

# EXHIBIT A

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*Kiton Corporation*

KITON CORPORATION,  Plaintiff,  v.  PACIFIC INDEMNITY COMPANY,  Defendant.
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**SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: HUNTERDON COUNTY**  
  
CIVIL ACTION  
  
DOCKET NO.: \_\_\_\_\_  
  
**COMPLAINT AND JURY DEMAND**

Plaintiff, Kiton Corporation (“Kiton” or “Plaintiff”), by its attorneys Anderson Kill, P.C., by way of its complaint against Defendant Pacific Indemnity Company (“Pacific” or “Defendant”), alleges the following:

**INTROUCTION**

1. This is a declaratory judgment action arising out of Defendant’s failure to promptly accept their insurance coverage obligations for Plaintiff’s business losses and damages that began on or about March 16, 2020 as a result of the COVID-19 pandemic.
2. The transmission of the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), commonly known as the coronavirus, has caused a pandemic affecting nearly every aspect of the lives and livelihoods of millions of people and businesses around the world, including Plaintiff.

3. To date, over 32 million Americans have been infected with coronavirus and over 570,000 have lost their lives<sup>1</sup>, making COVID-19 the third leading cause of death in the United States.<sup>2</sup>

4. Due to governmental orders that were issued in each state in which Plaintiff operates its business: 1. California; 2. Texas; 3. Nevada; 4. Florida; and 5. New York, Plaintiff's business, which was deemed "non-essential," was mandated by civil authority to close<sup>3</sup> each of its locations from which Plaintiff operates successful, high quality clothing boutiques (the "Boutiques").

5. In addition, the microbial matter propagated from the COVID-19 pandemic, an extremely pernicious disease, attached to the surfaces within the Boutiques, thereby causing direct physical loss and/or damage to the subject properties.

6. Specifically, the Loss, which occurred as a result of the COVID-19 pandemic's sweeping destruction of the retail shopping industry, caused damage to the Covered Premises operations, resulting in substantial losses to Plaintiff's business income.

7. Notably, on or about March 12, 2020, the World Health Organization (the "WHO"), in a statement issued by Dr. Hans Henri P. Kluge ("Dr. Kluge"), the WHO Regional Director for Europe, officially declared the COVID-19 outbreak to be a pandemic.<sup>4</sup>

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<sup>1</sup> Centers for Disease Control and Prevention, COVID Data Tracker, <https://covid.cdc.gov/covid-data-tracker/#datatracker-home> (last visited May 4, 2021).

<sup>2</sup> Youyou Zhou, Gary Stix, Oct. 8, 2020, <https://www.scientificamerican.com/article/covid-19-is-now-the-third-leading-cause-of-death-in-the-u-s/> (last visited April 7, 2021).

<sup>3</sup> The parties' insurance policy provides insurance coverage for the following nine (9) locations: (i) 4 East 54<sup>th</sup> Street, New York, NY 10022; (ii) 15 West 53<sup>rd</sup> Street, New York, NY 10019; (iii) 2060 Northern Blvd., Manhasset, NY 11030; (iv) 3131 Las Vegas Blvd. S., Las Vegas, NV 89109; (v) 9700 Collins Ave., Bal Harbour, FL 33154; (vi) 701 S. Miami Ave., Miami FL, 33154; (vii) 340 Royal Poinciana Way, Palm Beach, FL 33480; (viii) 207 Grant Ave., San Francisco, CA 94108; (ix) 4444 Westheimer Rd., A165, Houston, TX 77027.

<sup>4</sup> <https://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/news/news/2020/3/who-announces-covid-19-outbreak-a-pandemic>.

