Senior Claims Specialist, Boston Region, Property Claims

600 Independence Parkway P.O. Box 4700, Chesapeake, VA 23327-4700 USA

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M: (774) 502-5860

E: [shawn.lopriore@chubb.com](mailto:shawn.lopriore@chubb.com)

F: (800) 664-5358

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[Redacted]

**In responding to E-mails please include your claim number and also include the email address: [uspropertyclaims@chubb.com](mailto:uspropertyclaims@chubb.com)**

I strive to take care of all issues and questions directly with you. If you need to speak to my supervisor, Eric Van Wagoner, you can reach him at: (978) 502-1533, or at: [evanwagoner@chubb.com](mailto:evanwagoner@chubb.com)

**From:** Lopriore, Shawn R

**Sent:** Tuesday, April 14, 2020 11:45 AM

**To:** [sgupta@allureco.com](mailto:sgupta@allureco.com); US Property Claims ([USPropertyClaims@chubb.com](mailto:USPropertyClaims@chubb.com))

<[USPropertyClaims@chubb.com](mailto:USPropertyClaims@chubb.com)>

**Subject:** Claim#076920008751 // GK Trading Llc DbA Apparel Solutions - Federal Insurance Company

Dear Ms. Gupta,

As we discussed, I've mailed via USPS and attached to this email a copy of our coverage investigation letter. Please review the letter and do not hesitate to contact me in the event that you have any outstanding questions and/or concerns. Moving forward, we/CHUBB are finalizing our coverage investigation for your claim and I will contact you once the investigation is complete.

Sincerely,

[Redacted]

**Shawn R. Lopriore**

Senior Claims Specialist, Boston Region, Property Claims

600 Independence Parkway P.O. Box 4700, Chesapeake, VA 23327-4700 USA

-

M: (774) 502-5860

E: [shawn.lopriore@chubb.com](mailto:shawn.lopriore@chubb.com)

F: (800) 664-5358

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**In responding to E-mails please include your claim number and also include the email address: [uspropertyclaims@chubb.com](mailto:uspropertyclaims@chubb.com)**

I strive to take care of all issues and questions directly with you. If you need to speak to my supervisor, Eric Van Wagoner, you can reach him at: (978) 502-1533, or at: [evanwagoner@chubb.com](mailto:evanwagoner@chubb.com)

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# EXHIBIT B

**CHUBB**Eastern Claim Service Center  
600 Independence Parkway  
Chesapeake, VA. 23320Tel (774) 502-5860  
Fax (800) 664-5358  
shawn.lopriore@chubb.com  
[www2.chubb.com/us-en/claims](http://www2.chubb.com/us-en/claims)June 5<sup>th</sup>, 2020GK Trading LLC DBA Apparel Solutions  
Attn: Mariya Gonor  
PO Box 4226  
Warren, NJ 07059

Re: Insured: GK Trading LLC DBA Apparel Solutions  
 Claim Number: 076920008751  
 Policy Number: 000035987764  
 Date of Loss: March 24<sup>th</sup>, 2020  
 Loss: Coronavirus (COVID-19)  
 Loss Location: 1. 30 Technology Dr., STE 1, Warren, NJ 07059  
 2. 200 W 41<sup>st</sup> St., 21<sup>st</sup> Floor, STE 2100, New York, NY 10036  
 3. 325 W 38<sup>th</sup> St., New York, NY 10018  
 Writing Company: Federal Insurance Company

Dear Ms. Gonor,

This letter is to advise you that we have completed our investigation of this matter based on the information and supporting documentation provided to date. Based on Federal Insurance Company's ("Chubb's") review of the available claim information, Chubb must respectfully deny coverage for the claim your company has submitted. The bases for this denial are outlined and discussed below.

We understand that GK Trading LLC DBA Apparel Solutions ("Apparel Solutions") designing, manufacturing, marketing, and supplying women's garments to various retailers. We also understand that Apparel Solutions has reported a business income loss due to the governmental Executive Orders. Chubb's investigation included the review of the Executive Orders obtained from the websites for New York State and New Jersey State. Specifically, New York City's Executive Order NO. 102, which amended Executive Order NO. 100, effectively closed all non-essential businesses effective on March 20, 2020 at 8:00 p.m. EST. Additionally, New York State's executive order 202.6, issued on March 18<sup>th</sup>, 2020, directs all businesses to utilize telecommuting or work from home procedures to limit the in-person work force by 50% at any location. This order was later modified by Executive Order 202.7 and then by Executive Order 202.8 to ultimately reduce the in-person workforce at any location by 100% effective March 22<sup>nd</sup>, 2020 at 8 p.m. EST. Executive Order 202.8 order was later extended by Executive Order 202.18 effective through May 15<sup>th</sup>, 2020.

