

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION**

NEP GROUP HOLDINGS, INC.,)	Civil Action No. _____
)	
Plaintiff,)	
)	
vs.)	<u>JURY TRIAL DEMANDED</u>
)	
VIGILANT INSURANCE COMPANY,)	
)	
Defendant.)	

VERIFIED COMPLAINT

NEP Group Holdings, Inc. (“NEP”), by and through its undersigned counsel, K&L Gates LLP, hereby files this Verified Complaint against Vigilant Insurance Company (“Vigilant”), alleging as follows:

NATURE OF THE CASE

1. This action for breach of contract arises out of NEP’s claim for coverage under an insurance policy sold to it by Vigilant, “Customarq” policy # 3584-70-15 BAL, for the period June 30, 2019 through June 30, 2020 (the “Policy”).
2. Among other coverages, discussed more fully herein, the Policy provides up to \$75 million in coverage for property and “Business Income” losses at over 100 NEP premises in the United States and across the globe.
3. Vigilant accepted substantial premiums from NEP in exchange for providing insurance coverage for losses caused by any peril not specifically excluded by the Policy’s language.
4. Despite the Policy not explicitly excluding coverage for loss or damage caused by communicable diseases, viruses and related pandemics, and despite NEP’s reasonable expectation

of insurance coverage for such loss or damage, Vigilant has refused to make any payment to NEP for its losses resulting from “Severe Acute Respiratory Syndrome Coronavirus 2” (commonly referred to as “SARS-CoV-2”) and the “Novel Coronavirus Disease 2019” it causes (commonly abbreviated to “COVID-19”).

5. Through this lawsuit, NEP seeks to recover from Vigilant the benefit of the bargain the parties made in the Policy, and thus to enforce NEP’s reasonable expectations of coverage for loss or damage, like that resulting from SARS-CoV-2 and COVID-19, not expressly excluded.

PARTIES

6. Plaintiff NEP Group Holdings, Inc. is a privately-owned corporation organized under the laws of Delaware and with its principal place of business and corporate headquarters in Pittsburgh, Pennsylvania.

7. NEP provides video and audio production services in support of premier content producers across the globe, including the production of live sports, entertainment, music and corporate events. NEP’s technical services include remote production, studio production, centralized production, audio visual solutions, host broadcast support, post production and innovative media asset management solutions.

8. Defendant Vigilant Insurance Company is a corporation organized and existing under the laws of the State of New York, with its principal place of business in New York. Upon information and belief, Vigilant is authorized to do business in the Commonwealth of Pennsylvania and, at all relevant times, has been engaged in the business of selling insurance and investigating claims dealing with policyholders, property, or activities located in Pennsylvania.

9. Upon information and belief, Vigilant is a wholly-owned subsidiary of Federal Insurance Company, which is a wholly-owned subsidiary of Chubb INA Holdings Inc., which is

a subsidiary of Chubb Limited. All of these entities hold themselves out as being members of the Chubb Group of Insurance Companies (collectively “Chubb”), and Vigilant used the “Chubb Multinational Claims” group out of Boston, Massachusetts to investigate and communicate with NEP regarding NEP’s claim under the Policy.

JURISDICTION AND VENUE

10. Jurisdiction is proper in this Court pursuant to 42 Pa. C.S.A. § 931(a).

11. Venue is proper in this Court pursuant to Pennsylvania Rules of Civil Procedure 1006(a) and 2197(a) because Vigilant regularly conducts business here (*e.g.*, Vigilant is licensed to issue insurance in Pennsylvania, has obtained a certificate of authority from the Pennsylvania Insurance Department, and regularly does issue insurance, including the Policy, in Pennsylvania), the cause of action asserted in this Complaint arose here, and the transactions and/or occurrences out of which the cause of action arose took place here.

12. Because NEP demands an amount in excess of \$35,000.00, this matter is exempt from compulsory arbitration pursuant to Allegheny County Local Rule 1303(1).

FACTUAL BACKGROUND

A. The Policy.

13. In exchange for a premium of over four million dollars, Vigilant sold the Policy to NEP. A copy of the Policy is attached as **Exhibit A** to this Complaint.

14. The Policy provides coverage for the period from June 30, 2019 to June 30, 2020.

15. Prior to issuing the Policy, Vigilant had engaged in an underwriting investigation that gave Vigilant the opportunity to understand the nature and scope of NEP’s business and risks.

16. The Policy provides insurance coverage to certain real and personal property of NEP, including one hundred and eight (108) “premises” in the United States and a number of other

countries across the globe. With respect to the insured premises outside the United States, the Policy provides “difference in conditions” coverage, as discussed further below.

