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RIDLEY PARK FITNESS, LLC  
42490 Garfield Road Suite 202  
Clifton Township, MI 48038

*Plaintiff,*

vs.

PHILADELPHIA INDEMNITY  
INSURANCE COMPANY,  
PO Box 950  
Bala Cynwyd, PA 19004

*Defendant.*

**IN THE COURT OF COMMON PLEAS  
OF PHILADELPHIA COUNTY**

**MAY TERM, 2020**

**NO: 200501093**

**JURY TRIAL DEMANDED**

**AMENDED COMPLAINT**

Case ID: 200501093

**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 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 OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP

Lawyer Reference Service  
Philadelphia Bar Association  
1101 Market Street, 11th Floor  
Philadelphia, PA 19107  
(215) 238-6300

**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 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 nofificacion. Ademias, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades y 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.

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Plaintiff Ridley Park Fitness, LLC, brings this Amended Complaint as an Action for Declaratory Judgment, pursuant to Pa.R.C.P. 1601 *et seq.* and 42 P.S. §§ 7532 and 7534, alleging against Defendant Philadelphia Insurance Company as follows:

**PARTIES**

1. At all relevant times, Plaintiff Ridley Park Fitness, LLC (hereinafter referred to as “Ridley Fitness”) is a company authorized to do business and doing business in the Commonwealth of Pennsylvania. Ridley Fitness is a limited liability company owned in part by Jennifer August who is a citizen of Pennsylvania.

2. Defendant Philadelphia Indemnity Insurance Company (“Philadelphia Indemnity” or “Defendant”) is an insurance company whose headquarters and principal place of business are in Pennsylvania. Philadelphia Indemnity is a citizen of Pennsylvania.

3. At all relevant times, Defendant issued a business interruption policy to Plaintiff for its property located at 611 N Swarthmore Ave., Suite A, Ridley Park, Pennsylvania 19078.

4. Upon information and belief, Defendant is a member of Philadelphia Insurance Companies.

5. Defendant transacts the business of insurance in the Commonwealth of Pennsylvania and within the County of Philadelphia.

6. Plaintiff submitted a claim for a business loss pursuant to its Policy, seeking coverage under the Policy. Defendant rejected Plaintiff’s business loss and business interruption claims and other claims, contending, *inter alia*, that Plaintiff did not suffer physical damage to its property directly and stating other reasons why Plaintiff is not purportedly entitled to coverage for the losses and damages claimed.

7. The rejection of Plaintiff's losses and claim by Defendant on the basis that allegedly Plaintiff did not suffer physical damage to the properties and in reliance on the Virus Exclusion provision of the Policy are invalid reasons to have denied the claim. Defendant's denials are in violation of the provisions of and proper and fair interpretation of the Policy. The Virus Exclusion does not exclude coverage for losses associated with this pandemic and Plaintiff has suffered physical damage or loss.

### **JURISDICTION**

8. This Court has jurisdiction over this action and the matters alleged herein and this is an action for Declaratory Judgment Relief, pursuant to Pa.R.C.P. 1601 *et seq.* and 42 P. S. §§ 7532 and 7534.

9. Venue is proper based on Defendant's substantial insurance operations in Philadelphia County. Defendant's Policy at issue in this case has been issued to other insured's in the County of Philadelphia.

### **FACTUAL BACKGROUND**

#### **A. Insurance Coverage**

10. On or about April 26, 2019, Defendant entered into a contract of insurance with Plaintiff, as a renewal of an insurance Policy, whereby Plaintiff agreed to make premium payments to Defendant in exchange for Defendant's promise to indemnify Plaintiff for losses including, but not limited to, business income losses for Plaintiff's fitness center located in Delaware County, Pennsylvania (the "Insured Property").

11. The Insured Property is located at 611 N. Swarthmore Ave., Suite A, Ridley Park, Pennsylvania and consists of a fitness center which is owned, leased by, managed, and/or controlled by Jennifer August. Prior to March 16, 2020, the business maintained fully operational.

12. The Insured Property are covered under a policy issued by Defendant with policy number PHPK 1975212 (hereinafter “Policy”). *See* portion of the Policy attached herein as Exhibit “1.”

13. The Policy is currently in full effect, providing property, business personal property, business income and extra expense, contamination coverage, and additional coverages between the period of April 26, 2019 through April 26, 2020. The Policy has been since renewed.

14. Plaintiff faithfully paid policy premiums to Defendant, specifically to provide, among other things, additional coverages in the event of business closures by order of Civil Authority.

