

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

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BENAMAX ICE, LLC

CIVIL ACTION NO.

Plaintiffs,

vs.

MERCHANTS MUTUAL INSURANCE COMPANY,  
JOHN DOES (1-10) AND ABC COMPANIES (1-10),

Defendants.

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**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Merchants Mutual Insurance Company (hereinafter “Merchants”) submits the following Notice of Removal from the Superior Court of New Jersey, Camden County, the Court in which the above-referenced matter is now pending, to the United States District Court for the District of New Jersey. In support of its Notice of Removal, Merchants states as follows:

**NATURE OF ACTION**

1. Plaintiff, Benamax Ice LLC (“Plaintiff”) commenced this lawsuit against Merchants in the Superior Court of New Jersey, Camden County, docket no. CAM-L-001862-20, by filing a Complaint on May 29, 2020 (the “Action”). *See* Ex. A.
2. This Action is an insurance coverage dispute. Plaintiff alleges that Merchants insured them pursuant to an Advantage Plus Businessowners Policy bearing policy no. BOPI083506 for the policy period of February 15, 2020 to February 15, 2021 (the “Policy”) and covered Plaintiff’s food service establishment located at 101 Haddon Avenue, Westmont, New Jersey 08108 (the “Property”). *See* Ex. A ¶¶ 8-11

3. Plaintiff alleges that Merchants incorrectly denied its claim for business interruption coverage due to the COVID-19 pandemic. *See* Ex. A ¶¶ 15-22.

4. Pursuant to 28 U.S.C. § 1445(a) Merchants attaches copies of all process, pleadings and orders served upon it including:

a) A true and correct copy of Plaintiff's Complaint, dated May 29, 2020. *See* Ex. A.

b) A true and correct copy of the summons served on Merchants. *See* Ex. B.

#### **TIMELINESS OF REMOVAL**

5. Merchants was served with a copy of the Complaint on June 4, 2020. This Notice of Removal is being filed within thirty (30) days after service of Plaintiff's Complaint, and is therefore timely pursuant to 28 U.S.C. § 1446(b).

#### **AMOUNT IN CONTROVERSEY**

6. Plaintiff's Complaint seeks damages for Merchants' alleged wrongful denial of benefits under the Policy.

7. Merchants respectfully submits that the amount in controversy exceeds \$75,000, exclusive of interest and costs, because Plaintiff seeks to recover its unspecified loss of business income after being shut down due to the COVID-19 pandemic from March 21, 2020 to present, and for continuing business income losses.

**DIVERSITY OF CITIZENSHIP**

8. According to Plaintiff's Complaint, Plaintiff is a limited liability company organized under the laws of the State of New Jersey with a mailing address of 124 Mayfair Lane, Mount Laurel, NJ 08054. *See Ex. A at ¶ 1.*

9. According to a status report obtained from the State of New Jersey Division of Revenue and Enterprise Services dated June 18, 2020, the only member of Plaintiff is Michael Vizzoca, who resides at 124 Mayfair Lane, Mount Laurel, NJ 08054. *See Ex. C.*

10. Plaintiff's food establishment is located at 101 Haddon Avenue, Westmont, NJ 08108. *See Ex. A at ¶ 7.*

11. Merchants is an insurance company organized under the laws of New York with its principle place of business located at 250 Main Street, Buffalo, New York.

12. Pursuant to 28 U.S.C. § 1332(a)(1), full diversity exists among Plaintiff and Merchants because Merchants is a citizen of New York and maintains its principal place of business in a state other than where Plaintiff is deemed to reside.

**PLEA FOR REMOVAL**

13. Insofar as the amount in controversy is alleged to exceed \$75,000 and full diversity exists between the parties, removal to this Court is proper pursuant to 28 U.S.C. § 1332(a) and 28 U.S.C. § 1441 (a). Written notice is being given to all parties and to the Clerk of the Superior Court of New Jersey, Camden County, that this Notice of Removal is being filed with this Court.

**WHEREFORE**, Merchants respectfully requests that the entire state court action under docket currently pending in the Superior Court of New Jersey, Camden County, be removed to this Court for all further proceedings.

Respectfully Submitted,

GOLDBERG SEGALLA, LLP

By:           /s/ Nicole M. Crowley            
Nicole M. Crowley, Esq.  
*Attorneys for Merchants Mutual Insurance  
Company*

Dated: July 1, 2020

# Exhibit A

**MATTLEMAN, WEINROTH & MILLER, P.C.**  
Robert W. Williams, Esq. (Attorney ID No.: 048992014)  
Ashley S. Nechemia, Esq. (Attorney ID No.: 263392018)  
401 Route 70 East, Suite 100  
Cherry Hill, New Jersey 08034  
(856) 429-5507  
Our File No.: 17320.21514  
*Attorneys for Plaintiff*

**BENAMAX ICE LLC**  
  
Plaintiff,  
  
vs.  
  