8. Dr. Kluge's statement noted, inter alia, the following:

More and more countries are now experiencing clusters of cases or community transmission. We expect that in the days and weeks ahead, the number of cases and the number of deaths will continue to rise rapidly, and we must escalate our response in such a way as to take pre-emptive action wherever possible. Such actions may help to delay the pandemic, giving health-care systems time to prepare and assimilate the impact.<sup>5</sup>

9. Thereafter, on or about March 16, 2020, the Centers for Disease Control and Prevention (the "CDC"), along with members of the national Coronavirus Task Force, issued "the President's Coronavirus Guidelines for America" (the "CDC Guidelines"), advising individuals across the United States to avoid, inter alia, social gatherings in groups of more than ten (10), travel, and, most notably, shopping trips.<sup>6</sup>

10. In following the CDC Guidelines, many state governments across the United States began to implement restrictions to combat the spread of this extremely virulent and novel life-threatening disease.

11. As such, many state government administrations implemented civil authorities, executive orders, and/or emergency measures, shutting down non-essential businesses, specifically those in the retail shopping industry, of which naturally require public interaction and gatherings to conduct their operations.

12. In fact, almost all of the states throughout the country have implemented "stay-at-home" orders, which require such non-essential retail businesses to close their doors and cease operation.

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<sup>5</sup> *Id.*

<sup>6</sup> <https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20-coronavirus-guidance-8.5x11-315PM.pdf>.

13. Moreover, every single state in the nation declared a “state of emergency,” the first time that has ever happened in the history of the United States.

14. Consequently, these government actions and/or decrees, which are unprecedented and sweeping in both degree and scope, have crippled businesses, especially those within the retail shopping industry where operation depends on public access and travel for shopping purposes.

15. In order to protect their interests in the event that such a devastating and unforeseen event may occur, it is precisely for this very reason that many retail businesses procure insurance that covers damages for loss of business income.

16. Such policies include coverage provisions whereby the insurance company agrees, and promises, to indemnify the insured business for their actual business losses that were incurred at the time of the loss in which the business was, *inter alia*, forced to involuntarily suspend its operations, within the full limits of the insured’s policy.

17. Such coverage provisions, which are commonly included in most all-risk commercial property insurance policies, include indemnification for events that prohibit access to the insured’s business due to restrictions put in place by a civil authority and/or government order.

18. Further, the business loss coverage under Plaintiff’s Policy is similarly triggered where Plaintiff suffers business loss due to a direct physical loss to any of the properties covered under the Policy.

19. Kiton is one of those businesses that procured insurance including such loss of business income coverage as a means to protect it in this type of event.

20. Here, Kiton entered into an agreement with Defendant whereby Defendant promised to indemnify it in the event that Kiton suffered a loss that forced it to incur substantial actual business losses.

21. The Policy explicitly provides that Defendant will extend coverage for business losses sustained by Kiton due to the closure of its Boutiques for business due to civil authority and/or where such Boutiques sustain a direct physical loss.

22. Kiton has provided Defendant notice of the claim for the Loss and has demanded coverage under the Policy issued by Defendant.

23. Clearly, the COVID-19 contagion sticks to surfaces within properties that then require constant cleaning and/or de-sanitization, rendering the property damaged.

24. Since the property needs to be remediated, the microbes, virus and/or bacteria resulting from COVID-19 plainly constitutes a direct physical loss to property, thereby triggering coverage.

25. Despite this, at all relevant times, Defendant has refused, and continues to refuse, to provide Plaintiff with coverage for the damages and monumental losses that it sustained and incurred due to the Loss under the Policy.

26. Kiton has complied with all relevant provisions of the Policy, and has paid all premiums owed under the Policy to Defendant.

27. Kiton thus brings this lawsuit in order to, among other things, obtain a declaration that Defendant must provide coverage for the damages caused to Kiton as a result of the Loss.

#### **THE PARTIES**

28. Kiton is a domestic corporation with a principal office located at 4 East 54th Street, New York, New York 10022.

29. Upon information and belief, Pacific is a Wisconsin corporation with a principal office located at 202B Hall's Mill Road, Whitehouse Station, New Jersey 08889.

### **JURISDICTION AND VENUE**

30. This Court has personal jurisdiction over Defendant because at all relevant times: (1) Defendant operated, conducted, engaged in, or carrier out business in New Jersey, including the sale of insurance policies to New Jersey residents, (2) there is the requisite nexus between such business and this action, and (3) because Defendant engaged in substantial and not isolated business activity within New Jersey.

