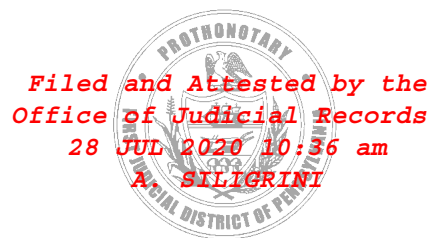


**ANAPOL WEISS**

BY: SOL H. WEISS, ESQUIRE (I.D. 15925)  
JAMES R. RONCA, ESQUIRE (I.D. 25631)  
GREGORY S. SPIZER, ESQUIRE (I.D. 82435)  
RYAN D. HURD, ESQUIRE (I.D. 205955)  
PAOLA PEARSON, ESQUIRE (I.D. 318356)  
[sweiss@anapolweiss.com](mailto:sweiss@anapolweiss.com)  
[jronca@anapolweiss.com](mailto:jronca@anapolweiss.com)  
[gspizer@anapolweiss.com](mailto:gspizer@anapolweiss.com)  
[rhurd@anapolweiss.com](mailto:rhurd@anapolweiss.com)  
[ppearson@anapolweiss.com](mailto:ppearson@anapolweiss.com)  
130 N. 18<sup>TH</sup> ST., SUITE 600  
PHILADELPHIA, PA 19103



ATTORNEYS FOR PLAINTIFF

BSD-360, LLC, D/B/A	:	COURT OF COMMON PLEAS
THE GODDARD SCHOOL	:	PHILADELPHIA COUNTY
PLAINTIFF,	:	
V.	:	
	:	JULY TERM, 2020
PHILADELPHIA INDEMNITY INSURANCE	:	
COMPANY; AND	:	CIVIL ACTION No.:
	:	
SPECHT INSURANCE GROUP, LTD.	:	
	:	
DEFENDANTS.	:	JURY TRIAL DEMANDED

**COMPLAINT - CIVIL ACTION**  
**NOTICE TO PLEAD**

**NOTICE**

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

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

Philadelphia Bar Association  
Lawyer Referral and Information Service  
1101 Market Street  
Philadelphia, PA 19107 (215) 238-6300

**AVISO**

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su personá. Sea avisado que si usted no se defiende, la corte tomará medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades o otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELÉFONO A LA OFICINA CUYA DIRECCIÓN SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

ASOCIACIÓN DE LICENCIADOS DE FILADELFIA  
Servicio De Referencia E Información Legal  
1101 Market Street  
Philadelphia, PA 19107 (215) 238-6300

## **PLAINTIFF'S COMPLAINT**

Plaintiff, BSD-360, LLC d/b/a The Goddard School, by way of Complaint, brings this action against Defendants, Philadelphia Indemnity Insurance Company and Specht Insurance Group, Ltd., and alleges as follows:

### **NATURE OF THE CASE**

1. Plaintiff owns and operates BSD-360, LLC d/b/a The Goddard School, a daycare and pre-school, located in Wall Township, New Jersey.

2. To protect the business from property damage and the loss of income in the event of a sudden suspension of operations for reasons outside of its control, Plaintiff enlisted the brokerage services of Defendant, Specht Insurance Group.

3. As a business owner without specialized knowledge of the nuances of commercial insurance, Plaintiff relied on the knowledge, expertise, advice and experience of Defendant, Specht Insurance Group, Ltd., in purchasing a policy, and Plaintiff reasonably expected Specht would procure insurance coverage sufficient to meet Plaintiff's needs.

4. Defendant, Specht Insurance Group, Ltd., recommended and procured a commercial multiple peril insurance policy from Defendant, Philadelphia Indemnity Insurance Company ("Philadelphia Indemnity"). The policy is attached as Exhibit 1.

5. Plaintiff's insurance policy is an "all-risk" policy that provides coverage for all non-excluded business losses.

6. The policy includes Communicable Diseases coverage which promises to pay for the actual loss of Business Income and Extra Expense incurred due to the suspension of operations at the covered property caused by a communicable disease such as COVID-19. See Exhibit 2.

7. The policy includes Business Income coverage which promises to pay for financial losses due to the suspension or slow-down of operations at the covered property and Civil Authority coverage which promises to pay for losses caused by a civil or governmental authority that prohibits access to the covered property.

8. Despite the Communicable Disease coverage, the policy also included notice of the “Virus or Bacteria Exclusion” created by Insurance Services Office that purported to exclude coverage for losses caused by any virus. (Form CP P 003 07 06, referencing Form CP 01 40 07 06).

9. On or about March 18, 2020, Plaintiff was contacted by a student’s parent who was present at the covered premises, in the presence of students, faculty and other parents, as recently as March 16, 2020. The parent advised that she had tested positive for Covid-19.

10. On March 18, 2020, Plaintiff contacted the New Jersey Department of Health to advise that the covered property had been contaminated and to confirm that Plaintiff would be ordered to shutdown. Plaintiff made numerous attempts and Plaintiff was unable to reach anyone at the Department of Health. Plaintiff reached a recorded message that stated the mailbox was full.

11. On March 21, 2020, Governor Murphy and local authorities mandated the closure of all non-life sustaining businesses in the State of New Jersey to protect the public from the global pandemic caused by COVID-19. All public, private at preschool program premises were ordered to remain closed.

12. As a result of the contamination at the covered property and the order of civil authority, Plaintiff suspended operations and closed the covered property for business.

