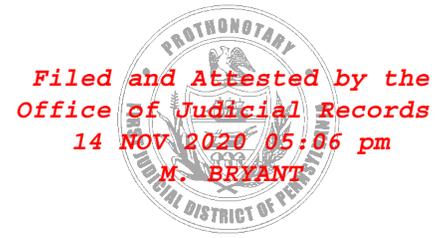


**ANDERSON KILL P.C.**  
Arthur R. Armstrong, Esq.  
1760 Market Street, Suite 600  
Philadelphia, PA 19103  
Telephone: (267) 216-2700  
E-mail: aarmstrong@andersonkill.com  
*Attorneys for Plaintiffs*



IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

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M.S. ACQUISITIONS & HOLDINGS, LLC; and MEGA PHILADELPHIA, LLC,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	No.
	:	
VIGILANT INSURANCE COMPANY,	:	
	:	
Defendant.	:	
	:	
	:	

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**NOTICE TO DEFEND**  
**NOTIFICACIÓN PARA DEFENDERSE**

**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.

**AVISO**

Le han demandado a usted en el tribunal. Si usted quiere defenderse de las demandas expuestas en las páginas siguientes, usted debe tomar acción en el plazo de veinte (20) días a partir de la fecha en que se le hizo entrega de la demanda y la notificación, al interponer una comparecencia escrita, en persona o por un abogado y registrando por escrito en el tribunal sus defensas o sus objeciones a las demandas en contra de su persona. Se le advierte que si usted no lo hace, el caso puede proceder sin usted y podría dictarse un fallo por el juez en contra suya sin notificación adicional y podría ser por cualquier dinero reclamado en la demanda o por cualquier otro reclamo o desagravio en la demanda solicitado por el

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IN THE COURT OF COMMON PLEAS  
OF PHILADELPHIA COUNTY, PENNSYLVANIA

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M.S. ACQUISITIONS & HOLDINGS,  
LLC; and MEGA PHILADELPHIA, LLC,

Plaintiffs,

v.

VIGILANT INSURANCE COMPANY,

Defendant.

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No.

**COMPLAINT AND DEMAND FOR  
JURY TRIAL**

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**COMPLAINT**

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M.S. Acquisitions & Holdings, LLC and Mega Philadelphia, LLC (collectively “MSA” or “Plaintiffs”), by and through its undersigned counsel, Anderson Kill, P.C., submits the following Complaint against Defendant Vigilant Insurance Company (“Chubb” or “Defendant”), which is owned by the parent company The Chubb Group.

**INTRODUCTION**

1. The transmission of the severe acute respiratory syndrome coronavirus 2 (“SARS-CoV-2”), commonly known as the coronavirus, has caused a pandemic affecting millions of people around the world. MSA’s business has suffered enormously as a result.

2. M.S. Acquisitions & Holdings, LLC owns and operates Mega Philadelphia, LLC, a Spanish-speaking radio station serving the Hispanic community in the Philadelphia metropolitan area, with properties in Philadelphia, Pennsylvania, and Cherry Hill and Camden, New Jersey (the “Properties”).

3. The property damage and orders of civil authority associated with SARS-CoV-2 have caused MSA to sustain hundreds of thousands of dollars in business income losses. These losses are covered under the insurance policy that MSA purchased from Chubb.

4. MSA has paid substantial premiums to Chubb for a property insurance policy that provides \$390,000 in business interruption coverage during the policy period from September 30, 2019 to September 30, 2020 (the “Policy”).

5. The Policy provides “all risk” insurance coverage – that is, it provides coverage for all risks, except as specifically excluded.

6. The risks associated with viruses and pandemics have been known to the insurance industry for a century and have been well known to Chubb in recent decades during which we all have witnessed outbreaks and pandemics involving viruses such as SARS, MERS, H1N1, and Zika.

7. Because these risks are well known, there are exclusions in common usage in the insurance industry that specifically reference losses caused by viruses and pandemics. However, Chubb did not include any such exclusion as part of the Policy they sold to MSA.

8. The Policy includes coverage for business interruption losses, as well as “Additional Coverages” that cover business interruption losses like those MSA is suffering in the wake of the coronavirus outbreak.

9. The Policy’s terms, coupled with the absence of any applicable exclusion (despite commonly used exclusions for viruses and pandemics), establish that the Policy provides insurance coverage for MSA’s business interruption losses from the coronavirus pandemic.

