

Court of Common Pleas of Philadelphia County  
 Trial Division  
**Civil Cover Sheet**

For Prothonotary Use Only (Docket Number)  
**JUNE 2020**  
 001005


PLAINTIFF'S NAME <b>RDS VENDING COMPANY, LLC</b>	DEFENDANT'S NAME <b>Union Insurance Company</b>
PLAINTIFF'S ADDRESS <b>220 E. Washington Street, Bldg. A Norristown, PA 19401</b>	DEFENDANT'S ADDRESS <b>11201 Douglas Avenue Urbandale, IA 50322</b>
PLAINTIFF'S NAME	DEFENDANT'S NAME <b>Berkeley Mid-Atlantic Group, LLC</b>
PLAINTIFF'S ADDRESS	DEFENDANT'S ADDRESS <b>4820 Lake Brook Drive, Ste 300 Glen Allen, VA 23060</b>
PLAINTIFF'S NAME	DEFENDANT'S NAME <b>USI Insurance Services, LLC</b>
PLAINTIFF'S ADDRESS	DEFENDANT'S ADDRESS <b>One International Plaza, Ste 400 Philadelphia, PA 19113</b>

TOTAL NUMBER OF PLAINTIFFS <b>1</b>	TOTAL NO. OF DEFENDANTS <b>3</b>	COMMENCEMENT OF ACTION <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Writ of Summons <input type="checkbox"/> Petition Action <input type="checkbox"/> Transfer From Other Jurisdictions <input type="checkbox"/> Notice of Appeal
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AMOUNT IN CONTROVERSY <input type="checkbox"/> \$50,000.00 or less <input checked="" type="checkbox"/> More than \$50,000.00	COURT PROGRAMS <input type="checkbox"/> Arbitration <input checked="" type="checkbox"/> Jury <input type="checkbox"/> Non-Jury <input type="checkbox"/> Other:	<input type="checkbox"/> Mass Tort <input type="checkbox"/> Savings Action <input type="checkbox"/> Petition	<input type="checkbox"/> Minor Court Appeal <input type="checkbox"/> Statutory Appeals <input type="checkbox"/> Commerce (Completion of Addendum Required)	<input type="checkbox"/> Settlement <input type="checkbox"/> W/D/Survival
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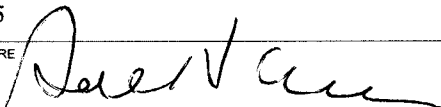
CASE TYPE AND CODE (SEE INSTRUCTIONS)  
**1D Declaratory Judgment**

STATUTORY BASIS FOR CAUSE OF ACTION (SEE INSTRUCTIONS)

RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)  Rds Vending Co Llc Vs Union Insurance Co Eta-CMPLC  20060109500005	IS CASE SUBJECT TO COORDINATION ORDER? Yes No <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
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2020 JUN 22 11:03  
 PROTHONOTARY  
 OFFICE OF THE  
 CLERK OF COURT

**TO THE PROTHONOTARY:**  
 Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant:  
 Papers may be served at the address set forth below.

NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY <b>Sol H. Weiss, Esq.</b>	ADDRESS (SEE INSTRUCTIONS) <b>130 N. 18th Street, Suite 1600 Philadelphia, PA 19103</b>
PHONE NUMBER <b>215-735-2098</b>	FAX NUMBER <b>215-875-7701</b>
SUPREME COURT IDENTIFICATION NO. <b>15925</b>	E-MAIL ADDRESS <b>sweiss@anapolweiss.com</b>
SIGNATURE 	DATE <b>June 17, 2020</b>

## Instructions for Completing Civil Cover Sheet

Rules of Court require that a Civil Cover Sheet be attached to any document commencing an action (whether the action is commenced by Complaint, Writ of Summons, Notice of Appeal, or by Petition). The information requested is necessary to allow the Court to properly monitor, control and dispose cases filed. A copy of the Civil Cover Sheet must be attached to service copies of the document commencing an action. The attorney or non-represented party filing a case shall complete the form as follows:

### A. Parties

#### i. Plaintiffs/Defendants

Enter names (last, first, middle initial) of plaintiff, petitioner or appellant ("plaintiff") and defendant. If the plaintiff or defendant is a government agency or corporation, use the full name of the agency or corporation. In the event there are more than three plaintiffs and/or three defendants, list the additional parties on the Supplemental Parties Form. Husband and wife are to be listed as separate parties.