13. On March 25, 2020, Governor Murphy issued Executive Order 110 and ordered childcare facilities such as Plaintiff’s business to close unless the business was certified to provide

childcare services exclusively to essential workers during the school closure period. Plaintiff was not certified; the covered property was contaminated.

14. Having faithfully paid the policy premiums, Plaintiff made a claim for business income loss and extra expense to recoup substantial, ongoing financial losses directly attributed to the contamination and the civil authority closure orders.

15. By letter dated March 24, 2020, Philadelphia Indemnity Insurance Company sent Plaintiff the letter at Exhibit 3, confirming that Plaintiff was insured for business losses caused by communicable disease.

16. On March 30, 2020, Philadelphia advised Plaintiff that it would reimburse Plaintiff for the costs of cleaning and decontaminating the covered premises. See letter at Exhibit 4.

17. By letter dated May 7, 2020, Philadelphia Indemnity Insurance Company wrongfully denied Plaintiff's claim for business income loss and extra expense. Ex. 4.

18. Through this action, Plaintiff seeks a declaratory judgment pursuant to 42 Pa.C.S. §7531 *et. seq.* that the subject policy covers Plaintiff's financial losses due to contamination at the property and civil authority orders mandating the closure of its business.

19. Plaintiff also seeks damages against Defendant Philadelphia Indemnity Insurance Company for breach of contract and bad faith.

20. If Plaintiff's losses are not covered under the policy, Plaintiff seeks damages against Defendant Specht Insurance Group for negligently failing to procure insurance coverage sufficiently broad to meet Plaintiff's needs.

## **THE PARTIES**

21. Plaintiff, BSD-360, LLC d/b/a The Goddard School (hereinafter “Plaintiff” and/or “The Goddard School”), a daycare and preschool, is a limited liability company organized and existing under the laws of New Jersey, with a principal place of business located at 1981 Highway 34, Wall, New Jersey 07719.

22. Defendant, Philadelphia Indemnity Insurance Company (hereinafter “Defendant” and/or “Philadelphia Indemnity”), is a Pennsylvania insurance company with a principal place of business located at One Bala Plaza, 231 St. Asaphs Road, Bala Cynwyd, Pennsylvania, 19004.

23. Defendant, Specht Insurance Group, Ltd. (hereinafter “Defendant” and/or “Specht”), is a Pennsylvania insurance brokerage company with a principal place of business at 1800 E. High Street, Suite 200, Pottstown, Pennsylvania, 19464.

## **JURISDICTION**

24. This Court has jurisdiction over this action pursuant to 42 Pa. C.S.A. §5301(a)(2) and is therefore proper in this Court.

25. Venue is proper in this county pursuant to Pa. R.C.P. 1006(a)(1) and Pa. R.C.P. 2179(a)(2) and Pa. R.C.P. 2179(b)(1), as defendants regularly conduct business in this county.

## **FACTUAL BACKGROUND**

### **A. PLAINTIFF’S RELIANCE ON SPECHT TO PROCURE BUSINESS INSURANCE**

26. At all relevant times, Defendant Specht held itself out as experienced insurance brokers with expertise in evaluating, recommending and binding appropriate insurance coverage for commercial business clients.

27. Defendant Specht markets that it “has delivered quality insurance solutions to both business and individuals across the country since 1961”, and its “team of experienced insurance

professionals is committed to helping you find a comprehensive insurance policy to fit your needs.”<sup>1</sup>

28. Specht claims: “We focus on providing exceptional customer service and personalized attention that’s difficult to find in today’s market. At Specht Insurance Group, Ltd., we’ll work with you to ensure that what you care about most is protected!”<sup>2</sup>

29. Plaintiff engaged Specht to provide expertise, recommendations and assistance in securing all appropriate insurance coverages for its business.

30. In August 2019, Specht presented insurance options to Plaintiff at the Goddard office in Pennsylvania.

31. At the August 2019 presentation, Plaintiff specifically asked the Specht broker if business income loss would be covered if the covered property (the Goddard school) was shut down for any reason. The Specht broker answered: “Absolutely.”

32. At all relevant times, Specht was aware of the nature of Plaintiff’s business operations and was asked to procure an insurance policy with the most comprehensive coverage tailored to Plaintiff’s needs.

33. Defendant Specht agreed and represented that they would explain and provide advice to Plaintiff about the coverages they recommended to meet Plaintiff’s needs.

34. Plaintiff requested and Defendant Specht agreed to procure and bind all insurance coverage appropriate for Plaintiff’s business, as broad as possible, including Communicable Disease, Business Income, Extra Expense and Civil Authority coverages.

---

<sup>1</sup> <http://www.spechtinsurance.com/> (last accessed on July 21, 2020).

<sup>2</sup> <http://www.spechtinsurance.com/> (last accessed on July 21, 2020).

35. Plaintiff expected and reasonably relied on Defendant Specht to procure and bind all appropriate insurance coverage, as broad as possible, including Communicable Disease, Business Income, Extra Expense and Civil Authority coverages.

36. Plaintiff expected and reasonably relied on Defendant Specht to accurately describe the breadth of coverage and any limitations of the insurance it procured, including any exclusions or limitations for Communicable Disease, Business Income, Extra Expense, and Civil Authority coverages.

37. Defendant Specht, selected, recommended, finalized and submitted an application of insurance to Defendant Philadelphia Indemnity on Plaintiff's behalf.

38. As insurance brokers acting on Plaintiff's behalf, Specht obtained the commercial insurance policy bearing policy number PHPK2030318 for the policy period of August 30, 2019 to August 30, 2020 (hereinafter "the Policy").