15. Under the Policy, insurance is extended to apply to the actual loss of business income sustained and the actual, necessary and reasonable extra expenses incurred when access to the Insured Property is specifically prohibited by order of Civil Authority as the direct result of a covered cause of loss to property in the immediate area of Plaintiff’s Insured Property. This additional coverage is identified as coverage under “Civil Authority.”

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

17. Based upon information and belief, the Policy provided by Defendant included language that is essentially standardized language adopted from and/or developed by the ISO (“Insurance Service Office”). The ISO, founded in 1971, provides a broad range of services to the property and casualty insurance industry. In addition to form policies, ISO collects and manages databases containing large amounts of statistical, actuarial, underwriting, and claims information, fraud-identification tools, and other technical services. ISO describes itself as follows: “ISO

provides advisory services and information to many insurance companies. ... ISO develops and publishes policy language that many insurance companies use as the basis for their products.” ISO General Questions, Verisk, <https://www.verisk.com/insurance/about/faq/> (last visited June 5, 2020); *see also* Insurance Services Office (ISO), Verisk, <https://www.verisk.com/insurance/brands/iso/> (last visited June 5, 2020).

18. Plaintiff was not a participant in negotiating or drafting the Policy’s content and provisions. Plaintiff possessed no leverage or bargaining power to alter or negotiate the terms of the Policy, and more particularly, Plaintiff had no ability to alter, change or modify standardized language derived from the ISO format.

19. Upon information and belief, the Virus Exclusion in the Policy was never intended by the ISO nor Defendant to pertain to Civil Authority Orders or a situation like the present global Coronavirus Pandemic and therefore does not apply to exclude coverage in this matter.

20. Upon information and belief, the Virus Exclusion in the Policy was developed by the ISO in response to the SARS outbreak that occurred in or around 2002-2004, which was not a pandemic and not a global pandemic like the present Coronavirus Pandemic, and therefore was never intended to exclude coverage for a circumstance as presented in this matter.

21. Further, the Virus Exclusion was first permitted by state insurance departments due to misleading and fraudulent statements by the ISO that property insurance policies do not and were not intended to cover losses caused by viruses, and so the Virus Exclusion offers mere clarification of existing law. To the contrary, before the ISO made such baseless assertions, courts considered contamination by a virus to be physical damage. Defendant’s use of the Virus Exclusion to deny coverage here shows that the Virus Exclusion was fraudulently adopted, adhesionary, and unconscionable. *See* <https://www.propertycasualty360.com/2020/04/07/here-we-go-again-virus->

[exclusion-for-covid-19-and-insurers/](#) (last visited June 12, 2020).

22. The Virus Exclusion applies only to “loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.”

23. Plaintiff purchased the aforementioned Policy expecting to be insured against losses, including, but not limited to, business income losses at its business.

24. Plaintiff purchased the Policy with an expectation that they were purchasing a Policy that would provide coverage in the event of business interruption and extended expenses, such as that suffered by Plaintiff as a result of the COVID-19 pandemic.

25. At no time had Defendant, or their agents, notified Plaintiff that the coverage that Plaintiff had purchased pursuant to an all-risk Policy that included business interruption coverage, had exclusions and provisions that purportedly undermined the very purpose of the coverage, of providing benefits in the occurrence of business interruption and incurring extended expenses.

26. Furthermore, Defendant’s application of exclusions to undermine Plaintiff’s bargained-for coverage violates public policy as a contract of adhesion and hence is not enforceable against Plaintiff.

27. Access to Plaintiff’s business was prohibited by Civil Authority Orders, which were the direct result of physical loss of or damage to property at or near the Insured Property. The Policy provides for coverage for such actual loss of business sustained and actual expenses incurred.

28. The reasonable expectations of Plaintiff were that the business interruption coverage included coverage when a Civil Authority Order forced closure of the business for an issue of public safety in the immediate area surrounding the Insured Property.

29. The Policy does not exclude the losses suffered by Plaintiff and therefore the Policy does provide coverage for those losses.

30. Plaintiff suffered direct physical loss or damage within the definitions of the Policy as loss of intended use of property, as in this case, constitutes loss or damage.

31. The virus and bacterium exclusions do not apply because Plaintiff's losses were not solely caused by a virus, bacterium or other microorganism. Instead, Plaintiff's losses were also caused by the entry of Civil Authority Orders, particularly those by the governors of California and Colorado and by the states' respective Departments of Health, to mitigate the spread of COVID-19. The Civil Authority Orders were issued because of damage to individuals and property caused by COVID-19. The Civil Authority Orders were more than mere social distancing enactments.