31. Venue is appropriate in Hunterdon County pursuant to Rule 4:3-2 because Plaintiff has a principal place of business there.

### **FACTUAL BACKGROUND**

#### **I. The Insurance Policy**

32. Defendant sold the Policy – a commercial general liability insurance policy – effective for the policy period from December 31, 2019 to December 31, 2020 (the “Policy Period”) covering the Covered Premises. A copy of the Pacific Policy is attached as Exhibit A.

33. The Policy provides “Blanket Limits” for the “Premises Coverage.”

34. Specifically, the Policy provides “Limits of Insurance” of \$7,100,000 for coverage under “Business Income with Extra Expense” on all of the Covered Premises in the Policy that are identified as having a “Blanket 2” Limit of Insurance. Ex. A, at p. 16 of 232.

35. As such, the following properties of the Covered Premises have this Blanket 2 Limit of Insurance under the Policy (the “Blanket 2 Properties”): (i) 4 East 54<sup>th</sup> Street, New York, NY 10022; (ii) 2060 Northern Blvd., Manhasset, NY 11030; (iii) 3131 Las Vegas Blvd. S., Las Vegas, NV 89109; (iv) 9700 Collins Ave., Bal Harbour, FL 33154; (v) 701 S. Miami Ave., Miami FL, 33154; (vi) 340 Royal Poinciana Way, Palm Beach, FL 33480; and (vii) 207 Grant Ave., San

Francisco, CA 94108; (viii) 4444 Westheimer Rd., A165, Houston, TX 77027. *See Id.*, at p. 188-189 of 232.

36. Therefore, the Blanket 2 Properties are entitled to, inter alia, business coverage claims that are capped at \$7,100,000.

37. Under the Policy, Defendant agreed to provide certain business interruption/property damage claim coverage for the Blanket 2 Properties.

38. Specifically, the Business Income With Extra Expense Coverage Form, Form 80-02-1004, states, 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, not to exceed the applicable Limit Of Insurance for Business Income shown under Any Other Location in the Declarations...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 at unspecified premises.*

*Id.*, at p. 6 of 232 (emphasis supplied).

39. In this same form, the Policy provides following Additional Coverages under the heading of “Civil Authority:”

*We 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. The most we will pay for Civil Authority is the applicable Limit Of Insurance for Business Income With Extra Expense shown in the Declarations.*

*Id.*, at p. 62-63 of 232 (emphasis supplied).

40. Furthermore, the Policy defines “Business Income,” as follows:



Net profit or loss, including rental income from tenants and net sales value of production, that would have been earned or incurred before income taxes:...your continuing normal:...operating;...and payroll, expenses;...charges you incur which are the legal obligation of your tenant which would otherwise be your obligations; and...the cost you are required to pay to rent temporary premises when that portion of the premises shown in the Declarations occupied by you is untenable, not to exceed the fair rental value of such untenable portion of the building you occupy Business income does not mean bank interest or investment income.

*Id.*, at p. 128 of 232.

41. The Policy also defines “Extra Expense” as the following:

Necessary expenses you incur...in an attempt to continue operations, over and above the expenses you would have normally incurred; and...to repair or replace any property, or to research or restore the lost information on damaged valuable papers, records and media, if such action will reduce any loss we would pay under this insurance...

*Id.*, at p. 131 of 232.

42. Critically, with respect to policy loss payment limitations under the Business Income With Extra Expense Coverage Form, the Policy does not include any specific limitation for damages or exclusions related to viruses or bacteria.

43. Notably, Defendant failed to include explicit language in the Policy that set forth to exclude loss payment limitations for damages resulting from a “virus or bacteria,” as the loss payment limitation section under the Business Income With Extra Expense Coverage Form, Form 80-02-1004, fails to include any reference to “virus or bacteria” whatsoever.