39. The documents consummating the transaction were signed on August 30, 2019 at the Goddard office in Pennsylvania.

**B. PLAINTIFF'S INSURANCE POLICY**

40. On August 30, 2019, Defendant Philadelphia Indemnity entered into a contract of insurance with Plaintiff, whereby Plaintiff agreed to make payments to Philadelphia Indemnity in exchange for Philadelphia Indemnity's promise to indemnify the Plaintiff for losses, including, but not limited to, business income losses at The Goddard School located at 1981 Highway 34, Wall, New Jersey 07719 (the "Covered Property"), which is owned, managed, and/or controlled by the Plaintiff.

41. Goddard Systems, Inc., Plaintiff's franchisor headquartered in Pennsylvania, was named an additional insured

42. Plaintiff did not participate in the drafting or negotiation of the Policy.

43. As the insured, Plaintiff had no leverage or bargaining power to alter or negotiate the terms of the Policy.

44. The Policy provides (among other things) property, business personal property, communicable disease, business income and extra expense, civil authority order, and additional coverages.

45. Plaintiff faithfully paid the policy premiums and reasonably expected that the communicable disease, business interruption, extra expense and/or civil authority coverage provided by Philadelphia Indemnity would protect against losses in the event that state or local officials ordered the closure of its business due to public safety concerns, including that of communicable disease like COVID-19.

46. The Policy is an all-risk policy.

47. Defendant agreed to “pay for direct physical loss of or damage to Covered Property . . . caused by or resulting from any Covered Cause of Loss.” Ex. 1, Form CP 00 10 10 12, Section I.A, p. 1 of 16.

48. The COVID-19 virus and restrictions on the use of Plaintiff’s Property are tantamount to a covered cause of loss as it caused direct physical loss and damage to the covered premises.

49. In the Communicable Disease Form PI-DC-001, Philadelphia Indemnity agreed to pay for the actual loss of business income sustained and necessary extra expense incurred during a period of restoration as a result of having the entire operations temporarily shutdown or



suspended by a local, state or federal Board of Health with jurisdiction over the operations due to communicable disease.<sup>3</sup> Ex. 1, Form PI-DC-001, p. 1 of 3.

50. In the Business Income (and Extra Expense) Coverage Form, Philadelphia Indemnity agreed to pay for Plaintiff's actual loss of Business Income sustained and Extra Expense incurred due to the necessary suspension of operations during the "period of restoration" caused by direct physical loss or damage to property. Ex. 1, Form CP 00 30 04 02, p. 1 of 9.

51. In the Business Income (and Extra Expense) Coverage Form, Philadelphia Indemnity also agreed to "pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises due to direct physical loss of or damage to property, other than at the described premises, caused by or resulting from a Covered Cause of Loss." Ex. 1, Form CP 00 30 04 02, p. 1 of 9.

52. Within the insurance industry, and unknown to Plaintiff, the word "loss" and the word "damage" have a customary usage more expansive than "loss" and "damage" as used in policy, and "loss" and "damage" includes "contamination".

53. The words "loss" and/or "damage" are not defined in the policy, are used for different purposes within the policy, and have more than one potential meaning.

54. "Loss" and/or "damage" are not synonymous.

55. In this policy "damage" is used with the disjunctive "or" when paired with "loss" and therefore must have a different meaning than "loss".

56. The words "loss" and "damage" are ambiguous as used by Defendant.

---

<sup>3</sup> "Business income" means net profit or loss before income tax that Plaintiff would have earned or incurred if no physical loss or damage had occurred and continuing normal operating expenses incurred. "Extra expense" includes expenses to avoid or minimize the suspension of business, continue operations, and to repair or replace property.

57. The word “damage” should be interpreted to have its normal and ordinary meaning-physical harm that impairs the value, usefulness or normal function of something.<sup>4</sup>

58. The COVID-19 virus causes direct physical damage, as well as indirect non-physical damage, as that word is commonly used.

59. The word “loss” should be interpreted to have its normal and ordinary meaning.

60. Loss has been defined as follows:

- a. Loss is the fact of no longer having something or having less of it than before.<sup>5</sup>
- b. Loss is the disadvantage you suffer when a valuable and useful thing is taken away.<sup>6</sup>
- c. Decrease in amount, magnitude or degree.<sup>7</sup>
- d. The amount of an insured’s financial detriment by death or damage that the insurer is liable for.<sup>8</sup>

61. Loss, as that word is commonly used, need neither be direct nor physical.

62. In an advisory notice of “Exclusion of Loss Due to Virus or Bacteria”, Philadelphia Indemnity indicated that endorsement CP 01 40 07 06 states that there is no coverage for loss or damage caused by or resulting from any virus, bacterium or other microorganism, and that the endorsement applies to all coverages including property damage and business income coverages. Ex. 1, Form CP P 003 07 06. The Virus or Bacteria exclusion was created by the Insurance Services Organization (“ISO”), a national advisory organization that develops policy forms used throughout the U.S.

---

<sup>4</sup> <https://www.lexico.com/definition/damage>

<sup>5</sup> <https://www.collinsdictionary.com/us/dictionary/english/loss>

<sup>6</sup> <https://www.collinsdictionary.com/us/dictionary/english/loss>

<sup>7</sup> <https://www.merriam-webster.com/dictionary/loss>

<sup>8</sup> <https://www.merriam-webster.com/dictionary/loss>

63. The Virus Exclusion Form CP P 003 07 06 directly conflicts with the Communicable Disease coverage in Plaintiff's policy, and by the language of the notice and for reasons contained herein the exclusion cannot be enforced.