#### ii. Parties' Addresses

Enter the address of the parties at the time of filing of the action. If any party is a corporation, enter the address of the registered office of the corporation.

iii. *Number of Plaintiffs/Defendants:* Indicate the total number of plaintiffs and total number of defendants in the action.

**B. Commencement Type:** Indicate type of document filed to commence the action.

**C. Amount in Controversy:** Check the appropriate box.

**D. Court Program:** Check the appropriate box.

**E. Case Types:** Insert the code number and type of action by consulting the list set forth hereunder. To perfect a jury trial, the appropriate fees must be paid as provided by rules of court.

#### Proceedings Commenced by Appeal

##### Minor Court

- 5M Money Judgment
- 5L Landlord and Tenant
- 5D Denial Open Default Judgment
- 5E Code Enforcement
- Other:

##### Local Agency

- 5B Motor Vehicle Suspension -  
Breathalyzer
- 5V Motor Vehicle Licenses,  
Inspections, Insurance
- 5C Civil Service
- 5K Philadelphia Parking Authority
- 5Q Liquor Control Board
- 5R Board of Revision of Taxes
- 5X Tax Assessment Boards
- 5Z Zoning Board
- 52 Board of View
- 51 Other:

Other:

#### Proceedings Commenced by Petition

- 8P Appointment of Arbitrators
- 8C Name Change - Adult
- 8L Compel Medical Examination
- 8D Eminent Domain
- 8E Election Matters
- 8F Forfeiture
- 8S Leave to Issue Subpoena
- 8M Mental Health Proceedings
- 8G Civil Tax Case - Petition
- Other:

#### Actions Commenced by Writ of Summons or Complaint

##### Contract

- 1C Contract
- 1T Construction
- 1O Other:

##### Tort

- 2B Assault and Battery
- 2L Libel and Slander
- 4F Fraud
- 1J Bad Faith
- 2E Wrongful Use of Civil Process
- Other:

##### Negligence

- 2V Motor Vehicle Accident
- 2H Other Traffic Accident
- 1F No Fault Benefits
- 4M Motor Vehicle Property Damage
- 2F Personal Injury - FELA
- 2O Other Personal Injury
- 2S Premises Liability - Slip & Fall
- 2P Product Liability
- 2T Toxic Tort
- T1 Asbestos
- TZ DES
- T2 Implant
- 3E Toxic Waste
- Other:

##### Professional Malpractice

- 2D Dental
- 4L Legal
- 2M Medical
- 4Y Other:

##### 1G Subrogation

##### Equity

- E1 No Real Estate
- E2 Real Estate
- 1D Declaratory Judgment
- M1 Mandamus

##### Real Property

- 3R Rent, Lease, Ejectment
- Q1 Quiet Title
- 3D Mortgage Foreclosure - Residential  
Owner Occupied
- 3F Mortgage Foreclosure - Not Residential  
Not Owner Occupied
- 1L Mechanics Lien
- P1 Partition
- Prevent Waste
- 1V Replevin
- 1H Civil Tax Case - Complaint
- Other:

### F. Commerce Program

Commencing January 3, 2000 the First Judicial District instituted a Commerce Program for cases involving corporations and corporate law issues, in general. If the action involves corporations as litigants or is deemed a Commerce Program case for other reasons, please check this block AND complete the information on the "Commerce Program Addendum". For further instructions, see Civil Trial Division Administrative Docket 01 of 2000.

### G. Statutory Basis for Cause of Action

If the action is commenced pursuant to statutory authority ("Petition Action"), the specific statute must be identified.

### H. Related Pending Cases

All previously filed related cases, regardless of whether consolidated by Order of Court or Stipulation, must be identified.

### I. Plaintiff's Attorney

The name of plaintiff's attorney must be inserted herein together with other required information. In the event the filer is not represented by an attorney, the name of the filer, address, the phone number and signature is required.

**The current version of the Civil Cover Sheet may be downloaded from the FJD's website  
<http://courts.phila.gov>**

**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
COURT OF COMMON PLEAS OF PHILADELPHIA**

RDS VENDING COMPANY, LLC  
220 E. Washington St., Bldg A  
Norristown, PA 19401

Civil Action No.:

**JUNE 2020**

Plaintiff

v.

UNION INSURANCE CO., et al.