## **II. The Damages and Losses Sustained by Plaintiff as a Result of Coronavirus**

### **A. The Property Damage Caused by Coronavirus**

44. The coronavirus is transmitted through both person-to-person contact and contact by persons with fomites, which are surfaces of objects or materials on which coronavirus is present.

45. Human contact with such surfaces is known to transmit the virus, making property impacted by the virus very dangerous and potentially fatal.

46. The World Health Organization (“WHO”) explains 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>7</sup>

47. A team of researchers from UCLA, Princeton University, the National Institute of Allergy and Infectious Diseases, and the Centers for Disease Control and Prevention (“CDC”) studied the persistence of coronavirus on various surfaces and materials. The researchers reported in the April 16, 2020 edition of the *New England Journal of Medicine* that the virus persisted on plastic and stainless steel surfaces for up to seventy-two hours in laboratory studies.<sup>8</sup>

48. When the coronavirus impacts property, like it did Plaintiff’s, it renders the property dangerous and potentially fatal.

49. Property impacted by coronavirus is, in practical effect, unusable for the purpose of generating business income.

50. 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 income – 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.

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<sup>7</sup> World Health Organization, *How does COVID-19 spread?*, Q&A on coronaviruses (COVID-19), <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-coronaviruses> (last visited July 8, 2020).

<sup>8</sup> Neeltje van Doremalen, *et al.*, *Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1*, *NEW ENG. J. MED.* (Mar. 17, 2020), <https://www.nejm.org/doi/full/10.1056/NEJMc2004973>.

51. A virus certainly causes “loss or damage” even though it is invisible to the naked eye. Property impacted by the coronavirus is just as dangerous as property impacted by fire or fumes or vapors (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 loss or damage to property, as well as direct physical loss of or damage to property.

52. The coronavirus causes a distinct and demonstrable alteration to impacted property, and thus constitutes a direct physical loss of or damage to property. Because the coronavirus causes direct physical loss of or damage to property, it is a covered peril under the Policy.

53. Defendant knows that viruses cause loss or damage, and Defendant knew that when it sold the Policy to Plaintiff.

54. Notwithstanding its knowledge, Defendant deliberately chose not to exclude viruses or pandemics, despite commonly used exclusions for viruses and pandemics in the insurance industry.

55. Accordingly, the loss and damage to property from coronavirus is ubiquitous and widespread across the United States, and thus constitutes a covered peril under the Policy.

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

56. In response to the increasing spread of the coronavirus, hundreds, if not thousands, of orders of civil authority have been issued across the United States, 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 stay in their homes, and restricting or limiting entry into the United States (the “Orders”).

57. On March 16, 2020, San Francisco’s Department of Public Health issued a Shelter in Place Order, which directed all businesses to cease non-essential operations at physical locations within San Francisco County.

58. Between March 12 and March 20, 2020, New York Governor Andrew Cuomo issued a string of Executive Orders that shuttered schools, courts, and nearly all businesses, with only a select few “essential” businesses permitted to remain opened.

59. On March 20, 2020, Nevada Governor Steve Sisolak issued Directive 003, which ordered the closure of all non-essential businesses and restricted the activities of non-essential businesses to reduce opportunities for interpersonal contact.

60. On March 24, Harris County, Texas Judge Lina Hidalgo ordered all individuals within Harris County to stay at their place of residence except for essential activities and mandated all businesses operating within Harris County to cease all activities except those activities that employees could perform at their own residences.

61. The order issued by Harris County Judge Hidalgo also stated “the COVID-19 virus causes property loss or damage due to its ability to attach to surfaces for prolonged periods of time.”

62. On March 25, 2020, Palm Beach County issued Emergency Order No. 2, which ordered all retail and commercial business within Palm Beach County closed. One week later, on April 1, 2020, Florida Governor Ron DeSantis ordered all Floridians to remain inside their homes with the exception of movements and interactions necessary to obtain or provide essential services or conduct essential activities.

63. The Orders were issued as a result of a peril insured against under the Policy.

64. The Orders were issued in part because of the distinct and demonstrable alteration of property caused by coronavirus.