32. The Civil Authority Orders prohibited access to Plaintiff's Insured Properties, and the area immediately surrounding the Insured Properties, in response to dangerous physical conditions described above resulting from COVID-19.

33. As a result of the presence of COVID-19 and the Civil Authority Orders, Plaintiff lost Business Income and incurred Extra Expense.

34. Based on information and belief, Defendant has accepted the Policy premiums with no intention of providing any coverage for business losses or the Civil Authority extension due to a loss and shutdown from a virus pandemic. The Policy's Exclusion of Loss Due to Virus or Bacteria does not apply to the business losses incurred by Plaintiff here. The Virus and Bacteria exclusion do not exclude a pandemic. Further, Defendant did not properly include the Virus or Bacteria exclusion in its Policy to its insureds and Plaintiff.

**B. The Coronavirus Pandemic**



35. The scientific community, and those personally affected by the virus, recognize the Coronavirus (also known as COVID-19) as a cause of real physical loss and damage. It is clear that contamination of the Insured Property would be a direct physical loss requiring remediation to clean the surfaces of the fitness center.

36. The virus that causes COVID-19 remains stable and transmittable in aerosols for up to three hours, up to four hours on copper, up to 24 hours on cardboard and up to two to three days on plastic and stainless steel. *See* <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (last visited April 9, 2020).

37. The CDC (Centers for Disease Control) had issued a guidance that gatherings of more than 10 people must not occur. People in congregate environments, which are places where people live, eat, sleep and office waiting rooms in close proximity, face increased danger of contracting COVID-19.

38. The global Coronavirus pandemic is exacerbated by the fact that the deadly virus physically infects and stays on surfaces of objects or materials, “fomites,” for up to twenty-eight (28) days.

39. China, Italy, France, and Spain have implemented the cleaning and fumigating of public areas prior to allowing them to re-open publicly due to the intrusion of microbials.

40. Courts in France have ruled that business interruption coverage applies where businesses lost revenue as a result of being forced to close their doors due to orders of civil authority in response to the COVID-19 Pandemic. *See* <https://www.insurancejournal.com/news/international/2020/05/22/569710.htm> (last visited June 11, 2020).

41. The determinations by courts in France, and potentially other countries, that

coverage exists is consistent with public policy that in the presence of a worldwide Pandemic such as COVID-19, businesses that possess business interruption insurance coverage should recover their losses from the insurance carriers.

**C. Civil Authority**

42. On March 6, 2020, Pennsylvania Governor Tom Wolf issued a Proclamation of Disaster Emergency, the first formal recognition of an emergency situation in the Commonwealth of Pennsylvania as a result of COVID-19.

43. On March 19, 2020, Governor Wolf issued a Civil Authority Order requiring all non-life- sustaining businesses in the Commonwealth to cease operations and close all physical locations. 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.” <https://www.scribd.com/document/452416027/20200319-TWW-COVID-19- Business-Closure-Order> (last visited April 19, 2019).

44. On April 1, 2020, Governor Wolf issued a Stay at Home Order to the entire Commonwealth of Pennsylvania.

45. On, May 8, 2016, Governor Wolf extended the Stay at Home Order for Delaware County until June 4, 2020.

46. The Civil Authority Orders in and around Plaintiff’s place of businesses also explicitly acknowledge that COVID-19 causes direct physical damage and loss to property. Civil Authority Orders entered in other states confirm this as well. For example, the City of New York Order explicitly stated that COVID-19 “is causing property loss and damage[.]” <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-101.pdf>. Similarly, the Pennsylvania Supreme Court recently clarified the Governor Wolf’s Orders and supported

Plaintiff's position that physical loss and damage exists, resulting in coverage here. *See Friends of DeVito, et. al v. Wolf*, No. 68 MM 2020 (Pa. April 13, 2020)

47. Further, on April 10, 2020, President Trump seemed to support insurance coverage for business loss like that suffered by the Plaintiff:

REPORTER: Mr. President may I ask you about credit and debt as well. Many American individuals, families, have had to tap their credit cards during this period of time. And businesses have had to draw down their credit lines. Are you concerned Mr. President that that may hobble the U.S. economy, all of that debt number one? And number two, would you suggest to credit card companies to reduce their fees during this time?