Defendants

**NOTICE TO DEFEND**

**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 or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.*

**Philadelphia Bar Association  
Lawyer Referral  
and Information Service  
1101 Market St., 11th Floor  
Philadelphia, Pennsylvania 19107  
(215) 238-6333**

**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. Ademas, 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 St., 11th Piso  
Filadelfia, Pennsylvania 19107  
(215) 238-6333**

**ANAPOL WEISS**

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GREGORY S. SPIZER, ESQUIRE (I.D. 82435)  
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130 N. 18<sup>TH</sup> ST., SUITE 1600

PHILADELPHIA, PA 19103

ATTORNEYS FOR PLAINTIFF

RDS VENDING COMPANY LLC  
220 E. WASHINGTON ST., BLDG. A  
NORRISTOWN, PA 19401

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY

PLAINTIFF,

CIVIL ACTION NO.:

V.

UNION INSURANCE COMPANY  
11201 DOUGLAS AVENUE  
URBANDALE, IA 50322

AND

BERKLEY MID-ATLANTIC GROUP LLC  
4820 LAKE BROOK DRIVE, STE. 300  
GLEN ALLEN, VA 23060

AND

USI INSURANCE SERVICES LLC  
ONE INTERNATIONAL PLAZA, STE. 400  
PHILADELPHIA, PA 19113

DEFENDANTS.

JURY TRIAL DEMANDED

**CIVIL ACTION COMPLAINT**

## NOTICE TO PLEAD

### NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or 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 OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

**PHILADELPHIA COUNTY BAR  
ASSOCIATION LAWYER REFERRAL AND  
INFORMATION SERVICE 1101 MARKET  
STREET, 11<sup>TH</sup> FLOOR PHILADELPHIA,  
PENNSYLVANIA 19107 TELEPHONE: (215)  
238-1701**

### 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 lan demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su 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 propiendandes 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 SERVICIOI, 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 LICENCIADOR DE  
PHILADELPHIA VICIO DE REFERENCIA  
DE INFORMACION LEGAL 1101 MARKET  
STREET, 11<sup>TH</sup> FLOOR PHILADELPHIA,  
PENNSYLVANIA 19107 TELEFONO: (215)  
238-1701**

Plaintiff, RDS Vending Company LLC, by way of Complaint, brings this action against Defendants, Union Insurance Company, Berkley Mid-Atlantic Group, LLC and USI Insurance Services LLC, and alleges as follows:

**NATURE OF THE CASE**

1. Plaintiff owns and operates RDS Vending Company LLC, Philadelphia's largest provider of vending machine, coffee service, micro market and pantry products and services for a variety of businesses including offices, hospitals, nursing homes, schools, airports and prisons.

2. To protect the business from property damage and the loss of income in the event of a sudden suspension of operations for reasons outside of its control, Plaintiff enlisted the brokerage services of Defendants, Berkley Mid-Atlantic Group LLC and USI Insurance Services LLC.

3. As a business owner without specialized knowledge of the nuances of commercial insurance, Plaintiff relied on the knowledge, expertise, advice and experience of Defendants, Berkley Mid-Atlantic Group LLC and USI Insurance Services LLC, in purchasing a policy and reasonably expected they would procure insurance coverage sufficient to meet Plaintiff's needs.

4. Defendants, Berkley Mid-Atlantic Group LLC and USI Insurance Services LLC selected, recommended and procured a commercial multiple peril insurance policy from Defendant, Union Insurance Company. A copy of the policy is attached as Exhibit A.

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

6. The policy includes "Premier Choice Business Income" coverage which promises to pay for financial losses due to the necessary suspension or slow-down of operations at the covered property as well as dependent properties (customers) and "Civil Authority" coverage

which promises to pay for losses caused by a civil or governmental authority that prohibits access to the covered property.

7. The policy also provides “Extra Expense” coverage which promises to pay for expenses incurred to minimize losses during the suspension of business operations and continue operations.

8. Unbeknownst to Plaintiff, the policy includes a “Virus or Bacteria Exclusion” created by the American Association of Insurance Services that purports to exclude coverage for losses “caused by, resulting from, or relating to any virus, bacterium, or other microorganism that causes disease, illness, or physical distress or that is capable of causing disease, illness, or physical distress.”

