

**WHEELER, DiULIO & BARNABEI, P.C.**

BY: Jonathan Wheeler, Esquire  
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Attorney for Plaintiff(s)  
**Filed and Attested by the**  
**Office of Judicial Records**  
**24 JUN 2020 02:20 pm**  
**A. SILIGRINI**

FEGLEY MANAGEMENT & ENERGY, LLC  
and  
FEGLEY ENTERPRISES, INC. d/b/a  
BETHLEHEM BREW WORKS  
and  
FEGLEY ENTERPRISES II, INC. d/b/a  
ALLENTOWN BREW WORKS & FEGLEY'S  
BREW WORKS  
and  
FEGLEY REAL ESTATE, LLC  
812 WEST HAMILTON STREET  
ALLENTOWN, PA 18101

vs

THE CINCINNATI INSURANCE COMPANY  
6200 S. GILMORE ROAD  
FAIRFIELD, OHIO 45250-5496  
and  
HMK INSURANCE  
54 S. COMMERE WAY - SUITE 150  
BETHLEHEM, PA 18017-8619

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY

JUNE TERM, 2020

NO.

**JURY TRIAL DEMANDED**  
**COMMERCE PROGRAM**

**CIVIL ACTION COMPLAINT**

**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 objections to the Claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a 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, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

PHILADELPHIA BAR ASSOCIATION  
Lawyer Referral Service  
1101 Market St., 11th Floor  
Philadelphia, PA 19107-2911  
Telephone: 215-238-6333  
Fax: 215-238-1159

**AVISO**

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta ascantar 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 persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademias, 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 u 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 TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

ASOCIACION DE LICENCIADOS DE FILADELFIA  
Servicio De Referencia E Informacion Legal  
1101 Market Street, 11<sup>th</sup> Floor  
Filadelfia, Pennsylvania 19107  
(215) 238-6333

Case ID: 200601426

**WHEELER, DiULIO & BARNABEI, P.C.**

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Attorney for Plaintiff(s)

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and

FEGLEY ENTERPRISES, INC. d/b/a  
BETHLEHEM BREW WORKS

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FEGLEY ENTERPRISES II, INC. d/b/a  
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FEGLEY REAL ESTATE, LLC  
812 WEST HAMILTON STREET  
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6200 S. GILMORE ROAD  
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HMK INSURANCE  
54 S. COMMERCE WAY - SUITE 150  
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COURT OF COMMON PLEAS  
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JUNE TERM, 2020

NO.

**JURY TRIAL DEMANDED  
COMMERCE PROGRAM**

**CIVIL ACTION COMPLAINT**

Fegley Management & Energy, LLC, Fegley Enterprises, Inc., d/b/a Bethlehem Brew Works and, Fegley Enterprises II, Inc., d/b/a Allentown Brew Works and Fegley's Brew Works and Fegley Real Estate, LLC (hereafter collectively "Fegley") by their attorneys, Wheeler, DiUlio

& Barnabei, P.C., file this Complaint against the Cincinnati Insurance Company (hereafter “Cincinnati”) and HMK Insurance (hereafter “HMK”), as follows:

**THE PARTIES:**

1. Fegley Management & Energy, LLC, Fegley Enterprises, Inc., d/b/a Bethlehem Brew Works, Fegley Enterprises II, Inc., d/b/a Allentown Brew Works & Fegley’s Brew Works are a limited liability company and s corporate entities duly created under and pursuant to the laws of the Commonwealth of Pennsylvania which maintain their principal places of business at the address set forth above.

2. Fegley Real Estate, LLC is a limited liability company duly organized and created pursuant to the laws of the Commonwealth of Pennsylvania which maintains its principal place of business at the address set forth above.

3. Fegley Management & Energy, LLC, Fegley Enterprises, Inc., d/b/a Bethlehem Brew Works, Fegley Enterprises II, Inc., d/b/a Allentown Brew Works & Fegley’s Brew Works own, maintain, manage and control two restaurants located at 559 Main Street, Bethlehem, PA 18018 and 812-816 West Hamilton Street, Allentown, PA 18101 (hereafter collectively “Restaurant Premises”).

4. Fegley Real Estate, LLC is a real estate holding company which owns, maintains, manages and controls rental properties located in the Commonwealth of Pennsylvania, including, but not limited to premises located at 911 Hamilton Street, 917 Hamilton Street and 921 Hamilton Street, Allentown, PA 18101 (hereafter “Rental Premises”).

5. Cincinnati is a business entity licensed to issue policies of insurance in the Commonwealth of Pennsylvania and maintains its principal place of business for that purpose at the address set forth above.

6. Cincinnati regularly conducts business and issues policies of insurance in the City and County of Philadelphia.

7. HMK is a business entity acting as an insurance agent/broker licensed to issue policies of insurance in the Commonwealth of Pennsylvania and maintains its principal place of business at the address set forth above.

8. At all times material hereto, Cincinnati and HMK were acting by and through their duly authorized agents, servants, workmen or employees, including, but not limited to Zachary Snyder (hereafter "Snyder") acting on behalf of Cincinnati and Timothy Kurtz (hereafter "Kurtz") acting on behalf of HMK.

9. Cincinnati, through its agent Kurtz issued to Fegley written policies of insurance Nos. 05EPP0467258 and 05EPP0177037 (hereafter the "Policies", copies of the Declaration pages of which are attached hereto as Exhibits 1 and 2), which provide coverage for the Restaurant Premises and the Rental Premises, which remain in full force and effect at all times material hereto.

#### **JURISDICTION AND VENUE**

10. Jurisdiction and venue are properly laid in the Court of Common Pleas of Philadelphia, since both Cincinnati and HMK regularly conduct business and issue policies of insurance in Philadelphia and material events giving rise to this action took place in Philadelphia. This action is properly before the Commerce Court since the dispute arises from a commercial transaction between business entities.

#### **THE POLICIES:**

11. The Policies, issued by Cincinnati through its agent, HMK, provide property coverage for the Restaurant Premises and the Rental Premises under terms and conditions set

forth in language copy-written by the Insurance Services Office, Inc. ("ISO") which provides standard forms for insurance companies including Cincinnati.

12. The Policies issued by Cincinnati, through its agent, HMK, contain identical language with respect to the property coverages which are at issue in this Civil Action.

13. In consideration for the premium paid, the Policies provide coverage for Business Interruption and Extra Expense in the amount of \$1,000,000.00 subject to a 1/3 monthly limit of \$333,333.33.

14. The Policies contain the ISO "Special" Cause of Loss form (FM101-05-16) which states that Cincinnati will "...pay for direct "loss" to covered property at the premises caused by or resulting from any Covered cause of Loss."

15. The ISO form (FM101-05-16) defines Covered Cause of Loss as "Covered Causes of Loss means direct "loss" unless the "loss" is excluded or limited in this coverage part."

16. There is no exclusion or limitation in the Policies for loss caused directly or indirectly by virus, pandemic or related perils.

17. The Policies form (FM101-05-16) define "loss" as "...accidental physical loss **or** accidental physical damage." (emphasis supplied)

18. "Accidental", although not defined in the Policies, is generally understood to mean an event which is neither intended nor expected from the point of view of the insured party.

19. The Policies form (FM101-05-16) states:

When a Covered Cause of Loss causes damage to property other than Covered Property at a "premises" we will pay for the actual loss of "Business Income" and necessary Extra Expense you sustain caused by action of civil authority that prohibits access to the "premises", provided that both of the following apply:

a) Access to the area immediately surrounding the damaged property

is prohibited by civil authority as a result of the damage; and

- b) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

20. "Premises" are defined in the Policies as "...the locations and buildings described in the declarations."

21. The Policies also provide coverage for Business Income and Extra Expense under ISO Endorsement FA 213-05-16 which states:

**1. Business Income**

- a) We will pay for the actual loss of "Business Income" you sustain due to the necessary "suspension" of your "operations" during the "period of restoration." The "suspension" must be caused by direct "loss" to property at "premises" which are described in the Declarations and for which a "Business Income" limit of insurance is shown in the Declarations. The "loss" must be caused by or result from a Covered Cause of Loss.

**2. Extra Expense**

- b) "Extra Expense" means necessary expenses you sustain...during the "period of restoration" that you would not have sustained if there had been no direct "loss" to property caused by or resulting from a Covered Cause of Loss.
- c) If these expenses reduce the otherwise payable "Business Income" "loss", we will pay expenses...to:
  - (1) avoid or minimize the "suspension" of business and to continue "operations"...

22. This ISO Endorsement for Business Income Loss and Extra Expense also provides coverage:

### 3. Civil Authority

When a Covered Cause of Loss causes direct damage to property other than Covered Property at the “premises”, we will pay for the actual loss of “Business Income” you sustain and necessary “Extra Expense” you sustain caused by action of civil authority that prohibits access to the “premises”, provided that both of the following apply:

- 1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage; and
- 2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage...

23. This ISO Endorsement also provides **Extended Business Income** for the period of time required to restore the operations “...to the level which would generate the “Business Income” amount which would have existed if no direct “loss” had occurred...”

#### **STATEMENT OF FACTS:**

24. On or around March 2020, the United States, including the premises insured under the Policies, were infested with an insidious, invisible virus identified as SARS-CoV-2 and COVID-19 (hereafter “Virus”) which caused an unprecedented Pandemic which afflicted millions of people and raised serious concerns among the general public as to its spread and containment.

25. On March 19, 2020, Pennsylvania Governor Tom Wolf issued an executive Order closing all “businesses that are not life sustaining” effective March 21, 2020 based, in part on a declaration by the World Health Organization and the Centers for Disease Control and Prevention that the virus had created a “public health emergency of international concern” and had been declared by the U.S. Department of Health and Human Services Secretary to “create a public health emergency.” (Exhibit 3)



26. In his Order, Governor Wolf declared a “disaster emergency throughout the Commonwealth of Pennsylvania” and ordered the closure of all “non-life sustaining businesses” for “...the prevention and suppression of disease.”