17. The Policy is hundreds of pages long and is comprised of dozens of “forms” and endorsements. Among others germane to this lawsuit, the Policy’s forms include a “Building and Personal Property” form # 80-02-1000 (Rev. 6-05), a “Business Income With Extra Expense” form # 80-02-1004 (Rev. 7-03), an “Extra Expense” form # 80-02-1018 (Rev. 7-03), a “Property/Business Income Global Extension” form # 80-02-1045 (Rev. 2-05), a “Mobile Equipment” form # 80-02-1047 (Ed. 7-03), a “Broadcasters Extension for Property Insurance” form # 80-02-1110 (Ed. 10-07), and an “Amended Mobile Equipment Coverage” form # 80-02-1342 (Ed. 4-94).

18. These “forms” were drafted by Vigilant, not NEP.

19. The “Building And Personal Property” coverage provides, in part:

[Vigilant] will pay for direct physical loss or damage to:

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

caused by or resulting from a peril not otherwise excluded....

Exhibit A, Form # 80-02-1000 (Rev. 6-05) at page 3 of 29.

20. The “Building And Personal Property” coverage form also provides several “Additional Coverages,” including a “Preparation Of Loss Fees” coverage, which provides in part:

[Vigilant] will pay the reasonable and necessary expenses we require you to incur after covered direct physical loss or damage to:

- *building;*
 - *personal property;*
- * * *

to determine the extent of such loss or damage....

Exhibit A, Form # 80-02-1000 (Rev. 6-05) at page 13 of 29.

21. The “Mobile Equipment” coverage provides in part:

[Vigilant] will pay for direct physical loss or damage to mobile equipment caused by or resulting from a peril not otherwise excluded,....

Exhibit A, Form # 80-02-1047 (Ed. 7-03) at page 3 of 13.

22. The “Business Income With Extra Expense” coverage provides in part:

[Vigilant] 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.

The Policy also explains for this coverage:

Except as otherwise provided, direct physical loss or damage must:

- *be caused by or result from a covered peril; and*
- *occur at, or within 1,000 feet of, the premises, other than a dependent business premises, shown in the Declarations.*

Exhibit A, Form # 80-02-1004 (Rev. 7-03) at page 3 of 15.

23. The “Business Income With Extra Expense” form also provides “Ingress And Egress” coverage, which states in part:

[Vigilant] 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,*

when existing ingress to or egress from a premises shown in the Declarations is prevented due to direct physical loss or damage by a covered peril to property at a location contiguous to such premises.

Exhibit A, Form # 80-02-1004 (Rev. 7-03) at page 4 of 15.

24. The “Business Income With Extra Expense” form also provides an “Additional

Coverage” for “Civil Authority,” which states in part:

[Vigilant] will pay for the actual:

- *business income loss; or*
- *extra expense,*

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

- *your premises; or*
- *a dependent business premises,*

by a civil authority.

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

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

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

Exhibit A, Form # 80-02-1004 (Rev. 7-03) at pages 5-6 of 15.

25. The “Business Income With Extra Expense” form also provides an “Additional Coverage” for “Dependent Business Premises,” which states in part:

[Vigilant] 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 depended business premises.

Exhibit A, Form # 80-02-1004 (Rev. 7-03) at pages 6-7 of 15.

26. No provision in the Policy excludes NEP’s claims for coverage for SARS-CoV-2 and COVID-19 related loss or damage.

27. Vigilant did not include in the Policy any explicit exclusion prohibiting coverage for communicable diseases, pandemics and/or viruses such as SARS-CoV-2 and COVID-19.

28. NEP purchased the Policy with the reasonable expectation that it would be insured against losses, including business interruption losses and extra expense, resulting from perils, like the SARS-CoV-2 virus and COVID-19, not specifically excluded.

29. NEP purchased the Policy with the reasonable expectation that it would be insured against losses, including business interruption losses and extra expense, when, by action of civil authority taken in response to perils not specifically excluded, like the SARS-CoV-2 virus and COVID-19, it was prevented from accessing and operating its premises and personal property as intended.

30. NEP purchased the Policy with the reasonable expectation that it would be insured against losses, including business interruption losses and extra expense, when its operations at dependent business premises were impaired or prevented by loss or damage resulting from perils, like the SARS-CoV-2 virus and COVID-19, not specifically excluded.

B. What Vigilant Knew Before Issuing The Policy Regarding Coverage for Losses Caused By Communicable Diseases, Viruses and Related Pandemics.

31. Upon information and belief, prior to issuing the Policy to NEP in June 2019, Vigilant understood – including through, but not limited to, Chubb’s participation in insurance industry trade organizations – of the potential impact of communicable diseases, viruses and related pandemics on the coverage obligations of commercial property insurers to their policyholders.

32. Also upon information and belief, Vigilant understood prior to issuing the Policy

to NEP in June 2019, that, as the drafter of the policies it sold to policyholders, any ambiguity in the language of its policies on the issue of whether they covered loss or damage resulting from communicable diseases, viruses or related pandemics would likely be construed against Vigilant.