PRESIDENT TRUMP: Well it's something that we've already suggested, we're talking to them. ***Business interruption insurance***, I'd like to see these insurance companies—you know you have people that have paid. When I was in private, I had business interruption. When my business was interrupted through a hurricane or whatever it may be, I'd have business where I had it, I didn't always have it, sometimes I had it, sometimes, I had a lot of different companies. ***But if I had it, I'd expect to be paid.*** You have people. ***I speak mostly to the restaurateurs***, where they have a restaurant, they've been paying for 25, 30, 35 years, business interruption. They've never needed it. All of a sudden they need it. And I'm very good at reading language. I did very well in these subjects, OK. And I don't see the word pandemic mentioned. Now in some cases it is, it's an exclusion. But in a lot of cases I don't see it. I don't see it referenced. And they don't want to pay up. I would like to see the insurance companies pay if they need to pay, if it's fair. And they know what's fair, and I know what's fair, I can tell you very quickly. But business interruption insurance, that's getting a lot money to a lot of people. And they've been paying for years, sometimes they just started paying, but you have people that have never asked for business interruption insurance, and they've been paying a lot of money for a lot of years for the privilege of having it, and then when they finally need it, the insurance company says 'we're not going to give it.' We can't let that happen.

<https://youtu.be/cMeG5C9TjU> (last visited on April 17, 2020) (emphasis added).

48. The President is articulating a few core points:

- a. Business interruption is a common type of insurance, especially for restaurants.
- b. Businesses pay in premiums for this coverage and should reasonably expect they'll receive the benefit of the coverage.
- c. This pandemic should be covered unless there is a specific exclusion for pandemics.
- d. If insurers deny coverage, they would be acting in bad faith.

49. These Civil Authority Orders and proclamations, as they relate to the closure of all “non-life- sustaining 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 where business is conducted, such as Plaintiff’s, as the requisite contact and interaction causes a heightened risk of the property becoming contaminated.

50. The Civil Authority Orders entered by the state and local government were in the exercise of authority to protect the public and minimize the risk of spread of disease.

51. The Civil Authority Orders were entered because of the contamination and damage of property caused by the Coronavirus near Plaintiff’s Insured Properties.

52. These Civil Authority Orders have the effect of prohibiting access to Plaintiff’s Insured Properties due to contamination and physical damage caused by the Coronavirus to surrounding property.

53. Even with the entry of these Civil Authority Orders, there remained physical impact not only in and within Plaintiff’s Insured Properties but in and around the surrounding property due to the presence of Coronavirus not being detectable other than through microscopic means and occurrence of illness.

**D. Impact on Plaintiff Ridley Park Fitness, LLC**

54. As a result of the Civil Authority Orders referenced herein, Plaintiff and its

buildings were required to suspend and shut its business to customers as of March 16, 2020.

55. As a further direct and proximate result of the Orders, Plaintiff has been forced to lay off part-time employees and expects to reduce the salaries of full-time employees.

56. Plaintiff's business is not a closed environment, and because people – staff, customers, family of customers, community members, and others – constantly cycle in and out of the building, there is an ever-present risk that the Insured Property is contaminated and would continue to be contaminated.

57. A fitness center that exists in a building, like Plaintiff's is more susceptible to being or becoming contaminated, as both respiratory droplets and fomites are more likely to be retained on the Insured Property and remain viable for far longer as compared to a facility with open-air ventilation.

58. Plaintiff's fitness center is not limited to operations at its Insured Property. Because of Pennsylvania's stay at home orders, Plaintiff is no longer able to operate its fitness center.

59. Plaintiff's business is also highly susceptible to rapid person-to-property transmission of the virus, and vice-versa, because the service nature of the business places staff and customers in close proximity to the property and to one another.

60. The ISO affirms that a virus can cause physical damage and business interruption merely by its presence and the need to replace potentially contaminated products or disinfect potentially contaminated surfaces, evidenced by the ISO's 2006 circular for an Exclusion Regarding Loss Due to Virus or Bacteria:

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

61. New York City’s civil authority orders have specifically found that the Virus causes physical damage and loss. *See* <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-101.pdf> (last visited July 2, 2020).

62. The virus is physically impacting the fitness center. Any effort by Defendant to deny the reality that the virus causes physical loss and damage would constitute a false and potentially fraudulent misrepresentation that could endanger Plaintiff and the public.