27. Pursuant to this Executive Order, Fegley immediately closed the Restaurant Premises and the tenants of the Rental Premises were closed and ceased all business operations.

28. The closures included the restaurants located in Bethlehem and Allentown operated by Fegley as well as the tenants of the Rental Premises in Allentown, including Hertz, Smooth Roots Tent and the Culture Jam Restaurant.

29. As a result of these closures, Business Income from these locations ceased and Fegley has spent and incurred substantial Extra Expenses to maintain these premises to minimize the suspension of operations and continue business when possible. This includes periodic maintenance to disinfect these premises and clean surfaces infected with the virus.

30. Claims for Business Income Loss and Extra Expense benefits under the Policies were submitted to Cincinnati through its agent HMK, which assigned a date of loss for these claims as March 13, 2020.

31. Thereafter, Fegley has done and performed all things required under the terms of the Policies.

32. Despite Fegley’s performance in accordance with the contract terms, Cincinnati, through its employee, Snyder, sent correspondence dated May 4, 2020 denying Fegley’s claims for Business Interruption and Extra Expense. Copies of these letters are attached as Exhibits 4 and 5.

33. Snyder sent these letters denying coverage and benefits owed under the Policies without conducting any investigation whatsoever and in spite of the clear policy language



granting coverage for these losses to Fegley.

34. Snyder's letter does not directly address the "Covered Cause of Loss" set forth in the Policies and conflates two other provisions in the policy as a pretext to deny coverage.

35. Snyder attempts to invoke the pollution exclusion as a pretext to deny coverage, although it is clear that this exclusion does not apply since virus does not meet the Policies' definition of "pollution."

36. Snyder's assertion that there has been no direct physical damage to insured property (even though this is not required under the "Causes of Loss" provision of the Policies) is plainly untrue since the virus pandemic has been declared to constitute a "Disaster Emergency" which has affected all property located in the Commonwealth of Pennsylvania, including the premises insured under the Cincinnati Policies.

37. Snyder's assertion that the acts of Government authority to close Fegley's businesses because of the pandemic causing "dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss" is plainly untrue since the infection of premises by the virus is clearly set forth in Governor Wolf's Order as the cause of the closures.

38. Fegley, through counsel, sent correspondence to Snyder rebutting the basis for Cincinnati's denial of benefits (Exhibit 6) and pointing out why coverage was in order and benefits owed by Cincinnati.

39. Despite a clear delineation of the facts and policy terms at issue, Snyder has reaffirmed Cincinnati's denial of coverage. (Exhibit 7)

40. As a direct result of Cincinnati's denial of coverage and benefits, Fegley has suffered damages and losses in an amount in excess of the limits of the Cincinnati Policies.

**COUNT I**  
**FEGLEY v CINCINNATI - BREACH OF CONTRACT AND DUTY OF GOOD FAITH**  
**AND FAIR DEALING**

41. Fegley incorporates by reference herein the averments set forth above, as fully as those same were here set forth at length.

42. The Policies issued by Cincinnati to Fegley are contracts of adhesion and any ambiguity in their terms or doubts with regard to the application of coverage are to be resolved in favor of the policyholder and coverage granted in accordance with the reasonable expectations of the policyholder.

43. Fegley reasonably believed and relied on the terms of the Policy to afford coverage and benefits in the event that the businesses were closed as a result of the damage to the premises and acts of civil authority in response to a virus pandemic as occurred here.

44. Cincinnati has breached its contract of insurance and violated its duty of good faith and fair dealing by denying coverage and benefits to Fegley which are clearly owed under the terms of the Policies.

45. As the direct and foreseeable result of Cincinnati's breach of contract and its duty of good faith and fair dealing, Fegley has been deprived of the benefit of its bargained for benefits due and owing as a result of its covered loss, including, but not limited to Loss of Business Income, Extra Expenses and Rental Income from its business operations. In addition, Fegley has suffered other consequential damages by reason of damage to its business operations for an amount in excess of the coverage set forth in the Cincinnati Policies, including, but not limited to as damage to its business operations, reduction in the value, and profitability of its business operations and assets, a diminution of its cash reserves and credit standing, as well as its

ability to exist in a competitive business environment

WHEREFORE, Fegley demands judgment against Cincinnati for an amount in excess of \$50,000.00 together with interest, costs of suit, counsel fees and such other relief as the Court may deem equitable and just.

**COUNT II**  
**FEGLEY v CINCINNATI - BAD FAITH VIOLATION OF 42 Pa §8371**

46. Fegley incorporates by reference herein the averments set forth above, as fully as those same were here set forth at length.

47. Cincinnati has engaged in bad faith conduct toward Fegley with respect to its adjustment of Plaintiffs' covered loss, in violation of 42 Pa. C.S.A §8371 et seq.

48. In furtherance of its bad faith and wrongful denial and refusal to pay benefits for Fegley's covered loss, Cincinnati, acting by and through its duly authorized agents, servants, workmen or employees, including, but not limited to, Zachary Snyder, has engaged in the following conduct:

- a) by sending correspondence dated May 4, 2020, true and correct copies of which are attached hereto, made part hereof, and marked Exhibits 3 and 4, falsely representing that Fegley's losses, caused by a peril insured against under the Policies were not entitled to benefits due and owing under the Policy;
- b) by refusing to reconsider and afford benefits and coverage under the Policies after being advised of the inaccuracy of its position and persisting in its refusal to afford coverage and pay benefits which it knew were due and owing;
- c) in failing to complete a prompt and thorough investigation of Fegley's claim before representing that such a claim is not covered under the Policy;
- d) in failing to pay Fegley's covered loss in a prompt and timely

manner;

- e) in failing to objectively and fairly evaluate Fegley's claim;
- f) in asserting policy defenses without a reasonable basis in fact;
- g) in flatly misrepresenting pertinent facts or policy provisions relating to coverages at issue and placing unduly restrictive interpretations on the Policy and/or claim forms;
- h) in unreasonably withholding policy benefits;
- i) in acting unreasonably and unfairly in response to Fegley's claim;
- j) in unnecessarily and unreasonably compelling Fegley to institute this lawsuit to obtain policy benefits for a covered loss, that Cincinnati should have paid promptly and without the necessity of litigation.

49. As the direct and proximate result of Cincinnati's Bad Faith misconduct, as aforesaid, Fegley has been required to retain counsel and incur the costs of this lawsuit.

50. For the reasons set forth above, Cincinnati's Bad Faith actions in violation of 42 Pa. C.S.A. §8371, have rendered Cincinnati liable for statutory damages including interest from the date the claim was made in an amount equal to the prime rate of interest plus three percent, court costs, attorney's fees, punitive damages, and such other compensatory and/or consequential damages as are permitted by law.

WHEREFORE, Fegley demands judgment against Cincinnati for an amount in excess of \$50,000.00 together with interest, costs of suit, counsel fees, punitive damages and such other relief as the Court may deem equitable and just.

**COUNT III**  
**FEGLEY v HMK - NEGLIGENT BREACH OF CONTRACT**

51. Fegley incorporates by reference herein the averments set forth in the preceding paragraphs of Fegley's Complaint as fully as those same were here set forth at length.

52. HMK has served as Fegley's insurance agent, broker and consultant for at least the past ten years and, by virtue of this relationship is intimately familiar with Fegley's business operations and insurance needs.

53. By reason of HMK's longstanding role as the insurance agent, broker and consultant for Fegley and its familiarity with its business operations and insurance needs, a special relationship existed between Fegley and HMK and HMK knew that Fegley trusted and relied on it to provide the necessary insurance coverage against all reasonably anticipated risks of loss.

54. By reason of its background and experience as insurance agent and consultant for Fegley, HMK knew, or in the exercise of reasonable care should have known, that virus contagion such as SARS, EBOLA and most recently SARS-CoV-2 and COVID-19, created a grave risk of pandemic and resulting catastrophic losses to Fegley's business operations as a result of the contamination of Fegley's premises and the actions of civil authority to prevent, contain and suppress the virus.

55. Despite this knowledge, and the existence of available insurance coverage to specifically insure against risk of loss from a pandemic, HMK failed to advise, assist and provide Fegley with this necessary and available specific coverage.

56. If, as claimed by Cincinnati, there is no coverage for the losses suffered by Fegley as a result of this pandemic, HMK's negligent failure to advise, assist and provide Fegley with the necessary pandemic coverage is the direct and proximate cause of Fegley's losses and damages as set forth above.

57. HMK promised for a good and valuable consideration to advise, assist and procure for Fegley insurance coverage for its business operations yet negligently failed to do so.

58. The direct, factual and proximate cause of HMK's failure to obtain necessary insurance coverage for Fegley's business operations was the carelessness and negligence of HMK, acting through its employees and agents, including, but not limited to Tim Kurtz, as follows:

- a) in failing to advise Fegley of the availability of pandemic insurance coverage for their business operations;
- b) in failing to procure the necessary insurance coverage to protect Fegley's business operations from a reasonably anticipated risk of loss;
- c) in failing to advise Fegley of its failure to obtain necessary insurance coverage for its business operations so that it could take the necessary steps to protect its business operations;
- d) in failing to warn and advise Fegley that in the event of a pandemic, which caused closure of its business operations, there was a likelihood that Cincinnati would deny coverage which would necessitate retaining counsel to enforce the terms of the contract with resulting expense and delay in the payment of benefits;
- e) in failing to advise, assist and counsel Fegley to obtain necessary insurance coverage in accordance with the prevailing standard of care for insurance agents and brokers.

59. As the direct, factual and proximate result of HMK's failure to perform its duties as insurance agent, broker and consultant for Fegley, Fegley has suffered a loss of insurance benefits for Business Interruption, Extra Expense and loss of Rental Income; as well as consequential damage to its business operations, reduction in the value, and profitability of its business operations and assets, a diminution of its cash reserves and credit standing, as well as its ability to exist in a competitive business environment.