33. Notwithstanding its knowledge, Vigilant did not include in the Policy issued to NEP in June 2019 an explicit exclusion prohibiting coverage for communicable diseases, viruses or related pandemics, despite several such endorsements having been widely available and in use by various insurers, including Chubb, for many years.

34. For example, after an outbreak of Severe Acute Respiratory Syndrome (“SARS”) in 2003, various insurers and insurance organizations began to draft exclusions for the purpose of preventing policyholders from recovering for damage and losses resulting from communicable diseases, viruses or related pandemics. One such effort was mounted by the Insurance Services Office (“ISO”), the insurance industry’s policy forms drafting organization,¹ which prepared and circulated in July 2006 a circular # LI-CF-2006-175 titled “New Endorsements Filed to Address Exclusion of Loss Due to Virus or Bacteria.”²

35. In that 2006 circular, ISO acknowledged that viruses arguably satisfy the “direct physical loss or damage” language of all-risk property insurance policies, stating:

Disease-causing agents may render a product impure (change its quality or substance), or enable the spread of disease by their presence on interior building surfaces or the surfaces of personal property. When disease-causing viral or bacterial contamination occurs, potential claims involve the

¹ “ISO is a non-profit trade association that provides rating, statistical, and actuarial policy forms and related drafting services to approximately 3,000 nationwide property or casualty insurers. Policy forms developed by ISO are approved by its constituent insurance carriers and then submitted to state agencies for review. Most carriers use the basic ISO forms, at least as the starting point for their general liability policies.” *Montrose Chem. Corp. v. Admiral Ins. Co.*, 10 Cal. 4th 645,671 n.13 (1995).

² See ISO Circular, “New Endorsements Filed to Address Exclusion of Loss Due to Virus or Bacteria,” (July 6, 2006), <https://www.propertyinsurancecoveragelaw.com/files/2020/03/ISOCircular-LI-CF-2006-175-Virus.pdf> (last visited Mar. 31, 2021).

cost of replacement of property (for example, the milk), cost of decontamination (for example, interior building surfaces), and business interruption (time element) losses.

Although building and personal property could arguably become contaminated (often temporarily) by such viruses and bacteria, the nature of the property itself would have a bearing on whether there is actual property damage. An allegation of property damage may be a point of disagreement in a particular case.³

36. ISO introduced this 2006 standard-form exclusion under the form numbers CP 01 40 07 06 and CP 01 75 07 06.

37. In 2007, Chubb (including Vigilant) developed its own endorsement to address specifically the issue of coverage for communicable diseases, viruses or related pandemics. Chubb's form was numbered Form 80-02-5241 (Ed. 11-07) and titled "Property Insurance - Communicable Disease Contamination".

38. In March 2019, Chubb updated its Property Insurance - Communicable Disease Contamination to use the number Form 80-02-5241 (Rev. 3-19). A copy of that revision is attached as **Exhibit B** to this Complaint. As had the 2007 version, the 2019 revision of the endorsement included, *inter alia*, an "Exclusions" section stating, in salient part:

This insurance does not apply to loss or damage:

- *which is communicable disease;*
 - *which is in anyway attributed to the presence of communicable disease; or*
 - *caused by or resulting from communicable disease,*
- regardless of any other cause or event....*

Exhibit B, Form # 80-02-5241 (Rev. 03-19) at pages 3-4 of 5 (underlining emphasis added).

³ *Id.*

39. Thus, Chubb (including Vigilant) acknowledged that “communicable disease” could create “loss or damage” under Chubb’s Property Insurance forms.

40. Chubb’s Form # 80-02-5241 defined “Communicable disease” as follows, in salient part:

Communicable disease means a disease that:

A. may be transmitted directly or indirectly by one person or other life form to another; and

B. is due to:

1. an infectious agent; or

2. a toxic product produced by such infectious agent.

Exhibit B, Form # 80-02-5241 (Rev. 3-19) at page 5 of 5.

41. COVID-19 satisfies the definition of a “communicable disease” under Chubb’s endorsement Form # 80-02-5241.

42. Prior to June 2019, Chubb advised the investing public in public disclosures that the Chubb companies could face substantial, negative financial impacts in the event of a pandemic. For example, in its 2017 Annual Report, Chubb stated:

Our results of operations or financial condition could be adversely affected by the occurrence of natural and man-made disasters.

We have substantial exposure to losses resulting from natural disasters... such as... catastrophic events, including pandemics. This could impact a variety of our businesses, including our commercial and personal lines.... Catastrophes can be caused by various events, including... a global or other wide-impact pandemic.... The occurrence of claims from catastrophic events could result in substantial volatility in our results of operations or financial condition for any fiscal quarter or year.... [T]he occurrence of one or more catastrophic events could have an adverse effect on our results of

operations and financial condition.⁴

43. Thus, at the time Vigilant wrote and sold the Policy to NEP in June 2019, Vigilant had acknowledged to its investors and its policyholders that it provided insurance for pandemic-related risk, and Vigilant knew how to include language in its policies to exclude explicitly any coverage for loss or damage caused by such a peril.