65. The Orders impaired or hindered access to Plaintiff's property in all five states in which Plaintiff operates.

**C. Plaintiff's Business Interruption Losses**

66. Plaintiff has suffered actual business interruption losses insured under the Policy.

67. Plaintiff's stores were not deemed an "essential" business by the any of the counties or states in which Kiton operates.

68. Plaintiff has suffered business interruption losses because, as a result of a peril insured against, access to real or personal property, has been prevented or prohibited by orders of civil authority.

69. Because of government-mandated closures, as well as the corresponding bans against "non-essential" travel and public gatherings, Kiton has suffered substantial damages and loss of business income at all of its Boutiques across the country.

70. The state and local orders fully restricted public access to the Covered Premises in California, Florida, Nevada, New York, and Texas, which triggers coverage under the Policy's Additional Coverage provisions related to "Civil Authority."

71. Moreover, even assuming that Plaintiff's business interruption losses are not triggered by governmental orders, such losses are triggered by a direct physical loss to Kiton's underlying covered properties.

72. Therefore, because Defendant failed to include explicit exclusions to coverage for "virus or bacteria" under the Policy, Defendant wrongfully denied Plaintiff's claim for coverage.

**III. Plaintiff's Insurance Claim and Defendant's Improper Denial**

73. In or about early May 2020, Plaintiff tendered to Defendant notice of claim, duly apprising Defendant of its calculable losses and placing Defendant on notice of its request for business interruption and property damage coverage arising from losses stemming from the coronavirus.

74. Defendant failed or refused to make any payment to Plaintiff as required under the Policy and, by letter dated June 19, 2020, Defendant wrongfully denied Plaintiff's coverage claims as related to all nine properties throughout the United States.

**IV. Plaintiff's New York Action and Consumer Complaints**

75. Plaintiff filed a complaint against Defendant in New York County Supreme Court on July 9, 2020 (the "New York Action").

76. On or about July 9, 2020, Plaintiff also filed complaints with each state insurance department in which Plaintiff operated its nine different Covered Premises.<sup>9</sup>

77. On October 6, 2020, Defendant removed the New York Action to the United States District Court for the Southern District of New York.

78. On October 12, 2020, Plaintiff's New York Action was voluntarily dismissed without prejudice as against Defendant.

**COUNT I**  
**(Declaratory Judgment)**

79. Kiton repeats, reiterates, and re-alleges each of the foregoing allegations with the same force and effect as if fully set forth at length herein.

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<sup>9</sup> Plaintiff, on or about July 9, 2020, filed the following five (5) separate state insurance complaints: (i) Consumer Complaint Case: CSB-2020-01364230 filed with the New York Department of Financial Services; (ii) Complaint ID: 51180 filed with the Nevada Division of Insurance; (iii) Service Request Number 1-1011981829 filed with the Florida Department of Financial Services; (iv) Case Number 8264676 filed with the California Department of Insurance; and (v) Complaint 294587 filed with the Texas Department of Insurance.

80. Kiton is a named insured under the Policy.

81. Therefore, Defendant has an obligation to provide coverage to Kiton under the Policy because the COVID-19 pandemic caused direct physical loss and/or damage to the covered premises.

82. Since Kiton's claims arise out of the Loss, and Kiton asserts claims for damages resulting for a direct physical loss or damage to Kiton's underlying covered premises, the Policy requires Defendant to provide coverage and to indemnify Kiton for the losses it sustained, as a result of the Loss.

83. Thus, Defendant has a duty to cover Kiton for the Losses sustained, which are covered under the provisions of the Policy without exclusion.

84. By reason of the foregoing, an actual and justiciable controversy exists between Kiton and Defendant.

85. As a result of Defendant's breaches of the Policy, Plaintiff has sustained substantial damages for which Defendant is liable, in an amount to be established at trial.

**COUNT II**  
**(Breach of Contract)**

86. Kiton repeats, reiterates, and re-alleges each of the foregoing allegations with the same force and effect as if fully set forth at length herein.