WHEREFORE, Fegley demands judgment against HMK for compensatory damages in an amount in excess of \$50,000.00 together with damages for delay and such other relief as the

Court deems equitable and just.

WHEELER, DiULIO & BARNABEI, P.C.

BY: /s/ Jonathan Wheeler  
JONATHAN WHEELER, ESQUIRE  
Attorney for Plaintiff(s)



***Civil Action Complaint***

**VERIFICATION**

The undersigned hereby states that he is the Plaintiff in this action and that the statements of fact made in the foregoing document are true and correct to the best of his information and belief. The undersigned understands that the statements herein are made subject to the penalties of 18 Pa. Cons. Stat. Ann. § 4904 relating to unsworn falsification to authorities.

FEGLEY MANAGEMENT & ENERGY, LLC,  
FEGLEY ENTERPRISES, INC., d/b/a BETHLEHEM  
BREW WORKS,  
FEGLEY ENTERPRISES II, INC., d/b/a  
ALLENTOWN BREW WORKS & FEGLEY'S BREW  
WORKS and  
FEGLEY REAL ESTATE, LLC

BY:

DATE: 06 / 23 / 2020

  
\_\_\_\_\_  
JEFF FEGLEY

# EXHIBIT “1”



## The Cincinnati Insurance Company

A Stock Insurance Company

Headquarters: 6200 S. Gilmore Road, Fairfield, OH 45014-5141

Mailing address: P.O. Box 145496, Cincinnati, OH 45250-5496

www.cinfin.com ■ 513-870-2000

### COMMON POLICY DECLARATIONS

Billing Method: **DIRECT BILL**

POLICY NUMBER **EPP 046 72 58 / EBA 046 72 58**

**NAMED INSURED** FEGLEY MANAGEMENT & ENERGY LLC

REFER TO IA905

**ADDRESS**

812 W HAMILTON ST

(Number & Street, ALLENTOWN, PA 18101

Town, County,

State & Zip Code)

**Previous Policy Number:**

CPP1074302 / CPP1074298

**Policy Period:** At 12:01 A.M., STANDARD TIME AT YOUR MAILING ADDRESS SHOWN ABOVE

**All coverages except Automobile and / or Garage**

Policy number: **EPP 046 72 58**

FROM: 12-31-2017 TO: 12-31-2020

**Automobile and / or Garage**

Policy number: **EBA 046 72 58**

FROM: 12-31-2017 TO: 12-31-2018

Agency **HMK INSURANCE 37-075**

City **BETHLEHEM, PA**

**Legal Entity / Business Description**

ORGANIZATION (ANY OTHER)

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

**FORMS APPLICABLE TO ALL COVERAGE PARTS:**

IL0017	11/98	COMMON POLICY CONDITIONS
IA102A	09/08	SUMMARY OF PREMIUMS CHARGED
IA904	04/04	SCHEDULE OF LOCATIONS
IA905	02/98	NAMED INSURED SCHEDULE
IA4236	01/15	POLICYHOLDER NOTICE TERRORISM INSURANCE COVERAGE
IP446	08/01	NOTICE TO POLICYHOLDERS
IA4006	07/10	SPECIAL PER OCCURRENCE DEDUCTIBLE ENDORSEMENT
IA4111PA	03/16	PENNSYLVANIA CHANGES - CANCELLATION AND NONRENEWAL
IA4189PA	04/99	IMPORTANT NOTICE
IA4238	01/15	CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM
IA4295PA	08/06	PENNSYLVANIA WARNING NOTICE
IA4313PA	07/09	PENNSYLVANIA CHANGES - ACTUAL CASH VALUE
IA4314PA	07/09	PENNSYLVANIA CHANGES
IA4338	05/11	SIGNATURE ENDORSEMENT
IA4442	05/14	NOTICE TO POLICYHOLDERS - EXCLUSION - ACCESS OR DISCLOSURE OF CONFIDENTIAL OR PERSONAL INFORMATION AND DATA-RELATED LIABILITY
IL0022	05/87	EFFECTIVE TIME CHANGES - REPLACEMENT OF 12 NOON
IL0910	07/02	PENNSYLVANIA NOTICE
FM502	07/08	COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS
GA532	07/08	COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS
MA556	06/07	COMMERCIAL ARTICLES COVERAGE PART DECLARATIONS

FORMS APPLICABLE TO ALL COVERAGE PARTS:

MA573 06/07 ELECTRONIC DATA PROCESSING EQUIPMENT COVERAGE FORM DECLARATIONS  
MA572 06/07 TRANSPORTATION COVERAGE PART DECLARATIONS  
CA516 03/09 CRIME AND FIDELITY COVERAGE PART DECLARATIONS (COMMERCIAL  
ENTITIES)  
AA505PA 03/10 BUSINESS AUTO COVERAGE PART DECLARATIONS

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01-03-2018 09:34

Countersigned \_\_\_\_\_ By \_\_\_\_\_  
(Date) (Authorized Representative)

## SUMMARY OF PREMIUMS CHARGED

POLICY NUMBER: EPP 046 72 58 / EBA 046 72 58

Effective Date: 12-31-2017

Named Insured: **FEGLEY MANAGEMENT & ENERGY LLC**

**THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS FOR WHICH A PREMIUM CHARGE IS INDICATED**

Commercial Property Coverage Part	W/EBC	\$	24,474
Commercial General Liability Coverage Part		\$	21,308
Commercial Auto Coverage Part		\$	10,401
Commercial Umbrella / Excess Liability Coverage Part		\$	
CRIME AND FIDELITY COVERAGE PART		\$	768
COMMERCIAL ARTICLES		\$	134
ELECTRONIC DATA PROCESSING EQUIPMENT		\$	470
TRANSPORTATION		\$	150
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
Terrorism Coverage		\$	377
Installment Charge		\$	
ANNUAL TOTAL		\$	58,082
PAYMENTS			

QUARTERLY

First  
Installment

Remaining  
Installment(s)  
\*

\*SEE BILLING STATEMENT MAILED SEPARATELY

Automobile Coverages, Employers Liability, Employment Practices Liability Coverage, Professional Liability Coverage, Terrorism Coverage and / or Wrongful Acts Coverage, if included in the policy, are subject to Annual Adjustment of rates and premium on each anniversary of the policy.

Commercial Umbrella and Excess Liability, if included in the policy, may be subject to Annual Adjustment of premium on each anniversary. Refer to the Commercial Umbrella or Excess Liability Coverage Part Declarations form to see if this is applicable.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **SCHEDULE OF LOCATIONS**

<u>LOC.</u>	<u>STREET ADDRESS</u>	<u>CITY</u>	<u>STATE</u>	<u>ZIP CODE</u>
1	559 MAIN ST SUITE 101 BETHLEHEM, PA 18018-5862			
2	919 W HAMILTON ST SUITE 2 ALLENTOWN, PA 18101			
3	812 HAMILTON ST # 816 ALLENTOWN, PA 18101-2437			
4	1006 HANOVER AVE ALLENTOWN, PA 18109-2075			
5	1420 S 8TH STREET ALLENTOWN, PA 18103			

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **NAMED INSURED SCHEDULE**

This Schedule supplements the Declarations.

### **SCHEDULE**

Named Insured:

FEGLEY MANAGEMENT & ENERGY LLC, FEGLEY ENTERPRISES INC DBA BETHLEHEM  
BREW WORKS AND FEGLEY'S BREW WORKS, FEGLEY ENTERPRISES II INC DBA  
ALLENTOWN BREW WORKS AND FEGLEY'S BREW WORKS



# THE CINCINNATI INSURANCE COMPANY

A Stock Insurance Company

## COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS

Attached to and forming part of POLICY NUMBER: EPP 046 72 58

Named Insured is the same as it appears on the Common Policy Declarations unless otherwise stated here.

Loc. (address)  
REFER TO IA904

COVERAGE PROVIDED					OPTIONAL COVERAGES Applicable only when an entry is made						
Item	Coverage	Limits	Coin- surance	Covered Cause Of Loss	Business Income Indemnity						
					Inflation Guard (%)	Replace- ment Cost (X)	Replace- ment Cost Ind. Stock (x)	Agreed Value (x)	Monthly Limit (fraction)	Maximum Period (X)	Extended Period (Days)
1-1	BUSINESS PERSONAL PROPERTY	2,400,000	90%	SPECIAL			X	X			
1-1	BUSINESS INCOME W/EXTRA EXPENSE (b)	1,250,000		SPECIAL					1/3		
2-1	BUSINESS PERSONAL PROPERTY	2,500	90%	SPECIAL			X	X			
3-1	BUSINESS PERSONAL PROPERTY	2,900,000	90%	SPECIAL			X	X			
3-1	BUSINESS INCOME W/EXTRA EXPENSE (b)	1,000,000		SPECIAL					1/3		
4-1	BUSINESS PERSONAL PROPERTY	300,000	90%	SPECIAL			X	X			

DEDUCTIBLE: \$500.00 unless otherwise stated \$ 1,000

### MORTGAGE HOLDER

Item Name and Address

### FORMS AND / OR ENDORSEMENTS APPLICABLE TO THIS COVERAGE PART:

FM101	05/16	BUILDING AND PERSONAL PROPERTY COVERAGE FORM (INCLUDING SPECIAL CAUSES OF LOSS)
FA4168	05/16	NOTICE TO POLICYHOLDERS COMMERCIAL PROPERTY COVERAGE PART DESCRIPTION OF REVISIONS EDITION 05 16
FA4013PA	11/02	PENNSYLVANIA CHANGES - ACTUAL CASH VALUE
FA4028PA	11/05	PENNSYLVANIA CHANGES
FA4053	04/06	CINCIPLUS™ COMMERCIAL PROPERTY EXPANDED COVERAGE (XC™) PLUS ENDORSEMENT SUMMARY OF COVERAGE LIMITS
FA450	05/16	COMMERCIAL PROPERTY CONDITIONS
FA460	05/16	UTILITY SERVICES - TIME ELEMENT
FA472	05/16	UTILITY SERVICES - DIRECT DAMAGE
FA480	02/16	LOSS PAYABLE PROVISIONS
FM201	05/16	BUSINESS PERSONAL PROPERTY EXTENSION OF COVERAGE ENDORSEMENT