64. The Communicable Disease, Business Income, Extra Expense and Civil Authority provisions of the Policy were triggered.

65. Damage and loss of the Property were caused by COVID-19.

66. The contamination of the Property by a student's parent, and the related closure orders issued by state and local authorities, resulted in Plaintiff's inability to use and/or restricted use of the Covered Property.

**C. THE COVID-19 PANDEMIC**

67. On March 11, 2020, the World Health Organization officially declared COVID-19 a global pandemic.

68. COVID-19 is a cause of real physical loss and damage to Covered Property.

69. COVID-19 is a physical substance.

70. COVID-19 remains stable and transmittable in aerosols for up to three hours, up to 24 hours on cardboard and up to two to three days on plastic and stainless steel.<sup>9</sup>

71. The ability of the deadly virus to physically infect and remain on surfaces of objects or materials, i.e. "fomites," for up to twenty-eight (28) days has prompted health officials around the World to disinfect and fumigate public areas before reopening them.

72. To avoid the increased risk of contracting the virus in congregate environments, the U.S. Centers for Disease Control and Prevention ("CDC") advised against gatherings of more than 10 people.

---

<sup>9</sup> See e.g. <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (last accessed May 23, 2020).

73. As of the date of this filing, every state has enacted measures to mitigate the spread of Covid-19.

**D. THE COVERED CAUSE OF LOSS**

**1. Physical Loss**

74. Losses due to the COVID-19 pandemic are a Covered Cause of Loss under the Policy.

75. The presence of virus or disease can constitute physical damage to property, as the insurance industry has recognized since at least 2006. When preparing so-called “virus” exclusions to be placed in some policies, but not others, the insurance industry’s drafting arm, Insurance Services Office, Inc. (“ISO”), circulated a statement to state insurance regulators that stated as follows:

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.

76. The COVID-19 pandemic caused direct physical loss of or damage to the Covered Property under the Policy.

77. An individual with COVID-19 entered and contaminated the Covered Property.

78. The COVID-19 pandemic and the specific contamination by a student’s parent rendered the Covered Property unsafe, uninhabitable, or otherwise unfit for its intended use, which triggered the Communicable Disease coverage and which also constitutes direct physical loss.

79. Plaintiff's loss of use of the Covered Property also constitutes direct physical loss.

80. Plaintiff's business income loss coverage within the Policy was triggered.

## **2. Civil Authority Orders**

81. The presence of COVID-19 has prompted civil authorities throughout the country to issue orders mandating the suspension of non-essential businesses across a wide range of industries, including civil authorities with jurisdiction over Plaintiff's business.

82. On March 9, 2020, Governor Phil Murphy issued Executive Order No. 103, declaring a State of Emergency in New Jersey as a result of COVID-19. Order 103 attached as Exhibit 5.

83. Governor Murphy declared: "It shall be the duty of every person or entity in this State or doing business in this State ... to cooperate fully with the State Director of Emergency Management and the Commissioner of DOH in all matters concerning this state of emergency." Ex. 5.

84. On March 16, 2020, Governor Murphy issued Executive Order No. 104, declaring it "necessary to limit the unnecessary movement of individuals in and around their communities and person-to-person interactions." Order 104 attached as Exhibit 6.

85. On March 21, 2020, Governor Murphy issued a "stay at home" order, ordering all New Jersey residents to stay at home except for necessary travel. He ordered that all non-essential businesses close until further notice. Public, private and preschool premises were included in the order to close. Order 107 attached as Exhibit 7.

86. On March 25, Governor Murphy issued Executive Order 110 and ordered childcare facilities such as Plaintiff's business to close unless the business was certified to provide childcare

services exclusively to essential persons during the school closure period. Plaintiff was not certified. Order 110 attached as Exhibit 8.

87. By of May 5, 2020, there were over 130,000 positive cases of COVID-19 in New Jersey, with at least 8,244 of those cases having resulted in death. There were positive cases of COVID-19 in every county in New Jersey, and there have been deaths relating to COVID-19 in every county in New Jersey. Order 138 attached as Exhibit 9.

88. On May 6, 2020, Governor Murphy ordered that emergency measures the State had taken to address COVID-19 must continue, and the prior Executive Orders would remain in full force and effect. Ex. 9.

89. “[T]he spread of COVID-19 in New Jersey constitutes an ongoing public health hazard that threatens and presently endangers the health, safety, and welfare of the residents of one or more municipalities or counties of the State, and it is necessary and appropriate to take action against this public health hazard to protect and maintain the health, safety, and welfare of New Jersey residents...” Ex. 9.

90. These Orders, as they related to the closure of all “non-essential businesses” and daycares and preschools, evidence awareness on the part of both state and local governments that COVID-19 causes damage vis-à-vis contamination to property. This is particularly true in places such as Plaintiff’s business where the requisite contact and interaction causes a heightened risk of the property becoming contaminated by COVID-19.

91. Following the contamination of Plaintiff’s business by the individual with COVID-19, Plaintiff’s business income loss was triggered by the civil authority action and order which prohibited access to the Covered Property.

92. These civil authority orders undeniably satisfy the Policy language that the shutdown “must be ordered by a local, state or federal Board of Health having jurisdiction” over the operations. Ex. 2, Form PI-CD-001.