10. MSA submitted a timely claim.

11. Chubb adjusted and denied MSA’s claim improperly and in bad faith.

12. This insurance coverage action seeks a judicial declaration that Chubb must indemnify MSA for business interruption losses suffered due to the coronavirus pandemic, and damages arising from Chubb's breach of the insurance Policy that it sold to MSA, as well as consequential damages and additional damages for Defendant's bad faith conduct in its handling of MSA's insurance claim giving rise to this action.

### **PARTIES**

13. Plaintiff M.S. Acquisitions & Holdings, LLC is a limited liability company organized under the laws of the state of Florida with an address of 1341 N. Delaware Avenue, Suite 509, Philadelphia, Pennsylvania.

14. Mega Philadelphia, LLC is a limited liability company organized under the laws of the state of New Jersey with an address of 1341 N. Delaware Avenue, Suite 509, Philadelphia, Pennsylvania.

15. Upon information and belief, Defendant Vigilant Insurance Company is an insurance company organized under the laws of the state of New York, with an address of 55 Water Street, New York, New York.

### **JURISDICTION AND VENUE**

16. This Court has personal jurisdiction because, at all times material hereto, Defendant transacted business within the Commonwealth of Pennsylvania, and because Defendant engages in substantial and not isolated activity within the Commonwealth of Pennsylvania.

17. Venue is proper in this County pursuant to Pennsylvania Rule of Civil Procedure 2179(b) because, among other things, Defendant regularly conducts business in this County and the insured property is located in this County.

## **FACTUAL BACKGROUND**

18. The purpose of business interruption insurance, like that purchased by MSA from Chubb, is to protect policyholders from losses arising out of the shutdown of normal business operations due to loss or damage sustained as a result of a peril insured against.

19. Indeed, Chubb's intent in drafting the Policy was to cover the very types of losses suffered by MSA because there is affirmative coverage for business interruption of this type and the Policy does not contain a virus exclusion.

20. Now, faced with covered losses caused by a global disaster, MSA has asked Chubb to honor the promise of insurance coverage that Chubb made when it sold the Policy to MSA. But Chubb has shirked its contractual obligation and abandoned Plaintiffs in their time of greatest need.

### **A. MSA's Insurance Policy and Relevant Policy Terms**

21. Chubb sold to MSA policy no. 3603-87-49 ECE, a unique property and liability insurance policy under the Customarq Series Broadcasters Insurance Program covering the policy period from September 30, 2019 to September 30, 2020. *See* Ex. 1.

22. To date, MSA has paid all premiums for the Policy, and has satisfied all relevant and applicable conditions precedent to obtaining payments owed under the Policy to the extent that they have not been waived or abrogated by Chubb's conduct, omissions, actions or breaches.

23. The Policy provides insurance coverage for MSA's Properties, as well as business income loss as follows:

We will pay for the actual:

- business income loss you incur due to the actual impairment of your operations; and

- extra expense you incur due to the actual or potential impairment of your operations

during the period of restoration . . . .

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

*See* Policy, Property Insurance Business Income with Extra Expense, at 3 of 15.

24. The Policy’s Business Income Coverage contains “Additional Coverages.”

*See id.* at 5-10 of 15. At least two of these “Additional Coverages” – Civil Authority coverage and Dependent Business Premises coverage – provide coverage for MSA’s business incomes losses at issue here.

25. As relevant to these two coverages, “dependent business premises” means: premises operated by others on whom you depend to:

- deliver materials or services to you or to others for your account (contributing premises);
- accept your products or services (recipient premises); . . . or
- attract customers to your business (leader premises).

*See* Policy, Property/Business Income Conditions and Definitions, at 14 of 34.

26. The Policy provides Civil Authority coverage as follows:

We will pay for the actual:

- business income loss; or
- extra expense,

you incur due to the actual potential impairment of your operations directly caused by the prohibition of access to:

- your premises; or
- a dependent business premises,

by a civil authority.

This prohibition of access by a civil authority must be the direct result of direct physical loss or damage to property away from such premises or such dependent business premises by a covered peril, provided such property is within:

- one mile

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from such premises or dependent business premises[.]

*See* Policy, Property Insurance Business Income with Extra Expense, at 5-6 of 15.

27. The Policy provides Dependent Business Premises coverage as follows:

We will pay for the actual:

- business income loss you incur due to the actual impairment of your operations; and
- extra expense you incur due to the actual or potential impairment of your operations,

during the period of restoration . . . .

This actual or potential impairment of operations must be caused by or result from direct physical loss or damage by a covered peril to property or personal property of a dependent business premises at a dependent business premises.

*See id.* at 6-7 of 15.