Chubb's investigation also included the review of the Executive Orders obtained from the website for New Jersey State. Specifically, New Jersey State's Executive Order NO. 104, issued on March 16<sup>th</sup>, 2020, outlines social distancing guidelines and also restricts the number of people who may gather in once place at a time. Additionally, Executive Order NO. 107, issued on March



**CHUBB**Eastern Claim Service Center  
600 Independence Parkway  
Chesapeake, VA. 23320Tel (774) 502-5860  
Fax (800) 664-5358  
shawn.lopriore@chubb.com  
[www2.chubb.com/us-en/claims](http://www2.chubb.com/us-en/claims)

21<sup>st</sup>, 2020, must accommodate work-from-home arrangements. In addition, this order requires all residents to remain home or at their place of residence except under limited circumstances for essential activities. This order was effective as of March 21<sup>st</sup>, 2020 and it is in effect until revoked or modified by the Governor. Based upon our review, it appears that the primary goal of the Executive Orders issued by government officials impacting your operations were to limit and prevent the spread of the Coronavirus (“COVID-19”). This letter will provide our analysis of coverage on the claim asserted by Apparel Solutions.

We have reviewed the facts of the loss as presented and the orders of civil authority impacting your business. This included a review of the Orders issued by New York Governor Cuomo, New York City Mayor de Blasio, and New Jersey Governor Phil Murphy in place at the time of this letter. Based upon this review, it appears that the primary goal of the Orders issued by governmental officials impacting your operations were to curtail the spread of the COVID-19 virus. Executive Order #100 from Mayor de Blasio also states that COVID-19 has a propensity to spread person to person and that the virus physically is causing property loss and damage.

It does not appear, however, that this order was issued as the result of any particular physical loss or damage either at your premises or within any specific geographical range of your premises; nor are we aware of the existence of any such physical loss or damage. Thus, based on the information currently within our possession, Chubb is unaware of physical loss of or damage that would implicate coverage in this matter. Nevertheless, if you have evidence that your claimed loss was the result of physical loss or damage at or within any geographical range of your premise set forth in the policy, please let us know and we will consider that evidence.

Chubb provides first-party property insurance to Apparel Solutions as provided by the terms and conditions of policy number 000035987764 (the “policy”). Please be assured that we have undertaken a thorough investigation to determine the cause of the loss and any potentially applicable coverage under your policy.

Chubb specifically directs your attention to the following terms and provisions of your policy, which are excerpted below for ease of reference.

Please refer to the Policy’s **Building And Personal Property** form 80-02-1000 (Rev. 3-19), which provides, in relevant part, as follows:

### **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, the loss or damage must:

- be caused by or result from a peril not otherwise excluded; and
- occur at, or within 1,000 feet of, the premises shown in the Declarations.

**CHUBB**Eastern Claim Service Center  
600 Independence Parkway  
Chesapeake, VA, 23320Tel (774) 502-5860  
Fax (800) 664-5358  
shawn.lopriore@chubb.com  
[www2.chubb.com/us-en/claims](http://www2.chubb.com/us-en/claims)**Building Or Personal Property**

We will pay for direct physical loss or damage to:

- **building;** or
- **personal property,**

caused by or resulting from a peril not otherwise excluded, not to exceed the applicable Limit Of Insurance for Building Or Personal Property shown in the Declarations.

Based on the information that was provided to us, Chubb's investigation has concluded that Apparel Solutions presented no evidence of direct physical loss or damage to **building or personal property**. Accordingly, the terms of the policy's Premises Coverage for Building Or Personal Property have not been met and coverage does not apply.

In addition, please refer to the **Business Income With Extra Expense** form 80-02-1004 (Rev. 3-19), which provides, in relevant part, as follows:

**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:

- 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.

**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.

**CHUBB**Eastern Claim Service Center  
600 Independence Parkway  
Chesapeake, VA. 23320Tel (774) 502-5860  
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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.

Here, Chubb's investigation revealed that Apparel Solutions presented no direct physical loss or damage to property as required by the policy to trigger the policy's Premises Coverage for Business Income And Extra Expense. Rather, it is Chubb's conclusion that all non-essential businesses were required to cease all activities at facilities located within New York State and New Jersey State except minimum basic operations to slow the spread of COVID-19 to the maximum extent possible. As the impairment of your operations was not due to direct physical loss or damage to property at or within 1,000 feet of your premises, the terms of the policy's Premises Coverage for Business Income And Extra Expense have not been met and coverage does not apply.

The **Business Income With Extra Expense** form 80-02-1004 (Rev. 3-19) further provides, in relevant part, the following Additional Coverage:

#### **Civil Authority**

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**,

directly caused by the prohibition of access to:

- your premises; or
- a **dependent business 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 or such **dependent business premises** by a **covered peril**, provided such property is within:

- one mile; or
- the applicable miles shown in the Declarations,

from such premises or **dependent business premises**, whichever is greater.