87. Defendant breached the Policy with Kiton by:

- (i) failing to promptly and reasonably adjust the claim;
- (ii) failing to timely indemnify Kiton for the loss of business income that it incurred;
- (iii) failing to promptly adjust, and properly pay, the Policy limits to Kiton; and
- (iv) any other acts or omissions to be shown at trial on the merits.

88. Plaintiff's Policy is a contract, which is to be construed against Defendant, under which Defendant was paid premiums in exchange for Defendant's promise to pay Plaintiff for its losses for claims covered by the Policy.

89. Per the Policy, Defendant agreed to pay for Kiton's actual loss of Business Income sustained due to the necessary suspension of its operations during the period of restoration.

90. Defendant further agreed to pay for Kiton's actual loss of Business Income sustained due to the necessary suspension of Kiton's operations during the period of restoration caused by direct physical loss or damage.

91. A partial slowdown or complete cessation of business activities at the Boutiques is a suspension under the Policy, for which Defendant agreed to pay for loss of Business Income during the period of restoration that occurs after the date of direct physical loss or damage.

92. The Closure Order caused direct physical loss and damage to Plaintiff's Boutiques, which are covered properties under the Policy, requiring suspension of operations at the Boutiques.

93. Losses caused by the civil authority orders thus triggered the Business Income provision of Plaintiff's Policy.

94. Plaintiff has complied with all applicable provisions of the Policy and/or those provisions have been waived by Defendant, and/or Defendant are estopped from asserting them.

95. As such, Defendant has abrogated their insurance coverage obligations pursuant to the Policy's clear and unambiguous terms.

96. By denying coverage for any Business Income losses incurred by Plaintiff as a result of the civil authority orders mandating closures, along with the orders intended to



mitigate the COVID-19 pandemic, Defendant breached their coverage obligations under the Policy.

97. As a result of Defendant's breaches of the Policy, Plaintiff has sustained substantial damages for which Defendant are liable, in an amount to be established at trial.

**WHEREFORE**, Plaintiff demands judgment as follows:

- (i) **On the First Cause of Action**, declaring that Defendant has a duty to extend full insurance coverage to Kiton for its claim of the Loss under the Policy and to indemnify Kiton for such losses;
- (ii) **On the Second Cause of Action**, an award in Plaintiff's favor against Defendant in the amount of damages that Plaintiff has suffered and will suffer as a result of Defendant's breach of contract, inclusive of costs and attorneys' fees;
- (iii) Together with such other and further relief as to the Court deems just and proper.

**DEMAND FOR TRIAL BY JURY**

Plaintiffs hereby demand a trial by jury on all counts so triable.

**DESIGNATION OF TRIAL COUNSEL**

Please take notice that pursuant to *Rule 4:25-4*, Nicholas M. Insua, Esq. is herewith designated as trial counsel for Plaintiff.

**RULE 4:5-1 CERTIFICATION**

I hereby certify, pursuant to *Rule 4:5-1*, that to the best of my knowledge, information and belief the matter in controversy is not the subject matter of any other action pending in any other court, nor of any pending arbitration proceeding, and no other action or arbitration is contemplated; further there are no other parties who should be joined in this action.

**CERTIFICATION PURSUANT TO RULE 1:38-7**

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b).

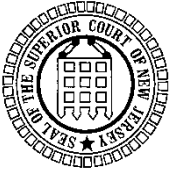

Dated: Newark, New Jersey  
May 4, 2021

**ANDERSON KILL P.C.**

By: /s/ Nicholas M. Insua

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*Attorneys for Plaintiff  
Kiton Corporation*