28. The Policy also provides other coverages that cover MSA's losses, such as Ingress/Egress coverage. *Id.* at 4 of 15.

29. To the extent that MSA has sustained any business income loss that did *not* result from direct physical loss or damage, the Policy is amended by endorsement to include

Prohibition of Access Coverage as follows:

We will pay for the actual:

- business income loss; or
- extra expense

you incur due to the actual potential impairment of your operations, directly caused by the prohibition of access to a premises shown in the Declarations by a civil authority . . . .

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

A. has occurred at or within 1,000 feet of such premises[.]

*See Policy, Prohibition of Access Endorsement, Form 90-02-5357, at 3 of 6.*

30. Viruses such as SARS-CoV-2 are a peril insured against under the Policy.

31. The Policy provides “all-risk” coverage and there is no exclusion for the risks or perils of pandemic, virus, or communicable disease.

32. The absence of any virus, pathogen, communicable disease or pandemic exclusion in the Policy is telling. Chubb did not exclude coverage for such perils when it sold MSA the Policy, despite the common use of such exclusions in the insurance industry following the outbreaks of SARS, MERS, H1N1, and Zika. Chubb cannot add any such exclusion or exclusionary interpretation now that MSA has suffered losses from the coronavirus pandemic.

**B. The Damage from SARS-CoV-2**

33. SARS-CoV-2 causes direct physical loss or damage to property.

34. When SARS-CoV-2 impacts property, it renders the property dangerous and potentially fatal.

35. Property impacted by SARS-CoV-2 is, in practical effect, unusable for the purpose of generating business income.

36. Businesses generally buy insurance for their property and business income to insure that their property functions and produces revenue. When property is impacted in a way that renders it incapable of producing revenue – whether it is caused by a fire, or a flood, or toxic fumes, or a virus – the loss or damage from any of these causes is the same.

37. A virus certainly causes “physical loss” or “physical damage” even though it is invisible to the naked eye. Property impacted by SARS-CoV-2 is just as dangerous as property impacted by fire or fumes (if not more so), and all such damaged property is equally incapable of producing revenues. Like the impact of fire or smoke or noxious odors, the impact of a potentially fatal virus constitutes “direct physical loss or damage to” property.

38. In January 2020, the first known case of COVID-19, the infectious disease caused by SARS-CoV-2 was reported in the United States.

39. Officially declared a pandemic by the World Health Organization (“WHO”) on March 11, 2020, the coronavirus pandemic has caused unfathomable sickness, death, and economic distress around the world.

40. SARS-CoV-2 is transmitted through both person-to-person contact and contact by persons with fomites, which are surfaces of objects or materials on which SARS-CoV-2 is present.

41. Evidence increasingly indicates that SARS-CoV-2 also can travel through the air through aerosol particles, or aerosols, which are produced continuously by normal breathing and talking. Aerosols are fine water droplets suspended in air which can remain suspended for hours until the force of gravity causes them to settle on surfaces.

42. Aerosol production increases during respiratory illnesses and during louder than normal oration.

43. Aerosol transmission of SARS-CoV-2 is particularly concerning because aerosolized SARS-CoV-2 can spread widely through air flow and settle on surfaces hundreds of feet away from any infected individual.

44. Human contact with surfaces on which SARS-CoV-2 is present is known to transmit the virus, making property impacted by SARS-CoV-2 very dangerous and potentially fatal.

45. Thus, aerosol transmission of SARS-CoV-2 could result in infection when someone who is not even in the vicinity of an infected person unknowingly touches an infected surface and then touches their face.

46. The WHO explains that COVID-19 “spreads primarily from person to person through small droplets from the nose or mouth, which are expelled when a person with COVID-19 coughs, sneezes, or speaks . . . . People can catch COVID-19 if they breathe in these droplets from a person infected with the virus.”<sup>1</sup>

47. In addition to transmission by inter-personal contact, the WHO states that viral “droplets can land on objects and surfaces around the person such as tables, doorknobs and handrails. People can become infected by touching these objects or surfaces then touching their eyes, nose, or mouth.”<sup>2</sup>

48. The *New England Journal of Medicine* reported a scientific study conducted by researchers from UCLA, Princeton University, the National Institute of Allergy and Infectious Diseases, and the Centers for Disease Control and Prevention that analyzed the aerosol and surface stability of SARS-CoV-2 and compared it with SARS-CoV-1, the most closely related human

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<sup>1</sup> *How does COVID-19 spread?*, WORLD HEALTH ORGANIZATION, available at <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-coronaviruses> (last visited July 30, 2020).