93. Further, Plaintiff’s Covered Property suffered “direct physical loss or damage” due to the Governor’s Order (and other local governmental orders) mandating that Plaintiff discontinue its primary use of the Covered Property. The Governor’s Order, in and of itself, constitutes a Covered Cause of Loss within the meaning of the Policy.

**E. IMPACT ON PLAINTIFF**

94. Plaintiff owns and operates a daycare and pre-school.

95. On or about March 18, 2020, Plaintiff was contacted by a student’s parent who was present at the covered premises in the days prior. The parent advised that she had tested positive for Covid-19 and had been at the covered premises and in the presence of parents, students and faculty.

96. On March 18, 2020, Plaintiff contacted the New Jersey Department of Health to advise that the covered property had been contaminated and to confirm that Plaintiff would be ordered to shutdown. Plaintiff was unable to reach anyone at the Department of Health. Plaintiff reached a recorded message that stated the mailbox was full.

97. Between March 9, 2020 and March 25, 2020, Governor Murphy and local authorities issued a series of orders ultimately mandating the closure of all non-life sustaining businesses in the State of New Jersey, including Plaintiff’s, in an effort to protect the public from the global pandemic caused by COVID-19.

98. Plaintiff was unable to even leave a voicemail for the Department of Health until approximately March 26, 2020.

99. Plaintiff's business operates in a close environment where employees, students and parents are directly next to each other, sharing the same air and space.

100. Plaintiff's practice is highly susceptible to contamination, damage, and rapid person-to-property transmission of the virus, and vice-versa, because the activities of the employees and students require them to interact in close proximity to one another and the property.

101. Because business is conducted in an enclosed building, the Covered Property is more susceptible to being or becoming contaminated, as respiratory droplets are more likely to remain in the air or infect surfaces within the Covered Property for far longer or with significantly increased frequency as compared to facilities with open-air ventilation.

102. Because people—employees, students, parents— frequent all areas of Plaintiff's property, there is an ever-present risk that the Covered Property is contaminated and would continue to be contaminated if the business remained open to the public.

103. The virus is physically impacting the Covered Property. Any effort by the Defendants to deny the reality that the virus has caused physical loss and damage would constitute a false and potentially fraudulent misrepresentation that could endanger the Plaintiff and the public.

104. As a direct result of the COVID-19 pandemic and the Closure Orders, Plaintiff incurred, and continues to incur, among other things, a substantial loss of business income and additional expenses covered under the Policy.

105. The covered losses incurred by Plaintiff and owed under the Policy increase daily.

106. As Plaintiff actually had Communicable Disease coverage, as well as Business Income loss and Civil Authority coverage, Plaintiff submitted a claim to Defendant under the Policy for Plaintiff's losses.



107. On March 24, 2020, Philadelphia Indemnity Insurance Company confirmed that Plaintiff was insured for business losses caused by communicable disease. Ex. 3.

108. Notably, Plaintiff's Communicable Disease coverage provided for the payment of "Extra expense" for compliance costs arising from the shutdown, including "the costs of cleaning ...and disinfecting the insured premises in accordance with the jurisdictional Board of Health requirements." Ex. 2, Form PI-CD-001.

109. On March 30, 2020, Philadelphia advised Plaintiff that it would reimburse Plaintiff for the costs incurred by Plaintiff for cleaning and decontaminating the Property. Ex. 4.

110. By letter dated May 7, 2020, although Defendant Philadelphia Indemnity agreed to pay the extra expense related to the closure, Philadelphia Indemnity wrongfully denied Plaintiff's claim for business income loss under the Policy. Ex. 4.

111. Defendant Philadelphia Indemnity's denial is contrary to public policy, which recognizes the reasonable expectations of the insured and the disparate bargaining power of insurance companies who rely on contradictory and illusory policy language to attract consumers later victimized by the denial of valid insurance claims.

112. A declaratory judgment that the Policy provides coverage will ensure that Plaintiff's reasonable expectations of coverage are met and prevent Plaintiff from being left without vital coverage acquired to ensure the survival of the business.

113. A declaratory judgment that the Policy provides coverage will also further the public policy of the State.

114. Plaintiff is also entitled to recover damages from Defendant Philadelphia Indemnity for breach of contract and bad faith.

**CAUSES OF ACTION**

**COUNT I**  
**DECLARATORY RELIEF**

**THE GODDARD SCHOOL V. PHILADELPHIA INDEMNITY INSURANCE COMPANY**

115. Plaintiff incorporates by reference all paragraphs within the Complaint as though fully set forth herein.

116. The Declaratory Judgments Act, 42 Pa.C.S. §7531 et. seq., provides that a court may “declare the rights, status, and legal relations whether or not further relief is or could be claimed.”

117. The Declaratory Judgments Act may be invoked to interpret the obligations of the parties under an insurance contract. Declaratory relief is intended to minimize the danger of avoidable loss and unnecessary accrual of damages.

118. Plaintiff requests a Declaratory Judgment to affirm that the Policy provides business income coverage because of losses attributable to communicable disease, physical loss and/or damage, and civil authority actions, and because the denial violates public policy.

119. Plaintiff further requests a Declaratory Judgment that the Exclusion of Loss Due to Virus or Bacteria does not apply to the business income losses incurred by Plaintiff, and that Defendant is estopped from enforcing the Virus Exclusion.

120. Plaintiff’s interest in the Policy and the declaratory relief sought is direct, substantial, quantifiable, and immediate.