44. And yet, Vigilant chose not to include ISO Form CP 01 40 07 06 or CP 01 75 07, or Chubb Form # 80-02-5241 (either the November 2007 or March 2019 version) in the Policy.

45. Vigilant's decision not to include an explicit virus exclusion in the Policy stands in stark contrast to the fact that several of the insurance policies issued by Chubb for the same June 30, 2019 – June 30, 2020 period to provide coverage for NEP premises in other countries (*i.e.*, non-U.S.) did explicitly address coverage for communicable disease and/or viruses. For example, the policies issued by Chubb to cover NEP locations in Sweden and The Netherlands included explicit exclusions for, *inter alia*, loss or damage caused by “Contaminants” or “Pollutants”, which in turn were explicitly defined as including viruses. For another example, the policy issued by Chubb to cover NEP locations in Australia included an explicit “Human Infectious &/or Human Contagious Disease” coverage. This further demonstrates that Chubb knew how to address these issues in the Policy, but chose not to add any explicit exclusion to the Policy prohibiting coverage for loss or damage relating to SARS-CoV-2 and COVID-19.

C. SARS-CoV-2 and the COVID-19 Pandemic.

46. The SARS-CoV-2 virus is microscopic, but it is a physical substance.

⁴ Chubb Limited, 2017 Annual Report, at 19, https://s1.q4cdn.com/677769242/files/doc_financials/2018/AGM/Chubb_Limited_2017_Annual_Report.pdf (last visited Mar. 31 2021).

47. SARS-CoV-2 is transmitted between persons and also from surfaces to persons. According to the World Health Organization (“WHO”), this virus can spread from person to person through small droplets expelled from the nose or mouth when a person with COVID-19 coughs, sneezes, exhales, or speaks. These droplets may be breathed in by another person or land on another person and cause infection if they reach the eyes, nose or mouth. Additionally, the droplets may land on objects and cause infection when another person touches the object or surface and then touches his/her eyes, nose, or mouth.⁵

48. Investigation remains ongoing regarding the extent to which the virus also is being transmitted through aerosols produced by infected individuals talking or singing, which aerosols can remain suspended in air for an extended time and move over extended distances.⁶

49. While COVID-19 is incubating in their bodies, which can take up to 14 days, infected persons can be contagious and transmit the disease, even prior to showing any symptoms.⁷

50. Some infected individuals remain asymptomatic,⁸ and at least one study has confirmed that these individuals still spread the virus by breathing, speaking, or touching objects and surfaces.⁹

⁵ *Q&A on Coronaviruses (COVID-19)*, World Health Organization (April 17, 2020), <https://www.who.int/news-room/q-a-detail/coronavirus-disease-covid-19> (last visited Mar. 31, 2021).

⁶ Renyi Zhang, et al., *Identifying airborne transmission as the dominant route for the spread of COVID-19*, Proceedings of the National Academy of Sciences of the United States of America (June 30, 2020), <https://www.pnas.org/content/117/26/14857> (last visited Mar. 31, 2021).

⁷ *Coronavirus disease 2019 (COVID-19) Situation Report – 73*, World Health Organization, https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_2 (last visited Mar. 31, 2021).

⁸ Erika Edwards, *Asymptomatic COVID-19 Cases May Be More Common Than Suspected* (May 27, 2020, 12:43 PM), <https://www.nbcnews.com/health/health-news/asymptomatic-covid-19-cases-maybe-more-common-suspected-n1215481> (last visited Mar. 31, 2021).

⁹ *Id.*; see also, Minghui Yang et al., *SARS-CoV-2 Detected on Environmental Fomites for Both Asymptomatic and Symptomatic Patients with COVID-19*, American Journal of Respiratory and Critical Care Medicine (Dec. 16, 2020), <https://doi.org/10.1164/rccm.202006-2136LE> (last visited Mar. 31, 2021).

51. A January 7, 2021 a Centers for Disease Control (“CDC”) study found that 59% of all transmission came from asymptomatic transmission, comprising 35% from pre-symptomatic individuals and 24% from individuals who never developed symptoms.¹⁰ As such, the number of positive test cases reflects only a portion of the individuals who were likely shedding SARS-CoV-2 on NEP’s covered property during the policy period.¹¹

52. Current evidence suggests that SARS-CoV-2 may remain viable for hours to days on surfaces made from a variety of materials.¹² Reportedly, the virus can survive and remain virulent on stainless steel and plastic for 3 to 6 days, on glass and banknotes for 3 days, and on wood and cloth for 24 hours.¹³ The CDC has reported that the virus was found on surfaces of the *Diamond Princess* cruise ship 17 days after the cabins were vacated.¹⁴ And more recent studies suggest the virus can remain active on inert surfaces for at least 28 days.¹⁵ Inanimate objects that are physically altered by the adherence of an infectious agent, like a virus, and allow for the

¹⁰ Michael Johansson et al., *SARS-CoV-2 Transmission From People Without COVID-19 Symptoms*, JAMA Netw. Open (Jan. 7, 2021), <https://doi:10.1001/jamanetworkopen.2020.35057> (last visited Mar. 31, 2021).