<sup>2</sup> *Id.*

coronavirus. The study found that SARS-CoV-2 persisted on plastic and stainless steel surfaces for up to seventy-two hours in laboratory studies.<sup>3</sup>

49. Scientists also have studied the persistence of SARS-CoV-2 on surfaces in cruise ships with documented outbreaks of COVID-19. One such study, reported by the Centers for Disease Control and Prevention (the “CDC”) on March 23, 2020, found that SARS-CoV-2 was present in the cabins of a Diamond Princess cruise ship seventeen days after it had been vacated, but before it had been disinfected.<sup>4</sup>

50. According to a study published in April 2020 in the CDC’s *Emerging Infectious Diseases* Journal on aerosol and surface distribution of SARS- CoV-2 in hospital wards, SARS-CoV-2 can travel up to 13 feet in the air.<sup>5</sup>

51. That same study reported that fifty percent of the samples from the medical staff’s shoes tested positive, suggesting that shoes might function as carriers: “In addition, as medical staff walk around the ward, the virus can be tracked all over the floor, as indicated by the 100% rate of positivity from the floor in the pharmacy, where there were no patients.”<sup>6</sup>

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<sup>3</sup> Neeltje van Doremalen, *et al.*, [Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1](https://www.nejm.org/doi/full/10.1056/NEJMc2004973), N. ENGL. J. MED. (March 17, 2020), available at <https://www.nejm.org/doi/full/10.1056/NEJMc2004973>.

<sup>4</sup> Leah F. Moriarty, *et al.*, [Public Health Responses to COVID-19 Outbreaks on Cruise Ships — Worldwide, February–March 2020](https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm), CDC Morbidity and Mortality Weekly Report (Mar. 27, 2020), available at <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm>.

<sup>5</sup> Zhen-Dong Guo, *et al.*, [Aerosol and Surface Distribution of Severe Acute Respiratory Syndrome Coronavirus 2 in Hospital Wards, Wuhan, China, 2020](https://wwwnc.cdc.gov/eid/article/26/7/20-0885_article), Centers for Disease Control and Prevention – Emerging Infectious Diseases (Vol. 26-7 July 2020), [https://wwwnc.cdc.gov/eid/article/26/7/20-0885\\_article](https://wwwnc.cdc.gov/eid/article/26/7/20-0885_article) (last updated Apr. 10, 2020)

<sup>6</sup> *Id.*

52. Another recent study conducted in Wuhan indicates that staff movement, floor cleaning, and the removal of personal protective equipment can cause the resuspension of SARS-CoV-2 aerosols.<sup>7</sup>

53. A study published in June 2020 in the CDC's *Emerging Infectious Diseases* Journal assessed the persistence of SARS-CoV-2 in aerosol suspensions by comparing its efficiency with SARS-CoV and Middle East respiratory syndrome coronavirus ("MERS-CoV").<sup>8</sup> The scientists determined that the short-term aerosol efficiency of SARS-CoV-2 surpassed those of SARS-CoV and MERS-CoV: "SARS-CoV-2-infected persons may produce viral bioaerosols that remain infectious for long periods after production through human shedding and airborne transport." Additionally, the report asserted that "these preliminary data suggest that SARS-CoV-2 is resilient in aerosol form."

54. There have been hundreds of thousands of confirmed cases of COVID-19 in proximity to the Properties, and the number of cases and geographic presence of SARS-CoV-2 continues to grow and spread.

55. Currently, the number of confirmed cases of COVID-19 nationwide is nearly 10 million, with over 475,000 cases confirmed in Pennsylvania and New Jersey alone as of the date of this filing. With the COVID-19 vaccination still in clinical development, the number of cases continues to rise.

56. As has been widely reported and acknowledged by civil and government authorities, there are even larger numbers of infected people that have not been counted as

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<sup>7</sup> Yuan Liu, Ph.D., et al., Aerodynamic Characteristics and RNA Concentration of SARS-CoV-2 Aerosol in Wuhan Hospitals during COVID-19 Outbreak, <https://www.biorxiv.org/content/10.1101/2020.03.08.982637v1.full.pdf> (last updated Mar. 10, 2020).

<sup>8</sup> Alyssa C. Fears, et al. Persistence of Severe Acute Respiratory Syndrome Coronavirus 2 in Aerosol Suspensions, Centers for Disease Control and Prevention – *Emerging Infectious Diseases* (Vol. 26-9 Sept. 2020), [https://wwwnc.cdc.gov/eid/article/26/9/20-1806\\_article](https://wwwnc.cdc.gov/eid/article/26/9/20-1806_article) (last updated June 22, 2020).

“confirmed” cases due, in part, to the at-times asymptomatic nature of some COVID-19 carriers and a lack of widespread testing.