**MERCHANTS MUTUAL INSURANCE  
COMPANY, JOHN DOES (1-10) and ABC  
COMPANIES (1-10)**  
  
Defendant(s)

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
CAMDEN COUNTY

DOCKET NO.

CIVIL ACTION

**COMPLAINT**

Plaintiff, BENAMAX ICE LLC (“BENAMAX” or “Plaintiff”), having a principal place of business of 124 Mayfair Lane in the Township of Mount Laurel, County of Burlington and State of New Jersey, through its undersigned counsels, by way of Complaint, avers the following:

**PARTIES**

1. Plaintiff, BENAMAX, is a limited liability company, organized under the laws of the State of New Jersey, with a mailing address of 124 Mayfair Lane, Mount Laurel, NJ 08054.
2. Defendant, Merchants Mutual Insurance Company (“Merchants Mutual” or “Defendant”), is located at 250 Main Street, Buffalo, New York 14202.
3. Defendants, John Does 1 through 10 and ABC Companies 1 through 10, inclusive, are sued herein under fictitious names. Their true names and capacities are presently unknown to Plaintiff. When said true names and capacities are ascertained, Plaintiff will amend this Complaint

by inserting such information. Plaintiff is informed and believe and thereon allege that each of the factitiously named Defendants are responsible in some manner for the occurrences alleged herein and Plaintiff's damages were proximately caused by said Defendants.

**JURISDICTION AND VENUE**

4. Jurisdiction and venue properly lay in the Superior Court of New Jersey, County of Camden, pursuant to R. 4:3-2(a) & (b) because Defendant regularly conducts business in Camden County.

**COMMON FACTUAL ALLEGATIONS**

5. Plaintiff repeats each and every allegation contained in the foregoing paragraphs of this Complaint as if same were set forth at length herein.

6. BENAMAX is a walk-in style quick service food retail establishment serving frozen desserts including, but not limited to Ice Cream and Italian Ice.

7. BENAMAX's food service establishment is located at 101 Haddon Avenue, Westmont, NJ 08108.

8. BENAMAX purchased a Merchants Advantage Plus Businessowners Policy from Merchants Mutual bearing Policy No.: BOPI083506 (the "Policy").

9. The insurer under the Policy is Merchants Mutual Insurance Company.

10. The Policy is contained on form BP 00 03 01 10.

11. The Policy Period is from February 15, 2020 to February 15, 2021.

12. The Policy provides coverage to the following location: 101 Haddon Avenue, Westmont, NJ 08108.

13. The Policy provides coverage for "Action of Civil Authority."

14. The Policy provides coverage for "Business Income and Extra Expense."

15. On March 9, 2020 the Governor of New Jersey, Phil Murphy, signed Executive Order 103 which declared both a Public Health and State of Emergency in New Jersey.

16. On March 11, 2020, COVID-19 was declared to be a global pandemic by the World Health Organization.

17. On March 13, 2020, the President of the United States of America declared a national emergency as a result of COVID-19.

18. On March 21, 2020, Governor Murphy signed Executive Order 107 which required New Jersey Residents to remain home or at their place of residence subject only to certain limited exceptions. (The averments contained within paragraphs 15 through 18 are collectively referred to as "Governmental Actions").

19. As a result of the above-referenced Governmental Actions, BENAMAX as suffered a direct physical loss of and damage to its property because it has been unable to use its property for its intended purpose.

20. As a result of the Governmental Actions, BENAMAX was required to close its food establishment.

21. On April 20, 2020, BENAMAX submitted a claim for coverage to Merchants Mutual for the losses it suffered.

22. On April 20, 2020, Merchants Mutual denied BENAMAX's claim for coverage.

#### **COUNT I – BREACH OF CONTRACT**

23. Plaintiff hereby incorporates by reference paragraphs 1 through 22 above as if set forth in full.

24. The Policy is an enforceable contract between BENAMAX and Merchants Mutual.



25. The Policy provides “Action of Civil Authority” coverage.
26. The Policy provides coverage for “Business Income and Extra Expense” coverage.
27. BENAMAX suffered an insured loss.
28. Defendant’s refusal to provide coverage for losses suffered constitutes breach of contract.