¹¹ Benedict Carey and James Glanz, *Hidden Outbreaks Spread Through U.S. Cities Far Earlier Than Americans Knew, Estimates Say*, N.Y. TIMES (Apr. 23, 2020), (updated July 6, 2020), <https://nytimes.com/2020/04/23/us/coronavirus-early-outbreaks-cities.html> (last visited Mar. 31, 2021); Meagan Fitzpatrick et al., *The implications of silent transmission for the control of COVID-19 outbreaks*, 117 PNAS 30, 17513-15, (July 28, 2020), <https://www.pnas.org/content/117/30/17513> (last visited Mar. 31, 2021).

¹² *Cleaning and Disinfection for Community Facilities*, Centers for Disease Control and Prevention (May 27, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html> (last visited Mar. 31, 2021).

¹³ Neeltje van Doremalen et al., *Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1*, The New England Journal of Medicine (April 16, 2020), <https://www.nejm.org/doi/full/10.1056/nejmc2004973> (last visited Mar. 31, 2021).

¹⁴ *Public Health Responses to COVID-19 Outbreaks on Cruise Ships—Worldwide, February–March 2020*, Centers for Disease Control and Prevention (March 27, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm> (last visited Mar. 31, 2021).

¹⁵ See CNBC, *Virus that causes Covid-19 can survive for 28 days on common surfaces, research says* (Oct. 12, 2020), <https://www.cnbc.com/2020/10/12/virus-that-causes-covid-19-can-survive-for-28-days-on-surfaces-research-says.html> (last visited Mar. 31, 2021); Shane Riddell, Sarah Goldie, Andrew Hill, Debbie Eagles & Trevor W. Drew, *The effect of temperature on persistence of SARS-CoV-2 on common surfaces*, 17 Virology J., Art. No. 145 (2020), <https://virologyj.biomedcentral.com/articles/10.1186/s12985-020-01418-7> (last visited Mar. 31, 2021).

transmission of the infectious agent from one susceptible person to another are referred to as “fomites.”¹⁶

53. Droplets containing the virus are physically present in the air and are physically present and adhere to the surfaces of both the real and personal property.

54. On December 31, 2019, the Chinese government notified the WHO of a “pneumonia of unknown cause” discovered in China’s Wuhan province.

55. The United States reported its first confirmed COVID-19 case on January 20, 2020.

56. On January 30, 2020, the WHO declared the COVID-19 pandemic a “Public Health Emergency of International Concern.”

57. By early February, 2020, millions of people in China were under quarantine, but in the United States the virus was spreading largely undetected.

58. On March 11, 2020, the WHO declared the widespread outbreak of COVID-19 a pandemic.

59. On March 13, 2020, the U.S. federal government declared the virus a national emergency. Three days later, the CDC and members of the national Coronavirus Task Force issued public guidance titled “30 Days to Slow the Spread,” which for the first time recommended significant social-distancing measures, such as working from home, avoiding gatherings of more than 10 people, and avoiding bars and restaurants.

60. The individual state governments have taken a lead role within the United States in combating the spread of the virus. In March 2020, state governors across the country began imposing restrictions on commercial businesses and social activities, to protect citizens and stop

¹⁶ See MerriamWebster.com, *A Guide to Coronavirus-Related Words Deciphering the terminology you're likely to hear – COVID 19*, <https://www.merriam-webster.com/words-at-play/coronavirus-words-guide> (last visited Mar. 31, 2021).

the spread of damage. Many states restricted or outright prohibited the operation of “non-essential” or “non life-sustaining” businesses, prohibited public gatherings, and required individuals to stay at home except for essential purposes such as shopping for food or obtaining medical care.

61. For example, Pennsylvania’s governor issued the following orders as the result of COVID-19’s spread across the state and SARS-CoV-2’s ability to attach and survive on surfaces:

- a. on March 6, 2020, based on the magnitude and severity of the COVID-19 public health emergency, he issued a Proclamation of Disaster Emergency proclaiming “the existence of a disaster emergency throughout the Commonwealth;”
- b. on March 19, 2020, based in part on his statutory authority “to control ingress and egress to and from a disaster area and the movement of persons within it and the occupancy of premises therein,” he issued an Order requiring all non-life sustaining businesses in the Commonwealth to cease operations and close all physical locations;
- c. on March 23, 2020, he issued a Stay at Home Order for citizens of various counties in Pennsylvania, including Allegheny County (which is within this District), and the Pennsylvania Department of Health also issued an order stating that “operation of non-life sustaining businesses present the opportunity for unnecessary gatherings, personal contact and interaction that will increase the risk of transmission and the risk of community spread of COVID-19”;

- d. on April 1, 2020, he expanded the March 23, 2020 Stay at Home Order to apply to the entire Commonwealth of Pennsylvania¹⁷;
- e. on April 20, 2020, he extended the March 23, 2020 Stay at Home Order to May 8, 2020 for the entire Commonwealth;
- f. on July 15, 2020, after two months of attempting to slowly reopen businesses, he once again limited restaurant capacity and required telework wherever possible; and
- g. on December 10, 2020, following another attempt to slowly reopen businesses, he enacted a “Limited-Time Mitigation” order prohibiting a wide array of business and personal activities, which remained in effect until January 4, 2021.