57. Accordingly, the loss and damage to property from SARS-CoV-2 is ubiquitous and widespread across the United States.

**C. Orders of Civil Authorities in Connection with the Coronavirus Pandemic**

58. There have been hundreds, if not thousands, of orders of civil authority across the United States as a result of the coronavirus outbreak, including orders by federal, state, county, and municipal officials deeming a limited number of businesses to be “essential”; requiring the closure of non-essential businesses; directing individuals to “shelter in place,” stay in their homes, and not travel except to receive medical care or buy groceries or other necessities for living; and restricting or limiting entry into the United States (the “Orders”).

59. On March 6, 2020, following confirmed cases of COVID-19 in the Commonwealth of Pennsylvania, Governor Tom Wolf declared the existence of a disaster emergency. *See* Ex. 2.

60. On March 9, 2020, following confirmed cases of COVID-19 in the State of New Jersey, Governor Philip D. Murphy declared a state of emergency. *See* Ex. 3.

61. On March 13, 2020, the President of the United States proclaimed a national emergency. *See* Ex. 4.

62. Following these initial state of emergency declarations, states nationwide also issued statewide stay-at-home orders, which mandated the closure of all non-essential business and required residents to stay at home with very limited exceptions. For example:

- (a) On March 23, 2020, the state of Pennsylvania entered a stay-at-home order placing restrictions on business activity allowing only life-sustaining establishments to remain open. *See* Ex. 5.
- (b) On March 21, 2020, the State of New Jersey issued Executive Order No. 107 (2020) closing all non-essential businesses and ordering “All New Jersey residents shall remain home or at their place of residence unless they are” performing a limited set of activities, like buying groceries or seeking medical attention. *See* Ex. 6 at ¶ 2.

63. Since these executives orders were issued, and as COVID-19 continues to spread, both states have continued to amend, extend, and issue new orders limiting business operations in each state.

64. State, local, and municipal authorities throughout the country have specifically recognized that the Orders were issued in part because of the damage SARS-CoV-2 causes to property. For example:

- (a) On March 19, 2020, Los Angeles Mayor Garcetti issued a shutdown order, explaining “This Order is given because, among other reasons, the COVID-19 virus can spread easily from person to person and it is physically causing property loss or damage due to its tendency to attach to surfaces for prolonged periods of time.” Ex. 7 (emphasis added). The Order advised that “City residents must isolate themselves in their residences, subject to certain exceptions[.]”

- (b) On April 1, 2020, in a supplement to a mayoral proclamation, the Mayor of the City of San Francisco extended coronavirus-related orders, including the stay-at-home order “requiring most people to remain in their homes subject to certain exceptions including obtaining essential goods such as food and necessary supplies, and requiring the closure of nonessential businesses.” The supplemental Order declared “This order and the previous orders issued during this emergency have all been issued because of the propensity of the virus to spread person to person and also because the virus physically is causing property loss or damage due to its proclivity to attach to surfaces for prolonged periods of time[.]” Ex. 8 (emphasis added).
- (c) On March 7, 2020, the Governor of New York issued Executive Order No. 202 declaring a State of Emergency based on his authority to act to “to protect state and local property, and to provide such other assistance as is necessary to protect public health, welfare, and safety.” Ex. 9. That Order was extended and amended on March 22, 2020 to close in-office operations at non-essential businesses.
- (d) On March 16, 2020, the Mayor of New York City issued an emergency executive order declaring a state of emergency, stating: “this order is given because of the propensity of the virus to spread person to person and also because the virus physically is causing property loss and damage[.]” Ex. 10 (emphasis added).

- (e) On March 16, 2020, the Mayor of the City of New Orleans issued an emergency order suspending non-emergency gatherings and closing certain categories of businesses, stating “there is reason to believe that COVID-19 may be spread amongst the population by various means of exposure, including the propensity to spread person to person and the propensity to attach to surfaces for prolonged periods of time, thereby spreading from surface to person and causing property loss and damage in certain circumstances[.]” Ex. 11 (emphasis added). That Order canceled all private and public gatherings and mandated the closure of gyms, entertainment venues, shopping malls, and eat-in dining.
- (f) On April 6, 2020, the Governor of Colorado extended that state’s shutdown order, acknowledging “COVID-19 also physically contributes to property loss, contamination, and damage due to its propensity to attach to surfaces for prolonged periods of time. Ex. 12 (emphasis added).
- (g) On April 23, 2020, a Dallas County Judge issued an amended “Safer at Home Order” that states, “this Emergency Order is necessary because of the propensity of the virus to spread person to person and also because the virus is physically causing property damage due to its proclivity to attach to surfaces for prolonged periods of time . . . All individuals currently living within Dallas County are ordered to shelter at their place of residence[.]” Ex. 13 (emphasis added).