	<h2 style="margin: 0;">Civil Case Information Statement</h2> <h3 style="margin: 0;">(CIS)</h3> <p style="margin: 0;">Use for initial Law Division                  Civil Part pleadings (not motions) under <i>Rule 4:5-1</i>  <b>Pleading will be rejected for filing, under <i>Rule 1:5-6(c)</i>,                  if information above the black bar is not completed                  or attorney's signature is not affixed</b></p>		For Use by Clerk's Office Only
			Payment type: <input type="checkbox"/> ck <input type="checkbox"/> cg <input type="checkbox"/> ca
			Chg/Ck Number:
			Amount:
			Overpayment:
		Batch Number:	
Attorney/Pro Se Name Nicholas M. Insua		Telephone Number (973) 652-5858	County of Venue Hunterdon
Firm Name (if applicable) Anderson Kill P.C.		Docket Number (when available)	
Office Address One Gateway Center, Suite 1510 Newark, NJ 07102		Document Type Complaint	
		Jury Demand <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Name of Party (e.g., John Doe, Plaintiff) Kiton Corporation, Plaintiff		Caption Kiton Corporation v. Pacific Indemnity Company	
Case Type Number (See reverse side for listing) 505	Are sexual abuse claims alleged? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Is this a professional malpractice case? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If you have checked "Yes," see <i>N.J.S.A. 2A:53A-27</i> and applicable case law regarding your obligation to file an affidavit of merit.	
Related Cases Pending? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		If "Yes," list docket numbers	
Do you anticipate adding any parties (arising out of same transaction or occurrence)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Name of defendant's primary insurance company (if known) <input type="checkbox"/> None <input checked="" type="checkbox"/> Unknown	
The Information Provided on This Form Cannot be Introduced into Evidence.			
Case Characteristics for Purposes of Determining if Case is Appropriate for Mediation			
Do parties have a current, past or recurrent relationship? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		If "Yes," is that relationship: <input type="checkbox"/> Employer/Employee <input type="checkbox"/> Friend/Neighbor <input type="checkbox"/> Other (explain) <input type="checkbox"/> Familial <input checked="" type="checkbox"/> Business	
Does the statute governing this case provide for payment of fees by the losing party? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition			
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;">  Do you or your client need any disability accommodations?  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No                             </div> <div style="width: 50%;">If yes, please identify the requested accommodation:</div> </div>			
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;">Will an interpreter be needed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</div> <div style="width: 50%;">If yes, for what language?</div> </div>			
<b>I certify that confidential personal identifiers have been redacted from documents now submitted to the court and will be redacted from all documents submitted in the future in accordance with <i>Rule 1:38-7(b)</i>.</b>			
Attorney Signature: <span style="border: 1px solid black; padding: 2px 20px;">/s/ Nicholas M. Insua</span>			

**Side 2**



# Civil Case Information Statement (CIS)

Use for initial pleadings (not motions) under *Rule 4:5-1*

**CASE TYPES** (Choose one and enter number of case type in appropriate space on the reverse side.)

### Track I - 150 days discovery

- |  |   |
|--|---|
| 151 Name Change  | 506 PIP Coverage                              |
| 175 Forfeiture   | 510 UM or UIM Claim (coverage issues only)    |
| 302 Tenancy  | 511 Action on Negotiable Instrument           |
| 399 Real Property (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction) | 512 Lemon Law                                 |
| 502 Book Account (debt collection matters only)  | 801 Summary Action                            |
| 505 Other Insurance Claim (including declaratory judgment actions)                                 | 802 Open Public Records Act (summary action)  |
|  | 999 Other (briefly describe nature of action) |

### Track II - 300 days discovery

- |   |   |
|---|---|
| 305 Construction  | 603Y Auto Negligence – Personal Injury (verbal threshold) |
| 509 Employment (other than Conscientious Employees Protection Act (CEPA) or Law Against Discrimination (LAD)) | 605 Personal Injury                                       |
| 599 Contract/Commercial Transaction   | 610 Auto Negligence – Property Damage                     |
| 603N Auto Negligence – Personal Injury (non-verbal threshold)   | 621 UM or UIM Claim (includes bodily injury)              |
|   | 699 Tort – Other  |