63. Contamination and damage to Plaintiff’s Insured Properties and surrounding property caused by the Coronavirus constitute “direct physical loss” and are Covered Causes of Loss within the meaning of the Policy.

64. The Virus Exclusion does not apply to Plaintiff’s claims that are based on the Civil Authority Orders, because those claims are not based on any “loss or damage caused by or resulting from any virus.” Rather, those claims are based on losses directly attributable to the Civil Authority Orders.

65. A declaratory judgment is necessary that determines that coverage exists under the Policy. Such a declaratory judgment will prevent Plaintiff from being left without vital coverage that was paid for and acquired to ensure the survival of the fitness center due to the shutdown caused by the civil authorities’ response. As a result of the “shut down” Orders entered by the civil authorities, Plaintiff has incurred, and continues to incur, among other things, a substantial loss of business income and additional expenses covered under the Policy.

**FIRST CAUSE OF ACTION**

**DECLARATORY RELIEF PURSUANT TO  
Pa. R. Civ. Pr. 1601 et al and 42 P.S. §§ 7532 AND 7534**

66. Plaintiff re-alleges and incorporates by reference into this cause of action each and every allegation set forth in each and every paragraph of this Complaint.

67. Under the Pennsylvania Declaratory Judgment Act, the Court has the “power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” 42 Pa. § 7532. A contract for insurance may be interpreted under the Pennsylvania Declaratory Judgments Act before there is a breach or even a claim for coverage. *See id.* at § 7534.

68. An actual controversy has arisen between Plaintiff and Defendant as to the rights, duties, responsibilities and obligations of the parties in that Plaintiff contends and, on information and belief, Defendant disputes and denies that:

- a. The Civil Authority Orders constitute a prohibition of access to Plaintiff’s Insured Property;
- b. The prohibition of access by the Civil Authority Orders has specifically prohibited access as defined in the Policy;
- c. The Policy’s Exclusion of Loss Due To Virus Or Bacteria does not apply to the business losses incurred by Plaintiff here;
- d. The Civil Authority Orders trigger coverage;
- e. The Policy provides coverage to Plaintiff for any current and future civil authority closures of a non-essential businesses in Pennsylvania due to physical loss or damage from the Coronavirus under the Civil Authority coverage parameters; and
- f. The Policy provides business income coverage in the event that Coronavirus has caused a loss or damage at the insured premises or immediate area of the Insured Properties.

69. Resolution of the duties, responsibilities and obligations of the parties is necessary as no adequate remedy at law exists and a declaration of the Court is needed to resolve the dispute

and controversy.

70. Plaintiff seeks a Declaratory Judgment to determine whether the Civil Authority Orders constitute a prohibition of access to Plaintiff's Insured Property as Civil Authority as defined in the Policy.

71. Plaintiff further seeks a Declaratory Judgment to affirm that the Civil Authority Orders trigger coverage.

72. Plaintiff further seeks a Declaratory Judgment to affirm that the Policy provides coverage to Plaintiff for any current and future civil authority closures of a non-essential businesses in Pennsylvania due to physical loss or damage from the Coronavirus and that the Policy provides business income coverage in the event that the Coronavirus has caused a loss or damage at the Insured Property.

73. Plaintiff does not seek any determination of whether the Coronavirus is physically in or at the Insured Property, an amount of damages, or any other remedy other than declaratory relief.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff herein prays as follows:

- a) For a declaration that the Civil Authority Orders constitute a prohibition of access to Plaintiff's Insured Property.
- b) For a declaration that the prohibition of access by the Civil Authority Orders is specifically prohibited access, as defined in the Policy.
- c) For a declaration that the Civil Authority Orders trigger coverage under the Policy.
- d) For a declaration that the Policy provides coverage to Plaintiff for any current, future and continued civil authority closures of the fitness center due to physical loss or damage from the Coronavirus under the Civil Authority coverage parameters.



- e) For a declaration that the Policy provides business income coverage in the event that the Coronavirus has caused a loss or damage at the Plaintiff's Insured Property or the immediate area of the Plaintiff's Insured Property.
- f) For a declaration that under the circumstances of the COVID-19 pandemic and the entry of the Civil Authority Orders, Plaintiff had no choice but to comply with the Civil Authority Orders and Plaintiff's compliance resulted in business losses, business interruption and extended expenses, and therefore constitute covered losses.
- g) For such other relief as the Court may deem proper.

**TRIAL BY JURY IS DEMANDED**

Dated: July 15, 2020

Respectfully submitted,

/s/ Daniel C. Levin

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