9. On or about March 19, 2020, Plaintiff was forced to substantially reduce business operations following an order from Pennsylvania Governor Tom Wolf mandating the closure of all non-life sustaining businesses in the Commonwealth in an effort to protect the public from the global pandemic caused by COVID-19, a highly contagious respiratory virus that has upended daily life and infected more than 2,000,000 people throughout the United States.

10. Having faithfully paid the policy premiums, Plaintiff made a claim for business interruption, civil authority and/or extra expense coverage to recoup substantial, ongoing financial losses directly attributed to a series of COVID-19 closure orders.

11. By letter dated May 28, 2020, Union Insurance Company wrongfully denied Plaintiff’s claim, citing, among other things, a lack of “direct physical loss of or damage to property that is the result of a Covered Cause of Loss” and the Virus or Bacteria exclusion.

12. Through this action, Plaintiff seeks a declaratory judgment pursuant to 28 U.S.C. §2201 that the subject policy covers Plaintiff’s financial losses due to government orders

mandating the closure of or otherwise limiting access to its business during the COVID-19 pandemic. Plaintiff further seeks damages for breach of contract on the basis that Defendants' denial of coverage runs afoul of the public policy of this Commonwealth. In the event that Plaintiff's losses are not covered under the policy, Plaintiff seeks damages against Defendants, Berkley Mid-Atlantic Group LLC and USI Insurance Services LLC, for negligently failing to procure insurance coverage sufficiently broad to meet Plaintiff's needs.

### **THE PARTIES**

13. Plaintiff, RDS Vending LLC, (hereinafter "Plaintiff" and/or "RDS Vending"), a vending machine, coffee service, micro market and pantry business catering to a variety of industries, is a limited liability company organized and existing under the laws of Delaware with a principal place of business in Norristown, PA.

14. At all relevant times, Defendant, Union Insurance Company ("UIC"), a commercial insurance company incorporated under Iowa law, maintained a principal place of business in Urbandale, IA.

15. At all relevant times, Defendant, Berkley Mid-Atlantic Group LLC ("Berkley"), an insurance brokerage company incorporated under Delaware law, maintained a principal place of business in Glen Allen, VA.

16. At all relevant times, Defendant, USI Insurance Services LLC ("USI"), an insurance brokerage company incorporated under Delaware law, maintained principal places of business in Philadelphia, PA and Blue Bell, PA.



## **FACTUAL BACKGROUND**

### **A. Plaintiff's Reliance on Berkley and USI to Procure Business Insurance**

17. At all relevant times, Defendants, Berkley and USI, held themselves out as experienced insurance brokers with expertise in evaluating, recommending and binding appropriate insurance coverage for commercial business clients.

18. Defendant, Berkley, markets its regional offices for their ability to “bring together underwriting, claim and loss prevention teams” and prides itself on a self-described mission to “insure the future of business by partnering with select independent agents to provide commercial insurance products and services backed by local expertise and financial stability.” *See* Exhibit A (UIC Policy) at p.2.

19. According to Berkley, its “highest value is simple—to do the right thing by providing our customers with peace of mind by lessening their risk and taking care of them when tough times happen.”<sup>1</sup>

20. Defendant, USI, touts its “ability to bring best-in-class solutions and services to our clients and our communities...through the collective knowledge and experience of our professionals coming together as ONE.”<sup>2</sup>

21. USI analyzes business issues and challenges using USI ONE®, “a proprietary platform using analytics, networked resources and strategic planning to deliver customized solutions with economic impact.”<sup>3</sup>

22. In 2019, Plaintiff engaged Berkey and USI to provide expertise, recommendations and assistance in securing all appropriate insurance coverages for its business.

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<sup>1</sup> <https://www.wrbmag.com/who-we-are/our-values/> (last accessed on June 15, 2020).

<sup>2</sup> <https://www.usi.com/about-usi/the-power-of-one/> (last accessed on June 15, 2020).

<sup>3</sup> *Id.*

23. At all relevant times, Berkley and USI were aware of the nature of Plaintiff's business operations and undertook to procure an insurance policy with the most comprehensive coverage tailored to Plaintiff's needs.

24. During consultations Plaintiff requested, and Berkley and USI agreed and undertook to procure and bind all insurance coverage appropriate for Plaintiff's business, including as broad as possible Business Income, Extra Expense and Civil Authority coverages.

25. In addition to agreeing and undertaking to procure and bind all appropriate insurance coverage, Defendants, Berkley and USI agreed and represented that they would explain and provide advice to Plaintiff about the coverages they recommended to meet RDS Vending's needs.