65. The Orders were issued as a result of direct physical loss or damage to property away from the Properties or dependent business premises by a covered peril.

66. The Orders prohibited access to the Properties and dependent business premises.

**D. MSA's Business Income Losses**

67. MSA has suffered actual business income losses insured under the Policy.

68. MSA operates a Spanish-speaking radio station serving the Hispanic community in the Philadelphia metropolitan area.

69. Operating the radio station requires specialized equipment and staff to be present at the broadcasting stations insured under the Policy.

70. MSA purchased a specialized broadcasting policy from Chubb that covers, among other things, business income losses when a civil authority prohibits access to the insured locations.

71. In March 2020, MSA was prohibited from entering the radio station by the aforementioned Orders issued in Pennsylvania and New Jersey to address COVID-19.

72. The COVID-19 pandemic and the related Orders have interrupted MSA's business operations at the Properties since March of 2020 by, among other things, prohibiting access to the Properties, thereby disrupting all aspects of the radio station's operations.

**E. MSA's Insurance Claim**

73. MSA timely provided notice to Chubb that it was submitting a claim in connection with losses stemming from SARS-CoV-2 (the "Claim").

74. On April 30, 2020, Chubb sent MSA a Reservation of Rights letter ("ROR") acknowledging receipt of the Potential Loss Letter. Chubb stated that it was

undertaking an ongoing investigation subject to a full reservation of its rights and defenses of the Policy, and baselessly asserted that there was no coverage under the Policy.

75. Dissatisfied with Chubb's complete lack of substantive reasoning as to their wrongful conclusion that the Policy did not provide coverage, MSA responded to the ROR on May 8, 2020, explaining, among other things, that the Policy is categorically different from most other commercial property insurance policies because it does not contain a virus exclusion and that the Chubb's continued delay in processing the Claim was exacerbating MSA's losses.

76. MSA also expressed that it was willing to submit a proof of loss and any additional information required to assist Chubb in making a coverage determination.

77. MSA made repeated requests that Chubb provide the proper Claim Form in order that MSA could submit its Claim.

78. Chubb did not acknowledge or reply to these requests.

79. On June 12, 2020, Chubb sent MSA a coverage position letter finding no coverage under the Policy.

80. The coverage position letter also stated that it was meant to "only address[] those provisions that appear[ed] pertinent at [that] time in light of the facts currently known to [Chubb]," and invited MSA to submit additional information.

81. On June 19, 2020, after MSA's repeated failed attempts to procure a claim form from Chubb, MSA submitted additional information to Chubb, via counsel, including a Claim Form obtained from Chubb's website, and other information regarding losses.

82. On July 14, 2020, after another month of radio silence, Chubb sent MSA a receipt confirmation of the June 19 email noting (rather confusingly) that "Chubb [did] not accept, nor reject, the Claim form and attachments" and was "in the process of reviewing it."

83. The very next day, MSA's counsel acknowledged receipt of the confirmation letter and asked Chubb to inform MSA of any additional information it may need to make a determination.

84. On September 23, 2020, Mr. Jerry Rudoshko ("Mr. Rudoshko"), Senior General Adjuster for Vigilant Insurance Company, responded to MSA's June 19, 2020 communication on behalf of Chubb and stated that he had reviewed the additional information and arguments presented, and that the "coverage position remains unchanged."

85. In this letter, Mr. Rudoshko also stated that MSA used an incorrect claim form—which form had been submitted three months prior, after a total lack of response from Chubb regarding MSA's request for a Claim Form, and which Chubb failed to correct at the time of submission.

86. On the same day, MSA's counsel responded to Mr. Rudoshko by email, expressing its doubt as to whether a denial was made and stating that all necessary claim information was contained in the Claim Form submitted.

87. On October 2, 2020, Mr. Rudoshko responded to "reconfirm [Chubb's] denial as outlined in our June 12, 2020 letter and again reconfirmed in our September 23, 2020 letter," noting that Chubb was "not just rejecting the claim form [] submitted," but denying the claim.

88. From the start, MSA has promptly responded, submitted additional information, and offered to submit even more information where needed. In contrast, Chubb has refused to acknowledge coverage under the clear terms of the Policy, and has refused to timely and thoroughly analyze and handle MSA's losses under the Policy.

89. MSA's diligent attempts to obtain coverage for its losses under the Policy have been met at every turn by Chubb's obstinate refusal to cooperate and communicate with MSA and delayed review of MSA's Claim.