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FORMS AND / OR ENDORSEMENTS APPLICABLE TO THIS COVERAGE PART:

FA250	05/16	CINCIPLUS® COMMERCIAL PROPERTY XC+® (EXPANDED COVERAGE PLUS) ENDORSEMENT
FA245	05/11	EQUIPMENT BREAKDOWN COVERAGE (INCLUDING PRODUCTION MACHINERY)
FA202	05/16	TEMPERATURE CHANGE LOSS FORM
FA213	05/16	BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM

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# EXHIBIT “2”



## The Cincinnati Insurance Company

A Stock Insurance Company

Headquarters: 6200 S. Gilmore Road, Fairfield, OH 45014-5141

Mailing address: P.O. Box 145496, Cincinnati, OH 45250-5496

www.cinfin.com ■ 513-870-2000

### COMMON POLICY DECLARATIONS

Billing Method: DIRECT BILL

POLICY NUMBER EPP 017 70 37

**NAMED INSURED** FEGLEY REAL ESTATE LLC, FEGLEY CONDOMINIUM ASSOCIATION

812 HAMILTON ST # 816

**ADDRESS**

ALLENTOWN, PA 18101

(Number & Street,  
Town, County,  
State & Zip Code)

**Previous Policy Number:**

ENP0177037

**Policy Period:** At 12:01 A.M., STANDARD TIME AT YOUR MAILING ADDRESS SHOWN ABOVE

**All coverages except Automobile and / or Garage**

Policy number: EPP 017 70 37

FROM: 12-31-2018

TO: 12-31-2021

**Automobile and / or Garage**

Policy number:

FROM:

TO:

Agency HMK INSURANCE 37-075

City BETHLEHEM, PA

**Legal Entity / Business Description**

LIMITED LIABILITY COMPANY

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

FORMS APPLICABLE TO ALL COVERAGE PARTS:

IL0017	11/98	COMMON POLICY CONDITIONS
IA102A	09/08	SUMMARY OF PREMIUMS CHARGED
IA904	04/04	SCHEDULE OF LOCATIONS
IA4236	01/15	POLICYHOLDER NOTICE TERRORISM INSURANCE COVERAGE
IP446	08/01	NOTICE TO POLICYHOLDERS
IA4111PA	03/16	PENNSYLVANIA CHANGES - CANCELLATION AND NONRENEWAL
IA4189PA	04/99	IMPORTANT NOTICE
IA4238	01/15	CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM
IA4295PA	08/06	PENNSYLVANIA WARNING NOTICE
IA4314PA	07/09	PENNSYLVANIA CHANGES
IA4338	05/11	SIGNATURE ENDORSEMENT
IA460	01/16	PROTECTIVE SAFEGUARDS
IL0022	05/87	EFFECTIVE TIME CHANGES - REPLACEMENT OF 12 NOON
IL0910	07/02	PENNSYLVANIA NOTICE
FM502	07/08	COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS
GA532	07/08	COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS
USC513	05/10	COMMERCIAL UMBRELLA LIABILITY COVERAGE PART DECLARATIONS

12-24-2018 11:00

Countersigned

(Date)

By

(Authorized Representative)

## SUMMARY OF PREMIUMS CHARGED

Attached to and forming part of

POLICY NUMBER: EPP 017 70 37

Effective Date: 12-31-2018

Named Insured: FEGLEY REAL ESTATE LLC, FEGLEY CONDOMINIUM ASSOCIATION

**THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS FOR WHICH A PREMIUM CHARGE IS INDICATED**

Commercial Property Coverage Part	W/EBC	\$	29,952
Commercial General Liability Coverage Part		\$	9,376
Commercial Auto Coverage Part		\$	
Commercial Umbrella / Excess Liability Coverage Part		\$	1,938
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
Terrorism Coverage		\$	310
Installment Charge		\$	
ANNUAL TOTAL PAYMENTS		\$	41,576

QUARTERLY

First  
Installment

Remaining  
Installment(s)

\*SEE BILLING STATEMENT MAILED SEPARATELY

Automobile Coverages, Employers Liability, Employment Practices Liability Coverage, Professional Liability Coverage, Terrorism Coverage and / or Wrongful Acts Coverage, if included in the policy, are subject to Annual Adjustment of rates and premium on each anniversary of the policy.

Commercial Umbrella and Excess Liability, if included in the policy, may be subject to Annual Adjustment of premium on each anniversary. Refer to the Commercial Umbrella or Excess Liability Coverage Part Declarations form to see if this is applicable.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **SCHEDULE OF LOCATIONS**

<u>LOC.</u>	<u>STREET ADDRESS</u>	<u>CITY</u>	<u>STATE</u>	<u>ZIP CODE</u>
1	812 HAMILTON ST # 816 ALLENTOWN, PA 18101-2437			
2	14 S 8TH ST # 20 ALLENTOWN, PA 18101-2404			
3	830 W WALNUT ST ALLENTOWN, PA 18102-4887			
4	911 HAMILTON ST ALLENTOWN, PA 18101-1108			
5	921 HAMILTON ST ALLENTOWN, PA 18101-1126			
6	922 W COURT ST ALLENTOWN, PA 18101-2485			
7	960 HAMILTON ST ALLENTOWN, PA 18101-1169			
8	915 HAMILTON ST # 919 ALLENTOWN, PA 18101-1166			



# THE CINCINNATI INSURANCE COMPANY

A Stock Insurance Company

## COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS

Attached to and forming part of POLICY NUMBER: EPP 017 70 37

Named Insured is the same as it appears on the Common Policy Declarations unless otherwise stated here.

Loc. (address)  
REFER TO IA904

COVERAGE PROVIDED					OPTIONAL COVERAGES Applicable only when an entry is made						
Item	Coverage	Limits	Coin- surance	Covered Cause Of Loss	Business Income Indemnity						
					Inflation Guard (%)	Replace- ment Cost (x)	Replace- ment Cost Ind. Stock (x)	Agreed Value (x)	Monthly Limit (fraction)	Maximum Period (X)	Extended Period (Days)
1-1	BUILDING	7,850,000	90%	SPECIAL		X		X			
1-1	BUSINESS INCOME W/EXTRA EXPENSE (c)	602,000	100%	SPECIAL							
2-1	BUILDING	10,000	90%	SPECIAL		X		X			
2-1	BUSINESS INCOME W/EXTRA EXPENSE (c)	4,200	100%	SPECIAL							
3-1	BUSINESS PERSONAL PROPERTY INCLUDING IMPROVEMENTS AND BETTERMENTS	25,000	90%	SPECIAL		X		X			
3-1	BUSINESS INCOME W/EXTRA EXPENSE (c)	18,000	100%	SPECIAL							
3-2	BUSINESS PERSONAL PROPERTY INCLUDING IMPROVEMENTS AND BETTERMENTS	25,000	90%	SPECIAL		X		X			
3-2	BUSINESS INCOME W/EXTRA EXPENSE (c)	18,480	100%	SPECIAL							
3-3	BUSINESS PERSONAL PROPERTY INCLUDING IMPROVEMENTS AND BETTERMENTS	25,000	90%	SPECIAL		X		X			
3-3	BUSINESS INCOME W/EXTRA EXPENSE (c)	17,940	100%	SPECIAL							

3-4	BUSINESS PERSONAL PROPERTY INCLUDING IMPROVEMENTS AND BETTERMENTS	25,000	90%	SPECIAL	X	X
3-4	BUSINESS INCOME W/EXTRA EXPENSE (c)	18,600	100%	SPECIAL		
4-1	BUILDING	800,000	90%	SPECIAL	X	X
4-1	BUSINESS INCOME W/EXTRA EXPENSE (c)	24,000	100%	SPECIAL		
5-1	BUILDING	792,000	90%	SPECIAL	X	X
5-1	BUSINESS INCOME W/EXTRA EXPENSE (c)	61,440	100%	SPECIAL		
6-1	BUILDING	431,000	90%	SPECIAL	X	X
6-1	BUSINESS INCOME W/EXTRA EXPENSE (c)	30,240	100%	SPECIAL		
7-1	BUILDING	950,000	90%	SPECIAL	X	X
7-1	BUSINESS INCOME W/EXTRA EXPENSE (c)	42,400	100%	SPECIAL		
8-1	BUILDING	2,010,000	90%	SPECIAL	X	X
8-1	BUSINESS INCOME W/EXTRA EXPENSE (c)	165,000	100%	SPECIAL		

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DEDUCTIBLE: \$500.00 unless otherwise stated \$ 1,000

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**MORTGAGE HOLDER**

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Item	Name and Address
1-1	KNBT, A DIVISION OF NATIONAL PENN BANK 90 HIGHLAND AVE BETHLEHEM, PA 18017
1-1	REDEVELOPMENT AUTHORITY OF THE CITY OF ALLENTOWN 435 HAMILTON ST CITY HALL, SUITE 345 ALLENTOWN, PA 18101
1-1	CITY OF ALLENTOWN 435 HAMILTON ST ALLENTOWN, PA 18101
4-1	PENN BANK ISAOA ATIMA 90 HIGHLAND AVE BETHLEHEM, PA 18017
5-1	PENN BANK ISAOA ATIMA 90 HIGHLAND AVE BETHLEHEM, PA 18017
6-1	PENN BANK ISAOA ATIMA 90 HIGHLAND AVE BETHLEHEM, PA 18017
7-1	NATIONAL PENN BANK ISAOA ATIMA 90 HIGHLAND AVE BETHLEHEM, PA 18017
8-1	NATIONAL PENN BANK 645 HAMILTON ST ALLENTOWN, PA 18101