26. Plaintiff expected and reasonably relied on Defendants, Berkley and USI, to procure and bind all appropriate insurance coverage, including as broad as possible Business Income, Extra Expense and Civil Authority coverages.

27. Plaintiff expected and reasonably relied on Defendants, Berkley and USI, to accurately describe the breadth of coverage and any limitations of the insurance it procured, including any exclusions or limitations for Business Income, Extra Expense, and Civil Authority coverages.

28. Defendants, Berkley and USI, selected, recommended, finalized and submitted an application of insurance to Defendant, UIC, on Plaintiff's behalf.

29. As insurance brokers acting on Plaintiff's behalf, Defendants, Berkley and USI obtained the commercial insurance policy bearing policy number CPA 4459963 41 for the policy period of January 3, 2020 to January 3, 2021 (hereinafter "UIC Policy" or "the Policy").

## **B. Plaintiff's Union Insurance Company Policy**

30. On or about January 3, 2020, Defendant, UIC, entered into a contract of insurance with Plaintiff, whereby Plaintiff agreed to make payments to UIC in exchange for UIC's promise to indemnify the Plaintiff for losses, including, but not limited to, business income losses at RDS Vending (the "Covered Property"), which is owned, managed, and/or controlled by the Plaintiff.

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

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

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

34. Plaintiff faithfully paid the policy premiums and reasonably expected that the business interruption, extra expense and/or civil authority coverage provided by UIC would protect against losses in the event that state or local officials ordered the closure of its business due to public safety concerns.

35. The Policy is an all-risk policy, insofar as it provides that covered causes of loss under the policy means direct physical loss or damage unless the loss is specifically and expressly excluded or limited in the Policy.

36. In the Business Income (and Extra Expense) Coverage Form, UIC agreed to pay for Plaintiff's actual loss of Business Income sustained due to the necessary suspension of operations during the "period of restoration" caused by direct physical loss or damage to property. A "slowdown or cessation" of business activities at the Covered Property is a "suspension" under the policy, for which Defendant agreed to pay for loss of Business Income during the "period of restoration" that begins at the time of direct physical loss or damage.

37. “Business income” means net profit or loss before income tax that Plaintiff would have earned or incurred if no physical loss or damage had occurred and continuing normal operating expenses incurred.

38. In the Business Income (and Extra Expense) Coverage Form, UIC also agreed to pay necessary Extra Expense that Plaintiff incurred during the “period of restoration” that Plaintiff would not have incurred if there had been no direct physical loss or damage to property.

39. “Extra expense” includes expenses to avoid or minimize the suspension of business, continue operations, and to repair or replace property.

40. In the Business Income (and Extra Expense) Coverage Form, UIC also agreed to “pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises” when access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage and the described premises are within that area and 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.

41. In an endorsement titled “Premier Choice Business Income (and Extra Expense) Actual Loss Sustained,” UIC agreed to pay for business income, extra expense and civil authority losses over an extended time period, cover business income losses resulting from or relating to “dependent properties” defined to include individuals or entities that accept Plaintiff’s products or services, and provide food contamination coverage.

42. In an endorsement titled “Virus or Bacteria Exclusion,” the Policy states UIC will not pay for “any loss, cost, or expense as a result of...any contamination by any virus, bacterium,

or other microorganism or...any denial of access to property because of any virus, bacterium or other microorganism.”

43. The Virus or Bacteria exclusion in Plaintiff’s UIC policy was created by the American Association of Insurance Services (“AAIS”), a national advisory organization that develops policy forms used throughout the U.S.

### **C. The COVID-19 Pandemic**

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

45. Those personally affected by the virus, and the general scientific community, recognize COVID-19 as a cause of real physical loss and damage. As such, it is clear that contamination of the Covered Property would be loss or damage requiring remediation to disinfect all surfaces of the Covered Property.

46. COVID-19 remains stable and transmittable in aerosols for up to three hours, up to 24 hours on cardboard and up to two to three days on plastic and stainless steel.<sup>4</sup>

47. The ability of the deadly virus to physically infect and remain on surfaces of objects or materials, i.e. “fomites,” for up to twenty-eight (28) days has prompted health officials in countries like China, Italy, France and Spain to disinfect and fumigate public areas before reopening them.

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

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<sup>4</sup> See e.g. <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (last accessed May 23, 2020).