121. An actual controversy has arisen between Plaintiff and Defendant as to the rights, duties, responsibilities and obligations of the parties under the Policy to reimburse Plaintiff for its business income loss. Plaintiff contends and, upon information and belief, Defendant disputes and denies that:

- a. The Plaintiff's Communicable Disease coverage was triggered and Plaintiff entitled to coverage for business income loss and extra expense;
- b. Plaintiff sustained direct physical loss of or damage to the Covered Property under the Policy;
- c. The Plaintiff is entitled to coverage for business income loss and extra expense;
- d. The Policy provides business income coverage in the event that COVID-19 directly or indirectly caused a loss and/or damage at the Covered Property or immediate area of the Covered Property;
- e. The closure Orders described herein constitute a shutdown and/or suspension and/or prohibition of access to the Covered Property;
- f. The prohibition of access by the closure Orders described herein specifically prohibited access as defined in the Policy;
- g. The closure Orders described herein trigger coverage;
- h. The Policy provides coverage to Plaintiff for any current and future closures due to communicable disease / physical loss or damage directly or indirectly resulting from COVID-19 under the Civil Authority Coverage;
- i. The Virus Exclusion is void as against public policy as it pertains to the closure Orders described herein;
- j. The Virus Exclusion does not apply to business income loss or losses from an Order of a civil authority; and
- k. Defendant is estopped from enforcing the Virus Exclusion.

122. Resolution of the duties, responsibilities and obligations of the Parties is necessary as no adequate remedy at law exists and a judicial declaration is required to resolve the dispute and controversy.

**COUNT II**  
**BREACH OF CONTRACT - COMPENSATORY RELIEF**

**THE GODDARD SCHOOL V. PHILADELPHIA INDEMNITY INSURANCE COMPANY**

123. Plaintiff incorporates by reference all paragraphs within the Complaint as though fully set forth herein.

124. At all times relevant hereto, Plaintiff was an insured under the Policy with Defendants.

125. Plaintiff purchased, elected and paid premiums to Defendant for the property, business income and extra expense, civil authority and additional coverages applicable to the losses claimed in this action.

126. All the information regarding the insured's business and risks thereof was known to Defendant when the Policy was issued.

127. Plaintiff is entitled to recover all losses caused by COVID-19 and/or civil authority orders.

128. Defendant was advised of Plaintiff's claims and demand for coverage under the Policy.

129. Plaintiff complied with all requirements of the Policy.

130. Defendant is duty bound and obligated to act in good faith towards the insured under the Policy to make fair and reasonable efforts and offers to resolve Plaintiff's claim.

131. Defendant breached the terms and provisions of the Policy by denying the claims of Plaintiff for all losses caused by COVID-19 and the civil authority orders.

132. The breach of the indemnification obligations under the Policy by Defendant has caused Plaintiff to suffer loss and harm.

133. Defendant is required to pay Plaintiff all covered losses caused by COVID-19 and civil authority orders including business income, extra expense, contamination civil authority and other coverages under the Policy.

**COUNT III**  
**BAD FAITH - COMPENSATORY RELIEF**

**THE GODDARD SCHOOL V. PHILADELPHIA INDEMNITY INSURANCE COMPANY**

134. Plaintiff incorporates by reference all paragraphs within the Complaint as though fully set forth herein.

135. Defendant has a duty under the insurance policy, as well as under Pennsylvania Law, to provide coverage to Plaintiff to make fair and reasonable efforts to investigate and resolve the claim submitted by Plaintiff.

136. Plaintiff's Communicable Disease coverage provided exactly as follows:

We will pay for the actual loss of "business income" you sustain and necessary "extra expense" you incur during a "period of restoration" as a result of having your entire "operations" temporarily shut down or suspended. The shutdown or "suspension" must be ordered by local, state or federal Board of Health having jurisdiction over your "operations." Such shutdown must be due directly to an outbreak of a "communicable disease" or a "water-borne pathogen" that causes an actual illness at the insured premises described in the Declarations. An actual business shutdown must occur. Ex. 2.

137. This coverage was precisely triggered as follows:

- a. An outbreak of the communicable disease COVID-19 occurred.
- b. An actual illness of this communicable disease was present at the Covered Property; A student's parent, who was present at the covered premises as recent as March 16, 2020, tested positive for COVID-19.
- c. State and local officials issued orders shutting down non-essential businesses, including Plaintiff's.
- d. An actual business shutdown did occur.

138. Despite the foregoing, Defendant refused to pay Plaintiff for business income losses covered by the Communicable Disease coverage for which Plaintiff had paid premiums.

139. In its denial Defendant Philadelphia Indemnity took the position that “the Executive Order [discussed herein] does not trigger coverage under the Communicable Disease Endorsement...[because] the Executive Order was not ‘due directly’ to an actual illness at the school.” Rather, Philadelphia Indemnity notes, The Executive Order was a blanked order that applied to all childcare centers, regardless of whether anyone at the premises was infected with COVID-19, in order to mitigate the risk of future spread of disease throughout the state.” Ex. 4, p. 2.

140. Yet, Philadelphia Indemnity did agree to reimburse Plaintiff for the costs of decontaminating the school- which were incurred directly due to COVID-19 and the contamination at the school.

141. Liability for Defendant to pay extra expense was sufficiently clear to Defendant that Defendant agreed to pay the cost of decontamination and cleaning.

142. Liability for Defendant to pay business income loss is equally as clear.

143. No debatable reasons existed for the denial of coverage under the Communicable Disease coverage for which Plaintiff paid premiums and which was triggered as described herein.