62. As the Office of Governor Wolf explicitly stated, these orders were enacted to “limit[] the spread of the virus through personal contact and surfaces.”¹⁸

63. This is also apparent when examining the plain text of these orders, which required that life-sustaining businesses allowed to remain open “follow, at a minimum, the social distancing practices and other mitigation measures defined by the Centers for Disease Control to protect

¹⁷ Governor Wolf’s April 1, 2020 Emergency Order also explicitly noted that it was enacted pursuant to the Governor’s power to “control ingress and egress to and from a disaster area.” Pennsylvania Office of the Governor, Emergency Order (Apr. 1, 2020), <https://www.governor.pa.gov/newsroom/gov-wolf-sec-of-health-pennsylvania-on-statewide-stay-at-home-order-beginning-at-8-pm-tonight-most-prudent-option-to-stop-the-spread/> (last visited Apr. 5, 2021).

¹⁸ Pennsylvania Office of the Governor, Press Release, *Wolf Administration Updates Businesses on Guidance for COVID-19 Mitigation Efforts* (Mar. 16, 2020), <https://www.governor.pa.gov/newsroom/wolf-administration-updates-businesses-on-guidance-for-covid-19-mitigation-efforts/> (last visited Apr. 5, 2021).

workers and patrons.”¹⁹ These measures include cleaning “high touch surfaces ... at least once a day” and “clos[ing] off areas used by [an infected individual] and do not use those areas until after cleaning and disinfecting.”²⁰

64. Governors and other state officials issued similar orders in states across the United States including in additional states where NEP has property and operations insured under the Policy.

65. A number of governmental orders issued in the United States, in addition to Pennsylvania, also explicitly mention the threat the virus poses to property and how widespread the virus has become.²¹

66. The impact of the virus and the resulting pandemic on life and property has been staggering across the United States and the world. Although the precise number and locations of COVID-19 infected persons is unknown, as of the filing date of this Complaint, there have been more than 118 million confirmed infections throughout the world, with more than 2.6 million

¹⁹ Pennsylvania Office of the Governor, Emergency Order (Mar. 19, 2020), <https://www.governor.pa.gov/newsroom/all-non-life-sustaining-businesses-in-pennsylvania-to-close-physical-locations-as-of-8-pm-today-to-slow-spread-of-covid-19/> (last visited Apr. 5, 2021).

²⁰ Center for Disease Control and Prevention, *Cleaning and Disinfecting Your Facility* (updated Apr. 5, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html> (last visited Apr. 5, 2021).

²¹ City of New Orleans, *Mayoral Proclamation to Promulgate Emergency Orders During the State of Emergency Due to COVID-19 2* (2020) (Mar. 16, 2020), <https://nola.gov/mayor/executive-orders/emergency-declarations/03162020-mayoral-proclamation-to-promulgate-emergency-orders-during-the-state-of-emergency-due-to-co/> (last visited Mar. 31, 2021); City of N.Y., *Emergency Executive Order No. 103* (2020) (Mar. 25, 2020), <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-103.pdf> (last visited Mar. 31, 2021); State of Colo., *Executive Order D 2020 032* (2020), <https://www.colorado.gov/governor/sites/default/files/inline-files/D%202020%20032%20Extending%20D%202020%20003.pdf> (last visited Mar. 31, 2021); Broward Cty. Adm’r, *Emergency Order 20-03* (2020) (Mar. 26, 2020), <https://www.broward.org/CoronaVirus/Documents/BC-EmergencyOrder20-03.pdf> (last visited Mar. 31, 2021); Pinellas Cty Adm’r, Resolution No. 20-20 “COVID-19 - Safer at Home Order” (Mar. 25, 2020), <http://www.pinellascounty.org/emergency/PDF/covid19/res20-20.pdf> (last visited Mar. 31, 2021); Nevada Executive Emergency Declaration Directive No. 16 (Apr. 29, 2020) [https://gov.nv.gov/News/Emergency_Orders/2020/2020-04-29_-_COVID-19_Declaration_of_Emergency_Directive_016_\(Attachments\)/](https://gov.nv.gov/News/Emergency_Orders/2020/2020-04-29_-_COVID-19_Declaration_of_Emergency_Directive_016_(Attachments)/) (last visited Mar. 31, 2021).

deaths.²² Within the U.S., there have been more than 29 million confirmed cases, with more than 525,000 deaths.²³

67. This COVID-19 public health crisis has directly and physically damaged property and caused the loss of use of property all across the Commonwealth of Pennsylvania, the United States and the world and has directly forced businesses everywhere to physically limit the use of property and the number of people who could inhabit physical buildings at any given time in a safe and responsible manner.