## **D. The Covered Cause of Loss**

### **1. Physical Loss**

49. Losses due to the COVID-19 pandemic should be a Covered Cause of Loss under the Policy.

50. The presence of virus or disease can constitute physical damage to property, as the insurance industry has recognized since at least 2006.

51. The COVID-19 pandemic caused direct physical loss of or damage to the Covered Property under the Policy by denying use of and damaging the Covered Property and by causing a necessary suspension of operations during a period of restoration.

52. Further, the COVID-19 pandemic renders the Covered Property unsafe, uninhabitable, or otherwise unfit for its intended use, which constitutes direct physical loss.

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

### **2. Civil Authority Orders**

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

55. On March 6, 2020, Pennsylvania Governor Tom Wolf signed an emergency disaster declaration triggering a public health state of emergency in the Commonwealth due to COVID-19. *See* the Declaration attached as Exhibit B.

56. On March 19, 2020, Pennsylvania Governor Tom Wolf issued an Order requiring all non-life sustaining businesses in the Commonwealth to cease operations and close all physical locations until further notice. Life-sustaining businesses that were

permitted to remain open were required to follow “social distancing practices and other mitigation measures defined by the Centers for Disease Control.” *See* the Order attached as Exhibit C.

57. On March 23, 2020, Governor Wolf issued a Stay-at-Home Order for residents of Philadelphia, Allegheny, Bucks, Chester, Delaware, Monroe and Montgomery Counties. *See* the Order attached as Exhibit D.

58. On April 1, 2020, Governor Wolf extended the Stay-At-Home Order to the entire Commonwealth of Pennsylvania. *See* the Order attached as Exhibit E.

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

**E. Impact on Plaintiff, RDS Vending**

60. Plaintiff, RDS Vending, is Philadelphia’s largest provider of vending machine, coffee service, micro market and pantry products and services to a variety of businesses including but not limited to offices, hospitals, nursing homes, schools, airports and prisons.

61. Beginning on or about March 19, as a direct result of the COVID-19 pandemic and Closure Orders referenced herein, Plaintiff experienced a significant reduction of normal business operations due to the disruption of business and/or shutdown of a majority of the customers to whom Plaintiff provides products and services.

62. As a direct result of the COVID-19 pandemic and Closure Orders referenced herein, Plaintiff experienced a substantial spoliation of food and beverage products it was unable to sell to its customers.

63. On or about March 20, 2020, Plaintiff laid off approximately 35 employees due to the financial impact of the COVID-19 pandemic and Closure Orders referenced herein.

64. Because Plaintiff is a “life-sustaining” business and has kept its Norristown, PA warehouse open, there is an ever-present risk that the Covered Property is contaminated and would continue to be contaminated with COVID-19.

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

66. Plaintiff’s business is also highly susceptible to rapid person-to-property transmission of the virus, and vice-versa, because the activities of the employees require them to interact in close proximity to the property and to one another.

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

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

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



70. On or about April 28, 2020, Plaintiff submitted a claim under the Policy due to the presence of COVID-19 and the closure Orders described herein.

71. On May 28, 2020, UIC sent Plaintiff a reservation of rights and/or denial letter. Among other things, UIC claims a lack of “direct physical loss of or damage to property that is the result of a Covered Cause of Loss” and the Virus or Bacteria exclusion as the bases for its denial.

72. UIC’s denial is contrary to the public policy of this Commonwealth, which recognizes the reasonable expectations of the insured and the disparate bargaining power of insurance companies who rely on contradictory and illusory policy language to attract consumers later victimized by the denial of valid insurance claims.

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

74. Plaintiff is also entitled to recover damages from Defendants, Berkley and USI, for their failure to exercise reasonable care in evaluating, recommending and procuring insurance coverage sufficiently broad to meet Plaintiff’s needs as well as their failure to adequately communicate the breadth and scope of the exclusions to Plaintiff’s business income, extra expense, and civil authority coverage.

**CAUSES OF ACTION**  
**COUNT I—DECLARATORY JUDGEMENT**  
**Plaintiff, RDS Vending v. Defendant, UIC**

75. Plaintiff incorporates by reference the preceding paragraphs as if fully set forth herein.

76. The Declaratory Judgment Act, 28 U.S.C. § 2201(a), provides that in “a case of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.” 28 U.S.C. § 2201(a).