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**FORMS AND / OR ENDORSEMENTS APPLICABLE TO THIS COVERAGE PART:**

FM101	05/16	BUILDING AND PERSONAL PROPERTY COVERAGE FORM (INCLUDING SPECIAL CAUSES OF LOSS)
FA4013PA	11/02	PENNSYLVANIA CHANGES - ACTUAL CASH VALUE
FA4028PA	11/05	PENNSYLVANIA CHANGES
FA4053	04/06	CINCIPLUS™ COMMERCIAL PROPERTY EXPANDED COVERAGE (XC™) PLUS ENDORSEMENT SUMMARY OF COVERAGE LIMITS
FA450	05/16	COMMERCIAL PROPERTY CONDITIONS
FA480	02/16	LOSS PAYABLE PROVISIONS
FA250	05/16	CINCIPLUS® COMMERCIAL PROPERTY XC+® (EXPANDED COVERAGE PLUS) ENDORSEMENT
FA244	05/11	EQUIPMENT BREAKDOWN COVERAGE (EXCLUDING PRODUCTION MACHINERY)
FA213	05/16	BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM
FA231	05/16	ORDINANCE OR LAW COVERAGE

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# EXHIBIT “3”



COMMONWEALTH OF PENNSYLVANIA

OFFICE OF THE GOVERNOR

## ORDER OF

### THE GOVERNOR OF THE COMMONWEALTH OF PENNSYLVANIA REGARDING THE CLOSURE OF ALL BUSINESSES THAT ARE NOT LIFE SUSTAINING

*WHEREAS, the World Health Organization and the Centers for Disease Control and Prevention ("CDC") have declared a novel coronavirus ("COVID-19") a "public health emergency of international concern," and the U.S. Department of Health and Human Services ("HHS") Secretary has declared that COVID-19 creates a public health emergency; and*

*WHEREAS, as of March 6, 2020, I proclaimed the existence of a disaster emergency throughout the Commonwealth pursuant to 35 Pa. C.S. § 7301(c); and*

*WHEREAS, I am charged with the responsibility to address dangers facing the Commonwealth of Pennsylvania that result from disasters. 35 Pa. C.S. § 7301(a); and*

*WHEREAS, in addition to general powers, during a disaster emergency I am authorized specifically to control ingress and egress to and from a disaster area and the movement of persons within it and the occupancy of premises therein; and suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, and combustibles. 35 Pa. C.S. § 7301(f); and*

*WHEREAS, in executing the extraordinary powers outlined above, I am further authorized during a disaster emergency to issue, amend and rescind executive orders, proclamations and regulations and those directives shall have the force and effect of law. 35 Pa. C.S. § 7301(b); and*

*WHEREAS, in addition to my authority, my Secretary of Health has the authority to determine and employ the most efficient and practical means for the prevention and suppression of disease. 71 P.S. § 532(a), 71 P.S. 1403(a); and*

*WHEREAS, these means include isolation, quarantine, and any other control measure needed. 35 P.S. § 521.5.*

*NOW THEREFORE, pursuant to the authority vested in me and my Administration by the laws of the Commonwealth of Pennsylvania, I do hereby ORDER and PROCLAIM as follows:*

#### **Section 1: Prohibition on Operation of Businesses that are not Life Sustaining**

*All prior orders and guidance regarding business closures are hereby superseded.*

*No person or entity shall operate a place of business in the Commonwealth that is not a life sustaining business regardless of whether the business is open to members of the public. This prohibition does not apply to virtual or telework operations (e.g., work from home), so long as social distancing and other mitigation measures are followed in such operations.*

*Life sustaining businesses may remain open, but they must follow, at a minimum, the social distancing practices and other mitigation measures defined by the Centers for Disease Control to protect workers and patrons. A list of life sustaining businesses that may remain open is attached to and incorporated into this Order.*

*Enforcement actions will be taken against non-life sustaining businesses that are out of compliance effective March 21, 2020, at 12:01 a.m.*

***Section 2: Prohibition on Dine-In Facilities including Restaurants and Bars***

*All restaurants and bars previously have been ordered to close their dine-in facilities to help stop the spread of COVID-19.*

*Businesses that offer carry-out, delivery, and drive-through food and beverage service may continue, so long as social distancing and other mitigation measures are employed to protect workers and patrons. Enforcement actions will be taken against businesses that are out of compliance effective March 19, 2020, at 8 p.m.*

***Section 3: Effective Date and Duration***

*This order is effective immediately and will remain in effect until further notice.*



*GIVEN under my hand and the Seal of the Governor, at the city of Harrisburg, on this nineteenth day of March two thousand twenty, the year of the commonwealth the two hundred and forty-fourth.*

*Tom Wolf*  
TOM WOLF  
Governor

# EXHIBIT “4”





The Cincinnati Insurance Company ■ The Cincinnati Indemnity Company  
The Cincinnati Casualty Company ■ The Cincinnati Specialty Underwriters Insurance Company  
The Cincinnati Life Insurance Company

**Zachary Snyder, AIC**  
**Senior Claims Specialist**

May 4, 2020

***VIA EMAIL AND U.S. MAIL***

Fegley Real Estate LLC  
Attn: Jeff Fegley  
812 W Hamilton St  
Allentown, PA 18101  
**jeff@thebrewworks.com**

**Re: Insured:** Fegley Management & Energy, LLC  
**Policy No.:** 05EPP0467258  
**Claim No.:** 3529866  
**Date of Loss:** 3/13/20

Dear Mr. Fegley:

This letter provides Cincinnati Insurance Company's ("Cincinnati") coverage decision for the above-referenced claim made by Fegley Management & Energy, LLC ("you" or "your"). As submitted, the claim involves the Novel Coronavirus known as SARS-CoV-2, which causes the viral infection known as COVID-19 ("Coronavirus"). The claim asserts Business Income loss due to Coronavirus. Cincinnati has determined that coverage is unavailable for the claimed loss. Cincinnati regrets that this decision is necessary and wants to describe the basis for its decision. Should you have any disagreement with the basis for this decision, Cincinnati invites you to state the reasons for your disagreement in writing, including by submitting any additional information or documentation. Cincinnati will consider any further information or documents you may supply.

**I. SUMMARY**

The Cincinnati policy provides coverage for direct physical loss or damage to Covered Property at the premises. This direct physical loss or direct physical damage must be to property at the covered premises. Cincinnati's investigation has found no evidence of direct physical loss or damage at your premises. Similarly, there is no evidence of damage to property at other locations, precluding coverage for orders of civil authority.

Nothing in this letter is a waiver of any rights available to Cincinnati under the policy or applicable law. Cincinnati reserves the right to rely on additional rights and/or language in the policy whether or not discussed in this letter.

## **II. THE CINCINNATI POLICY**

Cincinnati issued policy number 05EPP0467258 to Fegley Management & Energy, LLC (the "Policy"). The Policy's effective dates are from December 31, 2019 to December 31, 2020. The Commercial Property Coverage provides a limit of insurance for your locations at 559 Main St in Bethlehem, PA and 813 Hamilton St in Allentown, PA in the amounts of \$1,250,000 and \$1,000,000 respectively for Business Income with Extra Expense.

## **III. BACKGROUND**

We received notice of the above-captioned claim on March 31, 2020 for consideration under your policy via submission from your agency and receipt of your written statement regarding Coronavirus. A telephone conversation was completed the next day with you. In that conversation it was understood the insured locations represent restaurant holdings of your firm. It was claimed that, due to Coronavirus and the stay-at-home order of the Commonwealth of Pennsylvania, these insured locations are now operating at a curbside pickup-only capacity. A Reservation of Rights (ROR) letter and document request followed April 2, 2020 via email and regular mail.

After a follow-up letter to you on April 30, 2020, a response to our ROR was received via email attachment from you on May 1, 2020. Your response indicates that your insured premises sustained direct physical damage by means of Coronavirus being present within the surrounding community and the presumption that it may have also migrated onto/into your premises, although confirmation of the latter has not been received.

An email follow-up was then received from you today, May 4, 2020, providing a hyperlink to the Pennsylvania governor's webpage that provides a history of the Coronavirus within the commonwealth and the orders conveyed from his, the governor's, office

## **IV. NO COVERAGE UNDER THE POLICY FOR LOSS OF INCOME DUE TO CORONAVIRUS**

### **A. No Direct Physical Loss**

The Policy's insuring agreement at Section A. Coverage provides the following coverage:

We will pay for direct "loss" to Covered Property at the "premises" caused by or resulting from any Covered Cause of Loss.

(FM 101 05 16 at p. 3.) The Policy defines "loss" as "accidental physical loss or accidental physical damage." (FM 101 05 16 at p. 38.) The Policy defines "premises" as "the Locations and Buildings described in the Declarations." (FM 101 05 16 at p. 39.)

This claim does not satisfy the Policy's insuring agreement. The claim does not involve direct, physical loss to property at your premises caused by a Covered Cause of Loss. Although you have asserted that Coronavirus was present at your premises by means of it being within the surrounding community, that presence alone is not direct physical loss to property. You have not shown any direct physical loss to property, as required by the Policy.

Accordingly, the Policy's insuring agreement is not met and coverage is unavailable under the Policy.

**B. No Business Income and Extra Expense Coverage**

The Policy's Coverage Extensions section contains provisions for Business Income and Extra Expense coverage, included in Form FM 101 05 16:

**(1) Business Income**

We will pay for the actual loss of "Business Income" and "Rental Value" you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct "loss" to property at a "premises" caused by or resulting from any Covered Cause of Loss. With respect to "loss" to personal property in the open or personal property in a vehicle or portable storage unit, the "premises" include the area within 1,000 feet of the building or 1,000 feet of the "premises", whichever is greater.