D. NEP Suffers Property Damage, Business Income Loss and Extra Expense.

68. Many metropolitan areas in the United States have been particularly overwhelmed by the pandemic, including metropolitan areas where NEP has buildings, personal property and/or mobile equipment insured under the Policy and where there are dependent business premises, including event locations, where NEP provides services.²⁴

69. Due to unavailability of testing methods and testing capacity during the early months of the pandemic, NEP has little actual testing information to demonstrate precisely which of its premises, which of the properties nearby its premises, and which of its dependent business premises, including event locations, had SARS-CoV-2 attach to them and when.

²²*WHO Coronavirus Disease (COVID-19) Dashboard*, WHO (last updated Mar. 29, 2021), <https://covid19.who.int/> (last visited Mar. 31, 2021).

²³ *WHO Coronavirus Disease (COVID-19) Dashboard, United States of America*, WHO (last updated Mar. 31, 2021), <https://covid19.who.int/region/amro/country/us> (last visited Mar. 31, 2021).

²⁴ *CDC COVID Data Tracker: Trends in Number of COVID-19 Cases and Deaths in the US Reported to CDC, by State/Territory*, Centers for Disease Control and Prevention, https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendscases (last visited Mar. 31, 2021); *Daily State-By-State- Testing Trends*, Johns Hopkins Univ. of Medicine, <https://coronavirus.jhu.edu/testing/individual-states/illinois> (last visited Mar. 31, 2021); Michael Ettlinger and Jordan Hensley, *COVID-19 Economic Crisis: By State*, Univ. of N.H. Carsey School of Public Policy (Mar. 15, 2021), <https://carsey.unh.edu/COVID-19-Economic-Impact-By-State> (last visited Mar. 31, 2021); Gary Stix and Youyou Zhou, *COVID-19 Is Now the Third Leading Cause of Death in the U.S.*, *Scientific American* (Oct. 8, 2020), <https://www.scientificamerican.com/article/covid-19-is-now-the-third-leading-cause-of-death-in-the-u-s-1/> (last visited Mar. 31, 2021).

70. Nonetheless, it was statistically certain or near-certain that SARS-CoV-2 was present on covered property, nearby premises and dependent business premises, physically altering those properties and causing them to become physically uninhabitable, unsafe, and unfit for their normal and intended uses and resulting in physical loss or damage to property.²⁵

71. A number of NEP employees have reported that they contracted COVID-19. Per recent CDC data, discussed above, that quantity only accounts for 41% of the individuals who were shedding SARS-CoV-2 on NEP's covered property.²⁶

72. Due to the asymptomatic or presymptomatic nature of the remaining 59%, it is impossible to determine the exact number of individuals who were shedding SARS-CoV-2 on NEP's property during the policy period.²⁷

73. Nonetheless, it is certain that at least a portion of NEP's employees were shedding SARS-CoV-2 on NEP's property while undetected during the relevant period.

74. Extrapolated to the wider community, it is equally as certain that fomite transmission of SARS-CoV-2 occurred on nearby property or dependent business premises, given that approximately 5-10% of the U.S. population reportedly carried SARS-CoV-2 at any given time.²⁸

75. NEP has taken numerous steps to address the physical loss or damage to its property resulting from the virus and pandemic, including:

²⁵ Aroon Chande et al., *Real-time, interactive website for US-county-level COVID-19 event risk assessment*, 4 NAT. HUMAN BEHAVIOR, 1313-19 (Nov. 9, 2020), <https://doi.org/10.1038/s41562-020-01000-9> (last visited Mar. 31, 2021).

²⁶ See Johansson, et al., *supra*.

²⁷ See Carey and Glanz, *supra*; Fitzpatrick et al., *supra*.

²⁸ See WHO Coronavirus Disease (COVID-19) Dashboard, United States of America, *supra*.

- Putting into place extensive new procedures for social distancing and cleaning at NEP's premises;
- Purchasing large amounts of personal protective equipment ("PPE");
- Implementing testing procedures;
- Putting into place a "contact tracing" system at all NEP premises;
- Putting additional procedures in place for the operation and cleaning of NEP's mobile units; and
- Affixing new ion filter systems to the air conditioning systems of all NEP's mobile units.

76. Due to the presence of the virus, the governmental orders proclaiming state-wide disaster areas and requiring non-essential businesses to shut down, and the resulting cancellation of the live sporting events, entertainment, music and corporate events NEP would otherwise have produced, NEP suffered physical loss or damage to its buildings, personal property, and mobile equipment insured under the Policy and was unable to use its property for their intended functions, all resulting in NEP suffering substantial financial losses.