77. Declaratory relief is intended to minimize “the danger of avoidable loss and unnecessary accrual of damages.” 10B Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2751 (3d ed. 1998).

78. Plaintiff requests a Declaratory Judgment to affirm that the Policy provides business income coverage because of losses attributable to civil authority actions, and because the denial violates public policy.

79. Plaintiff further requests a Declaratory Judgment that Policy’s Exclusion of Loss Due to Virus or Bacteria does not apply to the business income losses incurred by Plaintiff as a result of the Closure Orders described herein.

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

81. An actual controversy has arisen between Plaintiff and UIC as to the rights, duties, responsibilities and obligations of the parties under the Policy to reimburse Plaintiff for the business interruption losses incurred by Plaintiff in connection with the significant disruption of its business due to COVID-19 and the civil authority orders described herein in that Plaintiff contends and, upon information and belief, UIC disputes and denies that:

- a. Plaintiff has sustained direct physical loss of or damage to property;
- b. Plaintiff has incurred extra expense as result of direct physical loss or damage to property;

- c. Plaintiff sustained a “suspension” of operations to due to direct physical loss to a “dependent property”;
- d. The closure Orders described herein trigger coverage;
- e. The Virus Exclusion is void as against public policy as it pertains to the closure Orders described herein;
- f. The Policy provides coverage to Plaintiff for any current and future closures due to direct physical loss of or damage to property directly or indirectly resulting from COVID-19 under the Civil Authority Coverage; and
- g. The Policy provides business income and extra expense coverage in the event that COVID-19 has directly or indirectly caused a loss or damage at the Covered Property or immediate area of the Covered Property.

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

**COUNT II**  
**BREACH OF CONTRACT-COMPENSATORY DAMAGES**  
**Plaintiff, RDS Vending v. Defendant, UIC**

83. Plaintiff incorporates by reference the preceding paragraphs as if fully set forth herein.

84. At all times relevant hereto, Plaintiff was an insured under the Policy.

85. Plaintiff purchased, elected and paid premiums to Defendant, UIC, for the property, business income and extra expense, civil authority and additional coverages applicable to the losses claimed in this action between the period of January 3, 2020 to January 3, 2021.

86. All the information regarding the insured’s business and risks thereof was known to UIC when the Policy was issued.

87. Plaintiff is entitled to recover all losses caused by the COVID-19 pandemic and the resulting Closure Orders described herein.

88. UIC was advised of Plaintiff's claims and demand for coverage under the Policy.

89. Plaintiff complied with all requirements of the Policy.

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

91. Defendant, UIC, breached the terms and provisions of the Policy by denying the claim of Plaintiff for all losses caused by the COVID-19 pandemic and the resulting Closure Orders described herein.

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

93. Defendant, UIC, is required to pay Plaintiff all covered losses caused by the COVID-19 pandemic and the resulting Closure Orders described herein, including business income, extra expense, civil authority and other coverages under the Policy in an amount exceeding \$75,000 to be determined at trial.

**COUNT III**  
**NEGLIGENCE**

**Plaintiff, RDS Vending v. Defendants, Berkley and USI**

94. Plaintiff incorporates by reference the preceding paragraphs as if fully set forth herein.

95. In the event that the fact finder determines the UIC Policy does not cover Plaintiff's losses in full, this Count is pleaded in the alternative to Counts I and II and only against Defendants, Berkley and USI.

96. Defendants, Berkley and USI, undertook a duty not only to exercise reasonable care, skill and knowledge normally possessed by insurance brokers in selecting, preparing and processing Plaintiff's policy application and in obtaining an insurance policy including Business Income, Extra Expense and Civil Authority coverages, but to do the right thing by providing Plaintiff peace of mind and lessening economic impacts as proclaimed in their respective marketing materials and the Policy itself.

97. Plaintiff requested and Berkley and USI undertook to secure as broad as possible Business Income, Extra Expense, and Civil Authority coverage.

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

99. Defendants, Berkley and USI, breached their duties of care by their negligence and other acts and/or omissions including, but not limited to:

A. Failing to ensure that the necessary and appropriate forms were completed to ensure the application for the requested as broad as possible insurance coverage as instructed by Plaintiff;

B. Failing to exercise reasonable care in obtaining as broad as possible insurance policies to provide the requested coverage for Plaintiff;

C. Failing to exercise reasonable care in obtaining insurance policies to provide as broad as possible Business Income, Extra Expense and Civil Authority coverages for Plaintiff that would cover losses due to a public health emergency arising from a virus such as COVID-19;

D. Failing to inform Plaintiff that the UIC Policy obtained did not have coverage which would provide as broad as possible Business Income, Extra

Expense and Civil Authority coverage applicable to Plaintiff's business operations in the event of a public health emergency arising from a virus such as COVID-19; and

E. Failing to adequately inform Plaintiff as to the breadth and scope of coverage and any limitations of the insurance it procured, including the Virus or Bacteria Exclusion.