90. The few communications from Chubb have been vague and fail to address MSA's concerns and very real losses.

91. In fact, Chubb did not make clear that it had actually denied the Claim until October 2, 2020.

92. At this time, Chubb's avoidance of MSA's claim has resulted in a spiral of losses from which MSA may never financially recover.

**F. Chubb's Handling of Similar Claims**

93. As COVID-19 continues to spread, policyholders continue to submit claims to insurance companies to recover business income losses under their policies' business interruption coverage, leading to the filing of hundreds of insurance coverage lawsuits within the last several months.

94. Not surprisingly, Chubb has been sued by its policyholders for denying coverage under policies that provide coverage for COVID-19-related business income losses. Currently, a class action is pending in the United States District Court for the District of New Jersey (the "Chubb Class Action") which alleges that Chubb has breached its policy contracts and seeks declaratory judgment that the Civil Authority and Extra Expense coverages apply to the policyholder plaintiffs' losses. *See Truhaven Enterprises, Inc. v. Chubb Ltd.*, No. 2:20-cv-04586-SRC-CLW (D.N.J. filed Apr. 20, 2020).

95. The underlying claims in the Chubb Class Action are similar to MSA's claims in this Action.

96. Significantly, MSA's claims against Chubb in this Action are even more robust because, unlike 80% of all property policies in the market at this time – including the policy involved in the Chubb Class Action – MSA's Policy does not contain a virus exclusion. *See id.* at ¶ 40 (stating “Plaintiff's Policy includes an endorsement Exclusion of Loss Due To Virus or Bacteria, Commercial Property form CP 01 40 07 07”); *see also* Ex. 1, Policy (showing no virus exclusion).

### **COUNT I - DECLARATORY JUDGMENT**

97. MSA repeats and realleges the allegations set forth in the foregoing paragraphs as though fully set forth herein.

98. An actual and justiciable controversy has arisen between MSA and Chubb as to Chubb's obligation to assume its obligations to pay MSA for the covered damages it has incurred and will incur due to its business interruption loss.

99. MSA and Chubb dispute whether the Policy covers the loss, or whether an exclusion applies to prohibit coverage.

100. Resolution of these controversies will establish MSA's right to payment from Chubb.

101. To date, Chubb has failed to provide any payment to MSA for its damages.

102. By reason of the foregoing, an actual, substantial, and justiciable controversy exists between MSA and Chubb, and a judicial declaration is necessary and appropriate so that the parties may ascertain their respective rights and obligations.

103. MSA seeks a declaration that Chubb must indemnify Plaintiffs under the terms of the Policy.

**WHEREFORE**, MSA prays for a determination by this Court in favor of MSA declaring that Chubb must indemnify MSA under the terms of the Policy, and must pay MSA for its attorneys' fees and costs, and any other and further relief as the Court deems just and proper.

### **COUNT II - BREACH OF CONTRACT**

104. MSA repeats and realleges the allegations set forth in the foregoing paragraphs as though fully set forth herein.

105. The Policy constituted a legal contract binding MSA and Chubb.

106. The Policy provided coverage for the types of business income losses that MSA suffered and the exclusions did not preclude coverage.

107. At all times, MSA carried out its duties under the terms of that contract.

108. However, Defendant breached its obligations when it failed to cover MSA's losses as promised by the Policy.

109. As a result, MSA has suffered significant damages.

**WHEREFORE**, MSA hereby demands judgment against Chubb for the following relief:

- (a) compensatory damages well in excess of at least \$399,000.00;
- (b) consequential damages;
- (c) prejudgment interest thereon; and,
- (d) such other and further relief that the Court deems equitable and just under circumstances.

### **COUNT III - STATUTORY BAD FAITH**

110. MSA repeats and realleges the allegations set forth in the foregoing paragraphs as though fully set forth herein.

111. 42 Pa. Cons. Stat. § 8371 provides as follows: "In an action arising under an insurance policy, if the court finds that the insurer has acted in bad faith toward the insured,

the court may take all of the following actions: (1) Award interest on the amount of the claim from the date the claim was made by the insured in an amount equal to the prime rate of interest plus 3%. (2) Award punitive damages against the insurer. (3) Assess court costs and attorney fees against the insurer.” 42 Pa. Cons. Stat. § 8371.

112. The relationship between Chubb and MSA is a fiduciary relationship requiring Chubb to act in the best interest of MSA as insured under the Policy.

113. The conduct of Chubb in failing to recognize and pay under the business interruption portion of the policy for its income losses, especially when the Policy did not contain any exclusions that clearly hindered coverage, and then failing to address losses quickly, lingering in making a final decision, sending mixed messages about the denial, failing to provide a proper claim form when requested, and failing to accommodate MSA’s losses under the policy by casting doubt about coverage before even a full investigation of the law and facts necessary to make such decision, constitute bad faith under 42 Pa. Cons. Stat. § 8371.