77. In addition, upon information and belief, the presence of contagious COVID-19 infected persons at NEP's properties, at properties nearby to them, and at dependent business premises caused SARS-CoV-2 to adhere to surfaces of the buildings, personal property, and mobile equipment, resulting in physical loss or damage.

78. Exacerbating NEP's losses, the fixed costs of NEP's business operations continued, such as lease payments, committed capital and expense payments, and payroll for employees.

79. Despite NEP's efforts to mitigate its losses, many of the variable costs of NEP's business operations have continued.

E. Vigilant Denied NEP's Claim for Coverage.

80. On April 1, 2020, NEP, through the insurance brokerage firm Simpson & McCrady LLC, gave notice to Vigilant of NEP's SARS-CoV-2 / COVID-19 related losses and request for coverage under the Policy.

81. On April 7, 2020 and April 30, 2020, Vigilant, through Chubb Multinational Claims, acknowledged receipt of NEP's claim, but failed to acknowledge Vigilant's obligations to accept and pay on the claim. Instead, the communications asserted that Vigilant was continuing to investigate the claim and outlined several purported defenses to coverage, without definitively stating whether any of those defenses actually applies.

82. Between April and October 2020, NEP responded to various requests for information from Vigilant, including submitting information and documents in support of the claim for coverage.

83. On November 13, 2020, Vigilant sent a letter to NEP denying NEP's claim for coverage in its entirety. A copy of that denial letter is enclosed as **Exhibit C** to this Complaint. As further described in the letter, Vigilant's denial was premised on Vigilant's assertion that NEP has not sustained "direct physical loss or damage" to buildings, personal property, or mobile equipment, and "has provided no evidence that would indicate that it has incurred any business income loss or extra expense due to the actual or potential impairment of NEP's operations caused by or resulting from direct physical loss or damage by a covered peril..." See **Exhibit C**, at p. 9 & 11. Vigilant also denied the claims under the Civil Authority coverage, asserting that NEP has not incurred actual business income loss and/or extra expense due to the actual impairment of NEP's operations, directly caused by the prohibition of access to NEP's premises or a dependent business premises by a civil authority, as the direct result of physical loss or damage to property

away from and within one mile of NEP’s premises or dependent business premises by a covered peril. *Id.* at p. 14. Vigilant also asserted that the terms “direct physical loss or damage” are “clear and unambiguous and do not include impairment of operations caused by or resulting from loss of use of or loss of access to property.” *Id.*, at p. 9.

84. The November 13, 2020 denial letter also purported to reserve Vigilant’s right to deny coverage on several other grounds, including that: (a) “even the actual presence of the COVID-19 virus on property would not constitute direct physical loss or damage to property”; and (b) the Policy’s “Increase of Loss Due to Death or Injury” Loss Payment Limitation and/or the “Acts or Decisions” exclusion apply to preclude coverage. *Id.*, at p. 18.

85. NEP disputes Vigilant’s denial of coverage. Coverage is triggered by “physical loss” in addition to “damage”. NEP’s losses, as described above, include both physical loss and damage. In addition, NEP’s losses have a number of causes and trigger a number of covered perils that are not excluded in the Policy. In addition, the various governmental closure orders prevented NEP from accessing certain of its insured premises, and impaired the use and function of NEP’s premises and mobile equipment.

86. Furthermore, NEP’s compliance with the governmental orders included various mitigation efforts that are covered under the Policy and common law.

COUNT I — Breach of Contract

87. The allegations set forth in each and every preceding paragraph are incorporated herein by reference.

88. The Policy constitutes a valid and enforceable contract between NEP, as the named insured, and Vigilant, as the insurance company.

89. As described above, NEP sustained covered loss under the Policy during the policy period, including but not limited to under the property, Business Income, Extra Expense, Mobile Equipment, Civil Authority, and Dependent Business Premises coverages.

90. NEP has complied with, and/or Vigilant has waived enforcement of, any conditions precedent to obtaining coverage.

91. Under the terms of the Policy, Vigilant was required to pay on NEP's claim subject to the Policy's limit of insurance, sub-limits, time limits, or deductibles applicable to the specific coverages.

92. Vigilant has failed to pay any amounts due to NEP in connection with NEP's claim. Instead, Vigilant has raised inapplicable issues and defenses and has denied the claim.


93. As a direct and proximate result of Vigilant's breach of the contract, NEP has suffered and will continue to suffer damages in an amount to be determined at trial, plus consequential damages, attorneys' fees, and pre- and post-judgment interest to the extent permitted by law.

PRAYER FOR RELIEF

WHEREFORE, NEP hereby demands judgment against Vigilant for NEP's actual damages, consequential damages, attorneys' fees and costs, prejudgment and post-judgment interest, and such other relief as this Court may deem just and proper;

A JURY TRIAL IS HEREBY DEMANDED.

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