144. Defendant misrepresented pertinent facts or insurance policy provisions relating to coverages at issue.

145. Defendant refused to pay the claim without conducting a reasonable investigation based upon all available information.

146. Defendant has attempted to resolve Plaintiff’s claim for less than the amount to which a reasonable man would have believed he was entitled by reference to the policy.

147. Defendant failed to, in good faith, effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear.

148. Defendant's stated basis for denial of the payment of business income loss under the Communicable Disease coverage is deceptive, unreasonable, without reasonable basis and indicative of bad faith conduct.

149. Defendant's general denial of the claim and delay of the resolution of Plaintiff's claim are similarly unreasonable, without reasonable basis, and indicative of bad faith.

150. Defendant denied the claim and delayed the resolution of Plaintiff's claim with knowing and/or reckless disregard for the unreasonableness of Defendant's actions and basis for denial.

151. Defendant denied the claim and delayed the resolution of Plaintiff's based on self-motivated corporate decisions and policies to deny claims and deprive Plaintiff and similarly situated insureds of coverage, thereby prioritizing corporate profits over the duties Defendant owed the insureds.

152. Defendant's unreasonable denial of the claim and delay in and failure to pay Plaintiff for business income loss and extra expenses should be deemed "bad faith" pursuant to 42 Pa.C.S.A. §8371, and Plaintiff should be entitled to interest from the date Plaintiff's claim was submitted, attorney's fees and award of punitive damages against Defendant.

WHEREFORE, Plaintiff demands judgment in its favor and against Defendant in an amount in excess of Fifty Thousand (\$50,000.00) Dollars plus incidental and consequential damages, interest, costs of suit, attorney fees and punitive damages.

**COUNT IV**  
**NEGLIGENCE**

**THE GODDARD SCHOOL V. SPECHT INSURANCE GROUP, LTD.**

153. Plaintiff incorporates by reference all paragraphs within the Complaint as though fully set forth herein.

154. In the event that the fact finder determines the Policy does not cover Plaintiff's losses in full, this Count is pleaded in the alternative and only against Defendant Specht.

155. Defendant Specht undertook a duty to exercise reasonable care, skill and knowledge normally possessed by insurance brokers in selecting, preparing and processing Plaintiff's policy application and in obtaining an insurance policy including Communicable Disease, Business Income, Extra Expense and Civil Authority coverages.

156. Defendant Specht undertook a duty to exercise reasonable care, skill and knowledge normally possessed by insurance brokers to provide Plaintiff a comprehensive insurance policy to fit Plaintiff's needs.

157. Plaintiff requested and Defendant Specht undertook to secure coverage as broad as possible.

158. Plaintiff had a reasonable expectation in purchasing the Communicable Disease, Business Income, Extra Expense, and Civil Authority coverage that such coverages would apply in the event that a civil authority issued an order effectively closing Plaintiff's business because of a public health emergency, such as the COVID-19 pandemic, particularly where Plaintiff's business was contaminated by an individual with COVID-19.

159. The coverage procured by Defendant Specht was not sufficiently broad to meet Plaintiff's needs and the breadth and scope of the exclusions to Plaintiff's communicable disease,



business income, extra expense, and civil authority coverage were not adequately communicated to Plaintiff.

160. Plaintiff is entitled to recover damages from Defendant Specht Insurance Group Ltd. for Specht's failure to exercise reasonable care in evaluating, recommending and procuring insurance coverage sufficiently broad to meet Plaintiff's needs as well as Specht's failure to adequately communicate the breadth and scope of the exclusions to Plaintiff's Communicable Disease, Business Income, Extra Expense and Civil Authority coverage.

161. Defendant Specht breached its duty of care by its negligence and other acts and/or omissions including, but not limited to:

- a. Failing to ensure that the necessary and appropriate forms were completed to ensure the application for the requested as broad as possible insurance coverage as instructed by Plaintiff;
- b. Failing to exercise reasonable care in obtaining as broad as possible insurance policies to provide the requested coverage for Plaintiff;
- c. Failing to exercise reasonable care in obtaining insurance policies to provide as broad as possible Communicable Disease, Business Income, Extra Expense and Civil Authority coverages for Plaintiff that would cover losses due to a public health emergency arising from a virus such as COVID-19;
- d. Failing to inform Plaintiff that the Policy obtained did not have coverage which would provide as broad as possible Communicable Disease, Business Income, Extra Expense and Civil Authority coverage applicable to Plaintiff's business operations in the event of a public health emergency arising from a virus such as COVID-19; and
- e. Failing to adequately inform Plaintiff as to the breadth and scope of coverage and any limitations of the insurance it procured, including the Virus or Bacteria Exclusion.

162. As a direct and proximate result of Defendant Specht's negligence, Plaintiff has sustained substantial damages for which Defendant is liable in an amount exceeding \$50,000 to be determined at trial.

WHEREFORE, Plaintiff demands judgment in its favor and against Defendant in an amount in excess of Fifty Thousand (\$50,000.00) Dollars plus incidental and consequential damages, interest, costs of suit, and attorney fees.

**COUNT V**

**NEGLIGENT SUPPLYING OF INFORMATION FOR THE GUIDANCE OF OTHERS**

**Restatement (Second) of Torts Section 552**

**THE GODDARD SCHOOL V. SPECHT INSURANCE GROUP, LTD.**

163. Plaintiff incorporates by reference all paragraphs within the Complaint as though fully set forth herein.

164. In the event that the fact finder determines that the Policy does not cover Plaintiff's losses in full, this Count is pleaded in the alternative against Defendant Specht.