**WHEREFORE**, Plaintiff demands judgment in its favor and against Defendant as follows:

- a. An award of Consequential and Compensatory Damages;
- b. Attorneys’ fees and costs; and
- c. Such other relief as the Court deems just and proper.

**COUNT II – DECLARATORY JUDGMENT (N.J.S.A. 2A:16-50 ET SEQ.)**

29. Plaintiff hereby incorporates by reference paragraphs 1 through 28 above as if set forth in full herein.

30. Plaintiff has fully complied with its obligations under the Policy.

31. Plaintiff’s losses continue to accrue as of the filing of this complaint as a result of the Governmental Actions.

32. Defendant’s April 20, 2020 disclaimer letter precludes coverage for both past, present, and future losses.

33. An actual controversy exists as to the extent and scope of coverage provided by the Policy.

**WHEREFORE**, Plaintiff demands a declaratory judgment in its favor and against Defendant as follows:

- a. Declaring that Plaintiff’s losses as a result of the Governmental Actions are insured losses under the Policy; and

- b. Declaring that Defendant is obligated to pay the full amount of losses incurred as a result of the Governmental Actions.

**MATTLEMAN, WEINROTH & MILLER, P.C**  
*Attorneys for Plaintiff*

*/s/ Robert W. Williams*

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By: Robert W. Williams, Esq.

*/s/ Ashley S. Nechemia*

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By: Ashley S. Nechemia, Esq.

Dated: May 29, 2020

**DESIGNATION OF TRIAL COUNSEL**

PLEASE TAKE NOTICE, that pursuant to R. 4:25-4, the Plaintiff hereby designates Robert W. Williams, Esquire, and Ashley S. Nechemia, Esquire, of the firm BENAMAX ICE LLC as designated trial counsel for all purposes in this matter.

**MATTLEMAN, WEINROTH & MILLER, P.C.**  
*Attorneys for Plaintiff*

*/s/ Robert W. Williams*

\_\_\_\_\_  
By: Robert W. Williams, Esq.

*/s/ Ashley S. Nechemia*

\_\_\_\_\_  
By: Ashley S. Nechemia, Esq.

Dated: May 29, 2020

**CERTIFICATION OF NO OTHER ACTIONS**

PLEASE TAKE NOTICE, that pursuant to R. 4:5-1(b)(2), it is hereby stated that the matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding to the best of my knowledge or belief. Also, to the best of my belief, no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this pleading, I know of no other parties that should be joined in the above action. In addition, I recognize the continuing obligation of each party to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

**MATTLEMAN, WEINROTH & MILLER, P.C.**  
*Attorneys for Plaintiff*

*/s/ Robert W. Williams*

\_\_\_\_\_  
By: Robert W. Williams, Esq.

*/s/ Ashley S. Nechemia*

\_\_\_\_\_  
By: Ashley S. Nechemia, Esq.

Dated: May 29, 2020

**NOTICE PURSUANT TO R. 1:5-1(a) AND R. 4:17-4(c)**

PLEASE TAKE NOTICE, that pursuant to R. 1:5-1(a) and R. 4:17-4(c), the party submitting this pleading to the Court for filing hereby demand that each party named in the this complaint and/or amended complaint that serves or receives pleading of any nature (including discovery requests) to or from any other party to the action, forward copies of same along with any documents provided in answer or response thereto to counsel for Plaintiff and this is a continuing demand.

**MATTLEMAN, WEINROTH & MILLER, P.C.**  
*Attorneys for Plaintiff*

*/s/ Robert W. Williams*

---

By: Robert W. Williams, Esq.

*/s/ Ashley S. Nechemia*

---

By: Ashley S. Nechemia, Esq.

Dated: May 29, 2020

**NOTICE PURSUANT TO R. 1:7-1(b)**

**PLEASE TAKE NOTICE**, that to the extent applicable to this case, the party submitting this pleading to the Court for filing may, at the time of closing argument, suggest to the trier of fact with respect to any element of damages, that unliquidated damages be calculated on a time-unit basis, without reference to a specific sum.

**MATTLEMAN, WEINROTH & MILLER, P.C.**  
*Attorneys for Plaintiff*

*/s/ Robert W. Williams*

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By: Robert W. Williams, Esq.

*/s/ Ashley S. Nechemia*

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By: Ashley S. Nechemia, Esq.