With respect to the requirements of the preceding paragraph, if you are a tenant and occupy only part of the site at which the "premises" are located, for the purpose of this Coverage Extension only, your "premises" is the portion of the building that you rent, lease or occupy, including:

- (a) Any area within the building or on the site at which the "premises" are located if that area services or is used to gain access to the "premises"; and
- (b) Your personal property in the open (or in a vehicle or portable storage unit) within 1,000 feet of the building or 1,000 feet of the "premises", whichever is greater.

**(2) Extra Expense**

- (a) We will pay Extra Expense you sustain during the "period of restoration". Extra Expense means necessary expenses you sustain (as described in Paragraphs (2)(b), (c) and (d)) during the "period of restoration" that you would not have sustained if there had been no direct "loss" to property caused by or resulting from a Covered Cause of Loss.

- (b) If these expenses reduce the otherwise payable "Business Income" "loss", we will pay expenses (other than the expense to repair or replace property as described in Paragraph **(2)(c)**) to:
- 1) Avoid or minimize the "suspension" of business and to continue "operations" either:
    - a) At the "premises"; or
    - b) At replacement "premises" or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location; or
  - 2) Minimize the "suspension" of business if you cannot continue "operations".
- (c) We will also pay expenses to:
- 1) Repair or replace property; or
  - 2) Research, replace or restore the lost information on damaged "valuable papers and records";
- but only to the extent this payment reduces the otherwise payable "Business Income" "loss". If any property obtained for temporary use during the "period of restoration" remains after the resumption of normal "operations", the amount we will pay under this Coverage will be reduced by the salvage value of that property.
- (d) Extra Expense does not apply to "loss" to Covered Property as described in the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM**.

(Form FM 101 05 16 at pp. 18-19, 21.)

Additionally, the Policy at Form FA 213 05 16 provides separate Business Income and Extra Expense coverage provisions:

**1. Business Income**

- a. We will pay for the actual loss of "Business Income" you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct "loss" to property at "premises" which are described in the Declarations and for which a "Business Income" Limit of Insurance is shown in the Declarations. The "loss" must be caused by or result from a Covered Cause of Loss. With respect to "loss" to personal property in the open (or personal property in a vehicle or portable storage unit), the

"premises" include the area within 1,000 feet of the building or 1,000 feet of the "premises", whichever distance is greater.

- b. With respect to the requirements set forth in the preceding paragraph, if you are a tenant and occupy only part of the site at which the "premises" are located, for the purposes of this Coverage Part only, your "premises" is the portion of the building which you rent, lease or occupy, including:

- (1) Any area within the building or on the site at which the "premises" are located if that area services or is used to gain access to the described "premises".
- (2) Your personal property in the open (or in a vehicle or portable storage unit) within 1,000 feet of the building or 1,000 feet of the "premises", whichever distance is greater.

## **2. Extra Expense**

- a. Extra Expense coverage is provided at the "premises" described in the Declarations only if the Declarations show that "Business Income" coverage applies at that "premises".
- b. Extra Expense means necessary expenses you sustain (as described in Paragraphs **2.c.**, **d.** and **e.**) during the "period of restoration" that you would not have sustained if there had been no direct "loss" to property caused by or resulting from a Covered Cause of Loss.
- c. If these expenses reduce the otherwise payable "Business Income" "loss", we will pay expenses (other than the expense to repair or replace property as described in Paragraph **2.d.**) to:
  - (1) Avoid or minimize the "suspension" of business and to continue "operations" either:
    - (a) At the "premises"; or
    - (b) At replacement "premises" or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location; or
  - (2) Minimize the "suspension" of business if you cannot continue "operations".
- d. We will also pay expenses to:
  - (1) Repair or replace property; or
  - (2) Research, replace or restore the lost information on damaged "valuable papers and records"

but only to the extent this payment reduces the otherwise payable "Business Income" "loss". If any property obtained for temporary use during the "period of restoration" remains after the resumption of normal "operations", the amount we will pay under this Coverage Form will be reduced by the salvage value of that property.

- e. Extra Expense as described in Paragraphs 2.a. thru 2.d. does not apply to "loss" to Covered Property as described in the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM**.

(FA 213 05 16 at pp.1-2.)

Like the Policy's insuring agreement, the Business Income and Extra Expense coverages require that there be direct physical loss or damage to Covered Property at the premises or within 1,000 feet of those premises. There is no evidence of any such physical loss or damage. Accordingly, the Business Income and Extra Expense requirements are not satisfied and coverage is unavailable under the Policy.

### **C. Pollution Exclusion**

For the reasons stated above, there is no coverage here because there was no direct physical loss at the premises. But, even assuming that there was direct physical loss, there was no covered cause of loss. This is because the Policy's Exclusions section at FM 101 05 16 excludes from coverage any "loss" caused by or resulting from:

#### **(I) Pollutants**

Discharge, dispersal, seepage, migration, release, escape or emission of "pollutants" unless the discharge, dispersal, seepage, migration, release, escape or emission is itself caused by any of the "specified causes of loss". But if the discharge, dispersal, seepage, migration, release, escape or emission of "pollutants" results in a "specified cause of loss", we will pay for the "loss" caused by that "specified cause of loss".

(FM 101 05 16 at pp. 8, 10.)

The Policy defines "pollutants" as

any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, asbestos, chemicals, petroleum, petroleum products and petroleum by-products, and waste. . . . 'Pollutants' include but are not limited to substances which are generally recognized in industry or government to be harmful or toxic to persons, property, or the



environment regardless of whether injury or damage is caused directly or indirectly by the 'pollutants' . . . .

(FM 101 05 16 at p. 39.)

The Coronavirus is a solid irritant or contaminant. Moreover, the government generally recognizes the Coronavirus as harmful to people. Accordingly, to the extent the Policy's insuring agreement was otherwise satisfied, coverage would ultimately be excluded because under the Pollutants exclusion there was no covered cause of loss.

**D. No Civil Authority Coverage**

The Policy's Coverage Extensions section contains provisions for Civil Authority coverage, included in Form FM 101 05 16:

When a Covered Cause of Loss causes damage to property other than Covered Property at a "premises", we will pay for the actual loss of "Business Income" and necessary Extra Expense you sustain caused by action of civil authority that prohibits access to the "premises", provided that both of the following apply:

- (a) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage; and
- (b) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

This Civil Authority coverage for "Business Income" will begin immediately after the time of that action and will apply for a period of up to 30 days from the date of that action.

This Civil Authority coverage for Extra Expense will begin immediately after the time of that action and will end:

- 1) 30 consecutive days after the time of that action; or
  - 2) When your "Business Income" coverage ends;
- whichever is later.

(Form FM 101 05 16 at pp. 19, 21.)

Additionally, the Policy at Form FA 213 05 16 provides separate Civil Authority coverage provisions:

When a Covered Cause of Loss causes direct damage to property other than Covered Property at the "premises", we will pay for the actual loss of "Business

Income" you sustain and necessary Extra Expense you sustain caused by action of civil authority that prohibits access to the "premises", provided that both of the following apply:

- (1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage; and
- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Civil Authority coverage for "Business Income" will begin immediately after the time of the first action of civil authority that prohibits access to the "premises" and will apply for a period of up to 30 consecutive days from the date on which such coverage began.

Civil Authority coverage for Extra Expense will begin immediately after the time of the first action of civil authority that prohibits access to the "premises" and will end 30 consecutive days after the date of that action; or when your Civil Authority coverage for "Business income" coverage ends, whichever is later.

(FA 213 05 16 at p. 2.)

Although you closed your business in response to a governmental order, there is no evidence that the order was entered because of direct damage to property at other locations or dangerous physical conditions at other locations. Moreover, the order does not restrict access to the area immediately surrounding your premises. Because these requisite elements of the Civil Authority coverage are not present here, coverage is unavailable under the Policy.

## **V. CONCLUSION**

For the reasons discussed above, Cincinnati has concluded that the Policy provides no coverage for your claim. Cincinnati therefore cannot indemnify [NAMED INSURED] for any loss of business income from Coronavirus.

You should note that the U.S. Small Business Administration ("SBA") may be providing assistance for citizens in your circumstances. I understand that the SBA's contact information is:

Website: <https://www.sba.gov/funding-programs/disaster-assistance>  
Phone: 1-800-659-2955

This letter is not intended to be a limitation or waiver of any rights available to Cincinnati. Cincinnati's position is based on the information available to date. Cincinnati



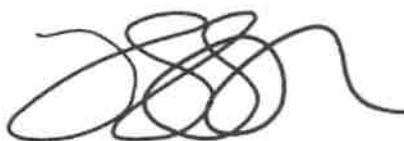
May 4, 2020

reserves all of its rights under the Policy and the applicable law. Cincinnati reserves the right to rely on any and all provisions of the Policy whether or not addressed in this letter.

If you have any information that you believe may impact any of the issues raised in this letter, please forward it to us as soon as possible. If you believe that we have misunderstood the facts or are in error regarding any of the statements set forth above, please notify us as soon as possible.

Please feel free to contact me if you have any questions or would like to discuss this matter.