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600 Independence Parkway  
Chesapeake, VA. 23320Tel (774) 502-5860  
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The most we will pay for Civil Authority is the applicable Limit of Insurance for Business Income With Extra Expense shown in the Declarations.

The coverage for:

A. **business income** will begin:

1. after the applicable waiting period shown in the Declarations for Business Income expires; or
  2. 24 normal business hours following the time the civil authority prohibits access,
- whichever is longer.

The Waiting Period shown in the Declarations will begin immediately following the time the civil authority prohibits access.

The coverage will apply for a period of:

- up to 30 consecutive days after coverage begins; or
- when your **business income** loss ends,

whichever occurs first; and

B. **extra expense** will begin immediately after the time the civil authority prohibits access and will end:

1. 30 consecutive days after the coverage begins; or
  2. Whenever your **business income** coverage ends,
- whichever is later

This Additional Coverage does not apply if the direct physical loss or damage is caused by or results from earthquake or **flood**.

Chubb has determined, based upon currently available information, that the foregoing Additional Coverage for Civil Authority does not afford coverage for your claim for business interruption. First, in order for this provision to apply, there must be a prohibition of access to your premises or a **dependent business premises**. Here, access to your premises was not prohibited. Accordingly, because the orders noted above did not prohibit access to your premises, this provision does not apply. No information has been provided establishing that your claim for business interruption was the result of any prohibition of access by a civil authority to your premises or a **dependent business premises**.

Even if access to your premises or a **dependent business premise** was prohibited, which it was not, this policy provision also requires that any prohibition of access must be the direct result of direct physical loss or damage to property away from, but within the greater of one mile or the applicable miles shown in the Declarations, such premises. Chubb has concluded that no civil authority order impacting your operations was actually issued due to the direct result of direct

**CHUBB**Eastern Claim Service Center  
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physical loss or damage to property away from, but within the greater of one mile or the applicable miles shown in the Declarations, such premises. As there is no evidence of actual direct physical loss or damage to property away from, but within the greater of one mile or the applicable miles shown in the Declarations, the terms of this Additional Coverage have not been met and coverage therefore does not apply.

### **Dependent Business Premises**

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 Dependent Business Premises shown under Business Income 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 or personal property of a dependent business premises at a dependent business premises**.

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**.

This Additional Coverage does not apply if the direct physical loss or damage is caused by or results from earthquake or **flood**.

Based on the information that was provided to us, Chubb's investigation has concluded that Apparel Solutions presented no evidence of direct physical loss or damage to a property or personal property of a dependent business premises which has caused an impairment of your operations. Accordingly, the terms of the policy's Additional Coverage for Dependent Business Premises have not been met and coverage does not apply.

The **Business Income With Extra Expense** form 80-02-1004 (Rev. 3-19) page 10 of 14, further provides, in relevant part, the following Additional Coverage:

### **Prohibition Of Access**

We will pay for the actual:

- **business income** loss; and

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- extra expense,

you incur due to the actual impairment of your **operations**, directly caused by the prohibition of access to a premises shown in the Declarations by a civil authority, subject to the applicable Limits Of Insurance for Prohibition Of Access.

This prohibition of access must be the direct result of a peril (not otherwise excluded by the Building And Personal Property Contract included in this policy) that:

- A. has occurred at or within 1,000 feet of such premises; or
- B. is certain to occur imminently, provided:
  1. the geographic area where access is restricted is less than 5,000 square feet; or
  2. the prohibition of access only applies to such premises.

The coverage will begin immediately following the time the civil authority prohibits access.

The coverage will apply for a period of:

- up to 30 consecutive days after the coverage begins; or
- when your **business income** loss ends,

whichever occurs first.

This Additional Coverage does not apply:

- A. if the prohibition of access is caused by or results from:
  1. direct physical loss or damage to property;
  2. weather conditions; or
  3. earthquake or **flood**; or
- B. to **business income** loss, unless a Limit Of Insurance for Business Income is shown in the Declarations applicable to the premises where prohibition of access occurred.

Chubb has determined, based upon currently available information, that the foregoing Additional Coverage for Prohibition Of Access does not afford coverage for your claim for business interruption. First, as more fully explained above, there was no prohibition of access to a premises shown in the Declarations by a civil authority. Accordingly, this provision does not apply.

Second, even if access to your premises was prohibited, which it was not, such prohibition of access was not the direct result of a peril (not otherwise excluded by the Building And Personal

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Property Contract included in this policy) that has either occurred at or within 1,000 feet of such premises or is certain to occur imminently, provided the prohibition of access: 1. does not apply to a geographic area of more than 1,000 square feet; or 2. only applies to a premises shown in the Declarations. The facts of your claim do not trigger either of these two requirements for coverage.