165. Defendant Specht for its own pecuniary interest, negligently supplied incorrect and incomplete information to Plaintiff regarding the amounts and applicability of the Communicable Disease, Business Income, Extra Expense, and Civil Authority coverage under the Policy.

166. Defendant Specht made the recommendations for coverage with the intent that Plaintiff purchase the Policy.

167. Plaintiff foreseeably and justifiably relied to its detriment on Defendant Specht's recommendations, expertise, and affiliations, and followed its advice, which, in fact, included material and negligent misrepresentations and/or omissions, and, as a result, its coverage with Philadelphia Indemnity Insurance Company was, if the fact finder determines that the Policy does not cover Plaintiff's losses in full, insufficient to compensate Plaintiff for its Communicable Disease coverage, Business Income, Extra Expense and Civil Authority losses resulting from the COVID-19 pandemic and Closure Orders.

168. As a direct and proximate result of Defendant Specht's negligent supplying of information, Plaintiff has sustained substantial damages for which Defendant Specht is liable in an amount exceeding \$50,000 to be determined at trial.

WHEREFORE, Plaintiff demands judgment in its favor and against Defendant in an amount in excess of Fifty Thousand (\$50,000.00) Dollars plus incidental and consequential damages, interest, costs of suit, and attorney fees.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that the Court enter judgment against the Defendants and declare, as a matter of law, the following:

- a. The Plaintiff's Communicable Disease coverage was triggered, and Plaintiff entitled to coverage for business income loss and extra expense;
- b. The Plaintiff is entitled to coverage for business income loss;
- c. Plaintiff sustained direct physical loss of or damage to the Covered Property under the Policy;
- d. The civil authority orders prohibit access to Plaintiff's Covered Property;
- e. The civil authority orders "prohibit access" as defined in the Policy;
- f. The civil authority coverage applies to Plaintiff due to physical loss or damage at the Covered Property or other premises in the immediate area of the Covered Property;
- g. The Virus Exclusion is void as against public policy as it pertains to the closure Orders described herein;
- h. The Virus Exclusion does not apply to business income loss or losses from an Order of a civil authority;
- i. Defendant is estopped from enforcing the Virus Exclusion;

- j. The inability to use the Covered Property amounts to a physical loss or damage as defined in the Policy;
- k. Defendant's denial of coverage for losses caused by the referenced civil authority orders violates public policy;
- l. Defendant Philadelphia Indemnity's denial of coverage for losses caused by the referenced civil authority orders amounts to a breach of contract;
- m. Defendant Philadelphia Indemnity's denial of coverage is tantamount to bad faith conduct; and in the alternative,
- n. Defendant Specht is liable for the damages caused by its negligence.

Plaintiff further seeks an Order requiring Defendant to pay Plaintiff all covered losses caused by loss of access to the Insured Premises, including communicable disease, business income, extra expense, contamination, civil authority and other coverages under the Policy; and such other relief as the Court deems appropriate.

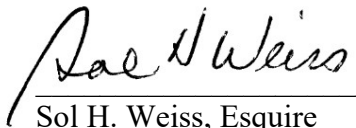
**JURY TRIAL DEMANDED**

Plaintiff demands a trial by jury on all issues so triable.

Dated: July 28, 2020

Respectfully submitted,

**ANAPOL WEISS**

By:   
\_\_\_\_\_  
Sol H. Weiss, Esquire  
James R. Ronca, Esquire  
Gregory S. Spizer, Esquire  
Ryan D. Hurd, Esquire  
Paola Pearson, Esquire  
One Logan Square  
130 N. 18<sup>th</sup> Street, Suite 1600  
Philadelphia, PA 19103  
[sweiss@anapolweiss.com](mailto:sweiss@anapolweiss.com)  
[jronca@anapolweiss.com](mailto:jronca@anapolweiss.com)  
[gspizer@anapolweiss.com](mailto:gspizer@anapolweiss.com)  
[rhurd@anapolweiss.com](mailto:rhurd@anapolweiss.com)  
[ppearson@anapolweiss.com](mailto:ppearson@anapolweiss.com)

Counsel for Plaintiff



BSD-360, LLC, d/b/a  
THE GODDARD SCHOOL

PLAINTIFF,

v.

PHILADELPHIA INDEMNITY INSURANCE  
COMPANY; AND

SPECHT INSURANCE GROUP, LTD.

DEFENDANTS.

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY

JULY TERM, 2020

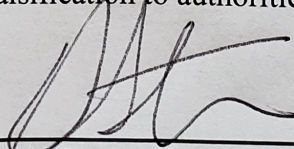
CIVIL ACTION No.:

JURY TRIAL DEMANDED

**VERIFICATION**

I, David Strumeier, hereby verify that I am the owner the Plaintiff, BSD-360 LLC, d/b/a The Goddard School, in the foregoing action; that the attached Complaint is based upon information which I have furnished to counsel, and information which has been gathered by counsel in the preparation of the lawsuit. The language of the Complaint is that of counsel and not mine. I have read the Complaint, and to the extent the statements therein are based upon information I have given counsel, they are true and correct to the best of my knowledge, information and belief. To the extent the contents of the Complaint are that of counsel, I have relied upon counsel in making this Verification. I understand that if false statements were made herein I would be subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

BY:

  
David Strumeier

DATE:

7/27/2020