Very truly yours,



Zachary Snyder, AIC  
Senior Claims Specialist  
PO Box B  
Bowmanstown, PA 18030  
(610)598-4009  
Zachary\_Snyder@cinfin.com

Enclosed: IA 904 04 04 (Schedule of Locations) of Policy No. 05EPP0177037  
FM 502 07 08 (Commercial Property Coverage Part Declarations of Policy  
No. 05EPP0177037  
Cc: HMK Insurance Inc (Susan Hartranft-Bittinger –  
[Shartranft-bittinger@hmk-ins.com](mailto:Shartranft-bittinger@hmk-ins.com))

# EXHIBIT “5”



The Cincinnati Insurance Company ■ The Cincinnati Indemnity Company  
The Cincinnati Casualty Company ■ The Cincinnati Specialty Underwriters Insurance Company  
The Cincinnati Life Insurance Company

**Zachary Snyder, AIC**  
**Senior Claims Specialist**

May 4, 2020

***VIA EMAIL AND U.S. MAIL***

Fegley Real Estate LLC  
Attn: Jeff Fegley  
812 W Hamilton St  
Allentown, PA 18101  
[jeff@thebrewworks.com](mailto:jeff@thebrewworks.com)

**Re: Insured:** Fegley Real Estate, LLC  
**Policy No.:** 05EPP0177037  
**Claim No.:** 3526519  
**Date of Loss:** 3/13/20  
**Locations:** See enclosed policy form (IA 904 04 04)

Dear Mr. Fegley:

This letter provides Cincinnati Insurance Company's ("Cincinnati") coverage decision for the above-referenced claim made by Fegley Real Estate, LLC ("you" or "your"). As submitted, the claim involves the Novel Coronavirus known as SARS-CoV-2, which causes the viral infection known as COVID-19 ("Coronavirus"). The claim asserts Business Income loss due to Coronavirus. Cincinnati has determined that coverage is unavailable for the claimed loss. Cincinnati regrets that this decision is necessary and wants to describe the basis for its decision. Should you have any disagreement with the basis for this decision, Cincinnati invites you to state the reasons for your disagreement in writing, including by submitting any additional information or documentation. Cincinnati will consider any further information or documents you may supply.

**I. SUMMARY**

The Cincinnati policy provides coverage for direct physical loss or damage to Covered Property at the premises. This direct physical loss or direct physical damage must be to property at the covered premises. Cincinnati's investigation has found no evidence of direct physical loss or damage at your premises. Similarly, there is no evidence of damage to property at other locations, precluding coverage for orders of civil authority.

Nothing in this letter is a waiver of any rights available to Cincinnati under the policy or applicable law. Cincinnati reserves the right to rely on additional rights and/or language in the policy whether or not discussed in this letter.

Case ID: 200601426

## **II. THE CINCINNATI POLICY**

Cincinnati issued policy number 05EPP0177037 to Fegley Real Estate, LLC (the "Policy"). The Policy's effective dates are from December 31, 2019 to December 31, 2020. The Commercial Property Coverage provides a limit of insurance for the locations listed on the enclosed policy form (IA 904 04 04). Please note that each of your eight (8) locations has a separate limit for Business Income and Extra Expense. Your policy's Commercial Property Coverage Part Declarations (FM 502 07 08), stating these separate limits, is enclosed for your review.

## **III. BACKGROUND**

We received notice of the above-captioned claim on March 31, 2020 for consideration under your policy via submission from your agency and receipt of your written statement regarding Coronavirus. A telephone conversation was completed the next day with you. In that conversation it was understood the insured locations represent real estate holdings of your firm, which derive their revenue primarily via rents received. It was claimed that, due to Coronavirus and the stay-at-home order of the Commonwealth of Pennsylvania, these insured locations were likely to suffer reduced revenues due to tenants' potential inability to pay rents owed. A Reservation of Rights (ROR) letter and document request followed April 2, 2020 via email and regular mail.

After a follow-up letter to you on April 30, 2020, a response to our ROR was received via email attachment from you on May 1, 2020. Your response indicates that your insured premises sustained direct physical damage by means of Coronavirus being present within the surrounding community and the presumption that it may have also migrated onto/into your premises, although confirmation of the latter has not been received.

An email follow-up was then received from you today, May 4, 2020, providing a hyperlink to the Pennsylvania governor's webpage that provides a history of the Coronavirus within the commonwealth and the orders conveyed from his, the governor's, office

## **IV. NO COVERAGE UNDER THE POLICY FOR LOSS OF INCOME DUE TO CORONAVIRUS**

### **A. No Direct Physical Loss**

The Policy's insuring agreement at Section A. Coverage provides the following coverage:

We will pay for direct "loss" to Covered Property at the "premises" caused by or resulting from any Covered Cause of Loss.

(FM 101 05 16 at p. 3.) The Policy defines "loss" as "accidental physical loss or accidental physical damage." (FM 101 05 16 at p. 38.) The Policy defines "premises" as "the Locations and Buildings described in the Declarations." (FM 101 05 16 at p. 39.)

This claim does not satisfy the Policy's insuring agreement. The claim does not involve direct, physical loss to property at your premises caused by a Covered Cause of Loss. Although you have asserted that Coronavirus was present at your premises by means of it being within the surrounding community, that presence alone is not direct physical loss to property. You have not shown any direct physical loss to property, as required by the Policy.

Accordingly, the Policy's insuring agreement is not met and coverage is unavailable under the Policy.

**B. No Business Income and Extra Expense Coverage**

The Policy's Coverage Extensions section contains provisions for Business Income and Extra Expense coverage, included in Form FM 101 05 16:

**(1) Business Income**

We will pay for the actual loss of "Business Income" and "Rental Value" you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct "loss" to property at a "premises" caused by or resulting from any Covered Cause of Loss. With respect to "loss" to personal property in the open or personal property in a vehicle or portable storage unit, the "premises" include the area within 1,000 feet of the building or 1,000 feet of the "premises", whichever is greater.

With respect to the requirements of the preceding paragraph, if you are a tenant and occupy only part of the site at which the "premises" are located, for the purpose of this Coverage Extension only, your "premises" is the portion of the building that you rent, lease or occupy, including:

- (a) Any area within the building or on the site at which the "premises" are located if that area services or is used to gain access to the "premises"; and
- (b) Your personal property in the open (or in a vehicle or portable storage unit) within 1,000 feet of the building or 1,000 feet of the "premises", whichever is greater.

**(2) Extra Expense**

- (a) We will pay Extra Expense you sustain during the "period of restoration". Extra Expense means necessary expenses you sustain (as described in Paragraphs (2)(b), (c) and (d)) during

the "period of restoration" that you would not have sustained if there had been no direct "loss" to property caused by or resulting from a Covered Cause of Loss.

(b) If these expenses reduce the otherwise payable "Business Income" "loss", we will pay expenses (other than the expense to repair or replace property as described in Paragraph **(2)(c)**) to:

1) Avoid or minimize the "suspension" of business and to continue "operations" either:

a) At the "premises"; or

b) At replacement "premises" or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location; or

2) Minimize the "suspension" of business if you cannot continue "operations".

(c) We will also pay expenses to:

1) Repair or replace property; or

2) Research, replace or restore the lost information on damaged "valuable papers and records";

but only to the extent this payment reduces the otherwise payable "Business Income" "loss". If any property obtained for temporary use during the "period of restoration" remains after the resumption of normal "operations", the amount we will pay under this Coverage will be reduced by the salvage value of that property.

(d) Extra Expense does not apply to "loss" to Covered Property as described in the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM**.

(Form FM 101 05 16 at pp. 18-19, 21.)

Additionally, the Policy at Form FA 213 05 16 provides separate Business Income and Extra Expense coverage provisions:

#### **1. Business Income**

a. We will pay for the actual loss of "Business Income" you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct "loss" to property at "premises" which are described in the Declarations and for which a "Business Income" Limit of Insurance is shown in the

Declarations. The "loss" must be caused by or result from a Covered Cause of Loss. With respect to "loss" to personal property in the open (or personal property in a vehicle or portable storage unit), the "premises" include the area within 1,000 feet of the building or 1,000 feet of the "premises", whichever distance is greater.

- b.** With respect to the requirements set forth in the preceding paragraph, if you are a tenant and occupy only part of the site at which the "premises" are located, for the purposes of this Coverage Part only, your "premises" is the portion of the building which you rent, lease or occupy, including:
  - (1)** Any area within the building or on the site at which the "premises" are located if that area services or is used to gain access to the described "premises".
  - (2)** Your personal property in the open (or in a vehicle or portable storage unit) within 1,000 feet of the building or 1,000 feet of the "premises", whichever distance is greater.

## **2. Extra Expense**

- a.** Extra Expense coverage is provided at the "premises" described in the Declarations only if the Declarations show that "Business Income" coverage applies at that "premises".
- b.** Extra Expense means necessary expenses you sustain (as described in Paragraphs **2.c.**, **d.** and **e.**) during the "period of restoration" that you would not have sustained if there had been no direct "loss" to property caused by or resulting from a Covered Cause of Loss.
- c.** If these expenses reduce the otherwise payable "Business Income" "loss", we will pay expenses (other than the expense to repair or replace property as described in Paragraph **2.d.**) to:
  - (1)** Avoid or minimize the "suspension" of business and to continue "operations" either:
    - (a)** At the "premises"; or
    - (b)** At replacement "premises" or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location; or
  - (2)** Minimize the "suspension" of business if you cannot continue "operations".
- d.** We will also pay expenses to:
  - (1)** Repair or replace property; or



- (2) Research, replace or restore the lost information on damaged "valuable papers and records"

but only to the extent this payment reduces the otherwise payable "Business Income" "loss". If any property obtained for temporary use during the "period of restoration" remains after the resumption of normal "operations", the amount we will pay under this Coverage Form will be reduced by the salvage value of that property.

- e. Extra Expense as described in Paragraphs 2.a. thru 2.d. does not apply to "loss" to Covered Property as described in the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM**.

(FA 213 05 16 at pp.1-2.)

Like the Policy's insuring agreement, the Business Income and Extra Expense coverages require that there be direct physical loss or damage to Covered Property at the premises or within 1,000 feet of those premises. There is no evidence of any such physical loss or damage. Accordingly, the Business Income and Extra Expense requirements are not satisfied and coverage is unavailable under the Policy.

### **C. Pollution Exclusion**

For the reasons stated above, there is no coverage here because there was no direct physical loss at the premises. But, even assuming that there was direct physical loss, there was no covered cause of loss. This is because the Policy's Exclusions section at FM 101 05 16 excludes from coverage any "loss" caused by or resulting from:

#### **(I) Pollutants**

Discharge, dispersal, seepage, migration, release, escape or emission of "pollutants" unless the discharge, dispersal, seepage, migration, release, escape or emission is itself caused by any of the "specified causes of loss". But if the discharge, dispersal, seepage, migration, release, escape or emission of "pollutants" results in a "specified cause of loss", we will pay for the "loss" caused by that "specified cause of loss".