Specifically, even assuming that access to your premises was prohibited, which it was not, such prohibition was not the direct result of the fact that COVID-19 had occurred at or within 1,000 feet of your premises. Neither was it the direct result of an imminent occurrence of COVID-19 which applies to a geographic area of less than 1,000 square feet or only to your premises. Instead, the orders referenced above were designed to reduce the spread of COVID-19 generally in the states of New York and New Jersey, and not because the virus was discovered within 1,000 feet of your premises; nor were the orders limited to a geographic area of 1,000 square feet or less, or to a premises shown in the Declarations. Thus, this Additional Coverage provision for Prohibition of Access does not provide coverage for this matter.

Based on the above-cited policy wording and analysis, and as stated above, Chubb must respectfully deny coverage under your policy.

Without waiver of the declination of coverage set forth in this letter, the policy contains the following definition of **covered peril** in the **Property/Business Income Conditions and Definitions** form 80-02-1097 (Rev. 3-19):

**Covered peril** means a peril covered by the Form(s) shown in the Property Insurance Schedule Of Forms, except Care, Custody Or Control Legal Liability, applicable to the lost or damaged **property**.

For the purposes of:

- **personal property of a dependent business premises;**
- **personal property of a utility; or**
- **service property,**

**covered peril** means a peril covered by the Building and Personal Property Contract included in this policy applicable to **building** or **personal property** at a premises shown in the Declarations.

The Policy also contains the following exclusion contained within the Policy's **Building And Personal Property** form 80-02-1000 (Rev. 3-19):

#### **Policy Exclusions**

The following exclusions apply.

#### **Acts Or Decisions**

This insurance does not apply to loss or damage caused by or resulting from acts or decisions, including the failure to act or decide, of any person, group,

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organization or governmental body.

This Acts Or Decisions exclusion does not apply to ensuing loss or damage caused by or resulting from a peril not otherwise excluded.

Pursuant to New Jersey Statute 17:29E-9, you may request claims decisions be reviewed by our Internal Appeal panel. Requests for review may be submitted in writing to:

Chubb North America Claims

Attn: Internal Appeal Officer, Routing WB04B

436 Walnut Street

Philadelphia, PA 19106

Phone: (800) 352-4462

Fax: (215) 640-2489

Email: [NJAppeals@chubb.com](mailto:NJAppeals@chubb.com)

Chubb reserves the right to rely and/or assert the foregoing exclusion in connection with this claim.

Please note Chubb's determination as described in this letter is based on information currently available to it. These facts consisted of information reported by you and your representatives, along with presently available information. If you are aware of any other information that you believe would weigh on our decision, we invite you to submit that information for our prompt review. This letter is not to be construed as a waiver of the rights and defenses of Chubb under the policy and/or at law, all of which are expressly reserved.

Although there is no coverage under your policy because, among other reasons, there has been no direct physical loss or damage, Chubb reminds you of the "Legal Action Against Us" condition found on page 6 of 34 of the Property/Business Income Conditions And Definitions, form 80-02-1097 (Rev. 3-19), which states, in relevant part:

No legal action may be brought against us unless:

- there has been full compliance with all the terms of this insurance; and
- the action is brought within three years after the date on which the direct physical loss or damage occurred.

This letter only addresses those provisions that appear pertinent at this time in light of the facts currently known to us. If there is any additional information that may affect our position or analysis, please forward such information.

Chubb reserves all rights with regard to the above referenced provisions as well as all other rights, remedies and defenses under the policy, at law and in equity. Nothing contained in this letter, and no action on our part or the part of independent adjusters or experts retained on our behalf in investigating and adjusting your claim, should be construed as an admission of coverage or as a waiver of any right, remedy or defense that may be available to Chubb.

Thank you for your patience and cooperation throughout the claim investigation process.



**CHUBB**

Eastern Claim Service Center  
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Chesapeake, VA. 23320

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[www2.chubb.com/us-en/claims](http://www2.chubb.com/us-en/claims)

Should you have any questions or wish to discuss the contents of this letter, please feel free to contact me at 774-502-5860.

Sincerely,

*Shawn R. Lopriore*

Shawn R. Lopriore  
Sr. Claims Specialist  
Federal Insurance Company  
(774) 502-5860 Cell Phone  
(800) 664-5358 Fax  
shawn.loppriore@chubb.com

cc: Otterstedt Insurance Agency Inc.  
540 Sylvan Ave.  
Englewood Cliffs, NJ 07632

cc: Beattie Padovano, LLC  
Attn: Mariya Gonor  
50 Chestnut Ridge Road, STE 208  
P.O. Box 244  
Montvale, NJ 07645