100. As a direct and proximate result of Defendants, Berkley and USI's negligence, Plaintiff has sustained substantial damages for which Defendants, Berkley and USI are liable in an amount exceeding \$75,000 to be determined at trial.

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

**Restatement (Second) of Torts Section 552**  
**Plaintiff, RDS Vending v. Defendants, Berkley and USI**

101. Plaintiff incorporates by reference the preceding paragraphs as if fully set forth herein.

102. In the event that the fact finder determines that the UIC Policy does not cover Plaintiff's losses in full, this Count is pleaded in the alternative to Counts I and II and only against Defendants, Berkley and USI.

103. Defendants, Berkley and USI, for their own pecuniary interest, negligently supplied incorrect and incomplete information to Plaintiff regarding the amounts and applicability of the Business Income, Extra Expense, and Civil Authority coverage under the UIC Policy.

104. Defendants, Berkley and USI, made the recommendations for coverage with the intent that Plaintiff purchase the UIC Policy.

105. Plaintiff foreseeably and justifiably relied to its detriment on Defendants, Berkley and USI's recommendations, expertise, and affiliations, and followed their advice, which, in fact, included material and negligent misrepresentations and/or omissions, and, as a result, its coverage

with UIC was, if the fact finder determines that the Policy does not cover Plaintiff's losses in full, insufficient to compensate Plaintiff for its Business Income, Extra Expense and Civil Authority losses resulting from the COVID-19 pandemic and Closure Orders.

106. As a direct and proximate result of Defendants Berkley and USI's negligent supplying of information, Plaintiff has sustained substantial damages for which Defendants Berkley and USI are liable in an amount exceeding \$75,000 to be determined at trial.

### **PRAYER FOR RELIEF**

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

- a. Plaintiff has sustained direct physical loss of or damage to property;
- b. Plaintiff has incurred extra expense as a result of direct physical loss or damage to property;
- c. Plaintiff sustained a "suspension" of operations to due to direct physical loss to "dependent property";
- d. The closure Orders described herein trigger coverage;
- e. The Virus Exclusion is void as against public policy as it pertains to the closure Orders described herein;
- f. The Policy provides coverage to Plaintiff for any current and future suspensions due to direct physical loss of or damage to property directly or indirectly resulting from COVID-19 under the Civil Authority Coverage; and
- g. The Policy provides business income and extra expense coverage in the event that COVID-19 has directly or indirectly caused a loss or damage at the Covered Property or immediate area of the Covered Property.

Plaintiff further seeks an Order requiring Defendant UIC to pay Plaintiff all covered losses including business income, extra expense, civil authority and other coverages under the Policy;

compensatory damages against Defendants, Berkley and USI, and such other relief as the Court deems appropriate.

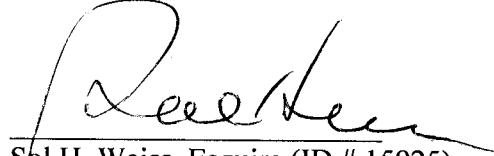
**JURY TRIAL DEMANDED**

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

Dated: June 17, 2020

Respectfully submitted,

**ANAPOL WEISS**



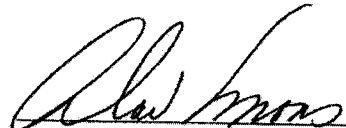
Sol H. Weiss, Esquire (ID # 15925)  
James R. Ronca, Esquire (ID # 25631)  
Gregory S. Spizer, Esquire (ID # 82435)  
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*Counsel for Plaintiff*



VERIFICATION

I, Alan Simons, hereby verify that I am a principal of RDS Vending LLC, the named plaintiff in the within action, and I have read the foregoing Civil Action Complaint and the facts contained therein are true and correct to the best of my knowledge, information and belief. I further understand that these statements are made subject to penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

  
Alan Simons

DATE: 6/16/2020