(FM 101 05 16 at pp. 8, 10.)

The Policy defines "pollutants" as

any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, asbestos, chemicals, petroleum, petroleum products and petroleum by-products, and waste. . . . 'Pollutants' include but are not limited to substances which are generally recognized in



industry or government to be harmful or toxic to persons, property, or the environment regardless of whether injury or damage is caused directly or indirectly by the 'pollutants' . . . .

(FM 101 05 16 at p. 39.)

The Coronavirus is a solid irritant or contaminant. Moreover, the government generally recognizes the Coronavirus as harmful to people. Accordingly, to the extent the Policy's insuring agreement was otherwise satisfied, coverage would ultimately be excluded because under the Pollutants exclusion there was no covered cause of loss.

#### **D. No Civil Authority Coverage**

The Policy's Coverage Extensions section contains provisions for Civil Authority coverage, included in Form FM 101 05 16:

When a Covered Cause of Loss causes damage to property other than Covered Property at a "premises", we will pay for the actual loss of "Business Income" and necessary Extra Expense you sustain caused by action of civil authority that prohibits access to the "premises", provided that both of the following apply:

- (a) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage; and
- (b) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

This Civil Authority coverage for "Business Income" will begin immediately after the time of that action and will apply for a period of up to 30 days from the date of that action.

This Civil Authority coverage for Extra Expense will begin immediately after the time of that action and will end:

- 1) 30 consecutive days after the time of that action; or
  - 2) When your "Business Income" coverage ends;
- whichever is later.

(Form FM 101 05 16 at pp. 19, 21.)

Additionally, the Policy at Form FA 213 05 16 provides separate Civil Authority coverage provisions:

When a Covered Cause of Loss causes direct damage to property other than Covered Property at the "premises", we will pay for the actual loss of "Business Income" you sustain and necessary Extra Expense you sustain caused by action of civil authority that prohibits access to the "premises", provided that both of the following apply:

- (1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage; and
- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Civil Authority coverage for "Business Income" will begin immediately after the time of the first action of civil authority that prohibits access to the "premises" and will apply for a period of up to 30 consecutive days from the date on which such coverage began.

Civil Authority coverage for Extra Expense will begin immediately after the time of the first action of civil authority that prohibits access to the "premises" and will end 30 consecutive days after the date of that action; or when your Civil Authority coverage for "Business income" coverage ends, whichever is later.

(FA 213 05 16 at p. 2.)

Although you closed your business in response to a governmental order, there is no evidence that the order was entered because of direct damage to property at other locations or dangerous physical conditions at other locations. Moreover, the order does not restrict access to the area immediately surrounding your premises. Because these requisite elements of the Civil Authority coverage are not present here, coverage is unavailable under the Policy.

## **V. CONCLUSION**

For the reasons discussed above, Cincinnati has concluded that the Policy provides no coverage for your claim. Cincinnati therefore cannot indemnify [NAMED INSURED] for any loss of business income from Coronavirus.

You should note that the U.S. Small Business Administration ("SBA") may be providing assistance for citizens in your circumstances. I understand that the SBA's contact information is:

Website: <https://www.sba.gov/funding-programs/disaster-assistance>  
Phone: 1-800-659-2955

This letter is not intended to be a limitation or waiver of any rights available to Cincinnati. Cincinnati's position is based on the information available to date. Cincinnati

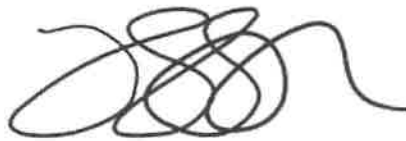
May 4, 2020

reserves all of its rights under the Policy and the applicable law. Cincinnati reserves the right to rely on any and all provisions of the Policy whether or not addressed in this letter.

If you have any information that you believe may impact any of the issues raised in this letter, please forward it to us as soon as possible. If you believe that we have misunderstood the facts or are in error regarding any of the statements set forth above, please notify us as soon as possible.

Please feel free to contact me if you have any questions or would like to discuss this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Zachary Snyder', with a stylized, looping flourish at the end.

Zachary Snyder, AIC  
Senior Claims Specialist  
PO Box B  
Bowmanstown, PA 18030  
(610)598-4009  
Zachary\_Snyder@cinfin.com

Enclosed: IA 904 04 04 (Schedule of Locations) of Policy No. 05EPP0177037  
FM 502 07 08 (Commercial Property Coverage Part Declarations of Policy  
No. 05EPP0177037  
Cc: HMK Insurance Inc (Susan Hartranft-Bittinger –  
[Shartranft-bittinger@hmk-ins.com](mailto:Shartranft-bittinger@hmk-ins.com))

# EXHIBIT “6”

E-mail: [jwheeler@wdblegal.com](mailto:jwheeler@wdblegal.com)

May 20, 2020

Zachary Snyder  
Senior Claims Specialist  
Cincinnati Insurance Companies  
PO Box B  
Bowmanstown, PA 18030

**Re: Fegley Real Estate LLC; Policy No: 05EP0177037; Claim No: 3526519**  
**Fegley Management & Energy LLC; Policy No: 05EPP0467258; Claim No: 3529866**  
**Date of Loss: 3/13/20**

Dear Mr. Snyder:

Please be advised that this office has been retained to represent your policyholders with respect to your denial of their Business Income Loss and Extra Expense claims arising from the government shut down of their businesses as a result of the COVID-19 pandemic which has infected the entire country.

I have reviewed your two denial letters dated May 4, 2020 and disagree with your conclusion that there is no coverage afforded to your policyholders for BI or EE as a result of this epidemic. In response to the statements made in your letter I would offer the following comments:

1. Contrary to your statement that the Cincinnati Policies "...provide coverage for direct physical loss.." I would direct your attention to the insuring provision which appears on page 5 of the ISO form FM 101 05 16 which states "Covered Causes of Loss means direct "loss" unless the "loss" is excluded or limited in this coverage part." The words "direct physical loss" do not appear in the insuring language of the Cincinnati Policy. The definition of "loss" (page 38 of form FM 101 05 16) states "Loss" means accidental physical loss or accidental physical damage." The use of the disjunctive "or" means that the loss can be **either** an accidental physical loss **or** accidental physical damage. There is no doubt that the loss of income suffered by your policyholders is a "physical loss" of income, and coverage would

apply.

Even if you conclude that loss of income does not constitute a “physical loss” it is still clear that this pandemic which has spread nationwide has, by its presence, created “physical damage” by infecting your insureds’ premises, as well as all other premises in the immediate area.

Even accepting your incorrect statement of the insuring provision as “...direct “loss” to Covered Property at the “premises” caused by **or** resulting from any Covered Cause of Loss” coverage would still attach because the loss of income was the result of a governmental shut down of the insured premises as a result of contamination by the virus.

2. There is no Virus Exclusion in either policy
3. COVID-19 is not a “Pollutant” as defined by the policy. It is a “virus.”
4. Business Income and Extra Expense coverage is provided under ISO form FA 213 05 16 at page 2 ( Paragraph 5(b) which provides BI and EE coverage when access to the “premises” or the “...area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage...” Since access to the insured premises has been prohibited by Civil Authority as a result of the virus contamination to “...property other than Covered Property at a “premises,” coverage would attach because the government has denied access to the insured premises and the immediately surrounding area.

Please provide me with certified copies of **all** Cincinnati policies in effect on the date of this loss.

Please revisit your denial of coverage. In the event I am not advised that coverage will be afforded under these policies within 10 days from the date of this letter I have been authorized to commence suit without further notice.

Please be guided accordingly

Very truly yours,

JONATHAN WHEELER

JW

cc: Jeffrey Fegley  
HMK Insurance Inc

# EXHIBIT “7”



The Cincinnati Insurance Company ■ The Cincinnati Indemnity Company  
The Cincinnati Casualty Company ■ The Cincinnati Life Insurance Company  
The Cincinnati Specialty Underwriters Insurance Company

**Zachary Snyder, AIC**  
**Senior Claims Specialist**

Mailing Address: P.O. Box B  
Bowmanstown, PA 18030  
(610) 598-4009  
Fax: (866) 232-7581  
email: zachary\_snyder@cinfin.com

**Via Email – No Hardcopy to Follow**

June 2, 2020

Wheeler, Diulio & Barnabei  
Attn: Jonathan Wheeler, Esq  
1617 JFK Blvd / Ste 1270  
Philadelphia, PA 19103  
[JWheeler@WDBLegal.com](mailto:JWheeler@WDBLegal.com)

<b>RE:</b>	<b>Insured:</b>	<b>Fegley Real Estate LLC &amp; Fegley Management &amp; Energy LLC</b>
	<b>Claim No.:</b>	<b>3529619 &amp; 3529866</b>
	<b>Policy No.:</b>	<b>05EPP0177037 &amp; 05EPP0467258</b>
	<b>Loss Date:</b>	<b>3/13/20</b>

Dear Mr. Wheeler,

I am writing regarding your representation of Jeffrey Fegley via Fegley Real Estate LLC and Fegley Management & Energy LLC in the aforementioned losses. As you are aware, Cincinnati Insurance is the property insurance carrier of these firms for the given date of loss.

Please allow this letter to serve as follow-up to your rebuttal of our coverage positions on these claims. I have reviewed your letter dated May 20, 2020 and our coverage positions remain unchanged

Copies of both of the above-captioned policies have been ordered for your review. Once received, these will be forwarded to you via email

Should you have any questions surrounding these claims, feel free to contact me at the number above.

Sincerely,

Zachary Snyder, AIC  
Senior Claims Specialist

"Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties."

Case ID: 200601426