114. Chubb did not have a reasonable basis for denying coverage as the Policy clearly provided coverage for the type of losses that MSA claimed and for the reasons requested, which are more fully set out above, and there were no applicable exclusions that would have precluded coverage as claimed by Chubb.

115. However, in conscious or reckless disregard of the law and its duty to MSA, Chubb arbitrarily, in bad faith and in violation of its public duty, refused to provide coverage to MSA.

116. Chubb’s conduct as set forth here is prohibited under 42 Pa. Cons. Stat. § 8371.

117. By virtue of Chubb's bad faith, and breach of its fiduciary and statutory duties, MSA claims punitive damages including but not limited to those provided pursuant to 42 Pa. Cons. Stat. § 8371.

**WHEREFORE**, MSA hereby demands judgment against Chubb for the following relief:

- (a) punitive damages;
- (b) prejudgment interest;
- (c) attorney fees and costs; and,
- (d) such other and further relief that the Court deems equitable and just under circumstances.

**COUNT IV - BREACH OF THE IMPLIED COVENANT OF  
GOOD FAITH AND FAIR DEALING**

118. MSA repeats and realleges the allegations set forth in the foregoing paragraphs as though fully set forth herein.

119. The Policy constitutes a valid contract of insurance coverage between MSA and Chubb.

120. Chubb had a contractual obligation to treat MSA fairly and in good faith with respect to its interests in the proceeds of the Policy.

121. Chubb breached its implied covenant to deal with MSA in good faith by, among other things:

- a. Intentionally or recklessly failing to treat MSA and its interests in the proceeds of the Policy fairly;
- b. Intentionally or recklessly placing its own interests over and to the detriment of Plaintiffs' interests, including but not limited to denying

coverage before adequately investigating, adjusting and paying MSA's claim;

- c. Unreasonably conducting an investigation and adjustment of the claim despite possessing necessary documentary information; and
- d. Failing to provide to MSA an adequate explanation of the basis for Chubb's refusal to pay MSA's claim despite the evidence demonstrating coverage.

122. As a result of its breaches of the implied covenant of good faith and fair dealing, Chubb is liable to MSA for damages for all losses incurred to date by MSA or that may be incurred up to the applicable limits under the Policy, together with consequential damages, costs and disbursements of this action, including but not limited to reasonable attorneys' fees and costs, and pre-judgment and post-judgment interest.

**WHEREFORE**, MSA prays for a determination by this Court in its favor awarding MSA damages for all losses incurred to date by MSA, or which may be incurred up to the applicable limits under the Policy, together with consequential damages, costs and disbursements of this action, including but not limited to pre-judgment and post-judgment interest, reasonable attorneys' fees and costs, and any other and further relief as the Court deems just and proper.

**PRAYER FOR RELIEF**

**WHEREFORE**, MSA respectfully request that judgment be entered against Chubb and relief be granted as follows:

- (a) compensatory damages in excess of \$399,000.00;
- (b) consequential damages;
- (c) punitive damages;
- (d) prejudgment interest;

- (e) attorney fees and costs; and,
- (f) such other and further relief that the Court deems equitable and just under circumstances.

**DEMAND FOR JURY TRIAL**

MSA hereby demands a trial by jury on all claims so triable.

Dated: November 13, 2020

**ANDERSON KILL P.C.**

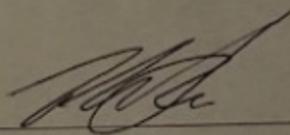
By: /s/ Arthur R. Armstrong  
Arthur R. Armstrong, Esq.  
1760 Market Street, Suite 600  
Philadelphia, PA 19103  
Telephone: (267) 216-2700  
E-mail: aarmstrong@andersonkill.com  
*Attorneys for Plaintiffs*

**VERIFICATION**

I, Michael Savio, state that I am the CEO of the

Plaintiffs M.S. Acquisitions & Holdings, LLC and Mega Philadelphia, LLC, and that I am authorized to make this Verification on behalf of Plaintiffs M.S. Acquisitions & Holdings, LLC and Mega Philadelphia, LLC, and that the facts set forth in the preceding Complaint are true and correct to the best of my information and belief. This Verification is made with knowledge of the penalties contained in 18 Pa.C.S.A. Section 4904, relating to unsworn verification of authorities.

By: \_\_\_\_\_

  
M.S. ACQUISITIONS & HOLDINGS, LLC; and  
MEGA PHILADELPHIA, LLC