### Track III - 450 days discovery

- |                              |  |
|------------------------------|--|
| 005 Civil Rights             | 608 Toxic Tort   |
| 301 Condemnation             | 609 Defamation   |
| 602 Assault and Battery      | 616 Whistleblower / Conscientious Employee Protection Act (CEPA) Cases |
| 604 Medical Malpractice      | 617 Inverse Condemnation   |
| 606 Product Liability        | 618 Law Against Discrimination (LAD) Cases                             |
| 607 Professional Malpractice |  |

### Track IV - Active Case Management by Individual Judge / 450 days discovery

- |   |  |
|---|--|
| 156 Environmental/Environmental Coverage Litigation | 514 Insurance Fraud                      |
| 303 Mt. Laurel                                      | 620 False Claims Act                     |
| 508 Complex Commercial                              | 701 Actions in Lieu of Prerogative Writs |
| 513 Complex Construction                            |  |

### Multicounty Litigation (Track IV)

- |   |   |
|---|---|
| 271 Accutane/Isotretinoin                                 | 601 Asbestos                                  |
| 274 Risperdal/Seroquel/Zyprexa                            | 623 Propecia                                  |
| 281 Bristol-Myers Squibb Environmental                    | 624 Stryker LFIT CoCr V40 Femoral Heads       |
| 282 Fosamax   | 625 Firefighter Hearing Loss Litigation       |
| 285 Stryker Trident Hip Implants                          | 626 Abilify                                   |
| 286 Levaquin  | 627 Physiomesh Flexible Composite Mesh        |
| 289 Reglan  | 628 Taxotere/Docetaxel                        |
| 291 Pelvic Mesh/Gynecare                                  | 629 Zostavax                                  |
| 292 Pelvic Mesh/Bard                                      | 630 Proceed Mesh/Patch                        |
| 293 DePuy ASR Hip Implant Litigation                      | 631 Proton-Pump Inhibitors                    |
| 295 AlloDerm Regenerative Tissue Matrix                   | 632 HealthPlus Surgery Center                 |
| 296 Stryker Rejuvenate/ABG II Modular Hip Stem Components | 633 Prolene Hernia System Mesh                |
| 297 Mirena Contraceptive Device                           | 634 Allergan Biocell Textured Breast Implants |
| 299 Olmesartan Medoxomil Medications/Benicar              |   |
| 300 Talc-Based Body Powders                               |   |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category  Putative Class Action  Title 59  Consumer Fraud

## Civil Case Information Statement

### Case Details: HUNTERDON | Civil Part Docket# L-000183-21

**Case Caption:** KITON CORPORATION VS PACIFIC INDEMNITY CO MPANY

**Case Initiation Date:** 05/04/2021

**Attorney Name:** NICHOLAS M INSUA

**Firm Name:** ANDERSON KILL PC

**Address:** ONE GATEWAY CENTER STE 1510  
NEWARK NJ 07102

**Phone:** 9736425858

**Name of Party:** PLAINTIFF : KITON CORPORATION

**Name of Defendant's Primary Insurance Company**  
(if known): Unknown

**Case Type:** OTHER INSURANCE CLAIM (INCLUDING DECLARATORY JUDGMENT ACTIONS)

**Document Type:** Complaint with Jury Demand

**Jury Demand:** YES - 6 JURORS

**Is this a professional malpractice case?** NO

**Related cases pending:** NO

**If yes, list docket numbers:**

**Do you anticipate adding any parties (arising out of same transaction or occurrence)?** NO

**Are sexual abuse claims alleged by:** KITON CORPORATION? NO

### THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

**Do parties have a current, past, or recurrent relationship?** YES

**If yes, is that relationship:** Business

**Does the statute governing this case provide for payment of fees by the losing party?** YES

**Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:**

**Do you or your client need any disability accommodations?** NO

**If yes, please identify the requested accommodation:**

**Will an interpreter be needed?** NO

**If yes, for what language:**

**Please check off each applicable category:** Putative Class Action? NO Title 59? NO Consumer Fraud? NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

05/04/2021  
Dated

/s/ NICHOLAS M INSUA  
Signed