Dated: May 29, 2020

## Civil Case Information Statement

### Case Details: CAMDEN | Civil Part Docket# L-001862-20

Case Caption: BENAMAX ICE LLC VS MERCHANTS  
MUTUAL INS URANCE

Case Initiation Date: 05/29/2020

Attorney Name: ASHLEY S NECHEMIA

Firm Name: MATTLEMAN WEINROTH & MILLER, PC

Address: 401 RT 70 E STE 100

CHERRY HILL NJ 08034

Phone: 8564295507

Name of Party: PLAINTIFF : Benamax Ice LLC

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

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

Document Type: Complaint

Jury Demand: NONE

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: Benamax Ice LLC? 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? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

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)

05/29/2020

Dated

/s/ ASHLEY S NECHEMIA

Signed

# Exhibit B



**Mattleman, Weinroth & Miller, P.C.**  
**Robert W. Williams, Esquire (048992014)**  
**Ashley S. Nechemia, Esquire (263392018)**  
**401 Route 70 East B Suite 100**  
**Cherry Hill, New Jersey 08034**  
**(856) 429-5507**  
**File No. 17320.21514**  
**Attorneys for Plaintiff**

Benamax Ice LLC,

Plaintiff

v.

Merchants Mutual Insurance Company ; John  
Does (1-10) and ABC Companies (1-10),  
Defendants

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
CAMDEN COUNTY

DOCKET NO.: L-001862-20

CIVIL ACTION

SUMMONS

**From The State of New Jersey**

**To The Defendant(s) Named Above: Merchants Mutual Insurance Company**

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 60 days from the date you received this summons, not counting the date you received it. (A directory of the addresses of each deputy clerk of the Superior Court is available in the Civil Division Management Office in the county listed above and online at [http://www.judiciary.state.nj.us/pro se/10153\\_deptyclerklawref.pdf](http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf).) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of \$135.00 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 60 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at [http://www.judiciary.state.nj.us/prose/10153\\_deptyclerklawref.pdf](http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf).

MICHELLE M. SMITH  
Clerk of the Superior Court

DATED: June 2, 2020

Name of Defendant to Be Served: **Merchants Mutual Insurance Company**  
Address of Defendant to Be Served: **250 Main Street, Buffalo, New York 14202**

# Exhibit C

Status Report For: BENAMAX ICE LLC  
Report Date: 6/18/2020  
Confirmation Number: 201702036328

**IDENTIFICATION NUMBER, ENTITY TYPE AND STATUS INFORMATION**

Business ID Number: 0400719869  
Business Type: DOMESTIC LIMITED LIABILITY COMPANY  
Status: ACTIVE  
Original Filing Date: 01/28/2015  
Stock Amount: N/A  
Home Jurisdiction: NJ  
Status Change Date: NOT APPLICABLE

**REVOCATION/SUSPENSION INFORMATION**

DOR Suspension Start Date: N/A  
DOR Suspension End Date: N/A  
Tax Suspension Start Date: N/A  
Tax Suspension End Date: N/A

**ANNUAL REPORT INFORMATION**

Annual Report Month: JANUARY  
Last Annual Report Filed: 03/09/2019  
Year: 2019

**AGENT/SERVICE OF PROCESS (SOP) INFORMATION**

Agent: MICHAEL VIZZOCA  
Agent/SOP Address: 124 MAYFAIR LANE ,MT LAUREL,NJ,08054  
Address Status: DELIVERABLE  
Main Business Address: 124 MAYFAIR LANE, MT LAUREL, NJ, 08054  
Principal Business Address: N/A

**ASSOCIATED NAMES**

Associated Name: N/A  
Type: N/A

**PRINCIPALS**

Following are the most recently reported officers/directors (corporations), managers/members/managing members (LLCs), general partners (LPs), trustees/officers (non-profits).

Title: OTHER  
Name: MICHAEL VIZZOCA,  
Address: 124 MAYFAIR LANE, MT LAUREL, NJ, 08054

**FILING HISTORY -- CORPORATIONS, LIMITED LIABILITY COMPANIES, LIMITED PARTNERSHIPS AND LIMITED LIABILITY PARTNERSHIPS**

To order copies of any of the filings below, return to the service page, <https://www.njportal.com/DOR/businessrecords/Default.aspx> and follow the instructions for obtaining copies. Please note that trade names are filed initially with the County Clerk(s) and are not available through this service. Contact the Division for instructions on how to order Trade Mark documents.

Charter Documents for Corporations, LLCs, LPs and LLPs

Original Filing 2015  
(Certificate)Date:

Changes and Amendments to the Original Certificate:

Filing Type Year Filed  
N/A N/A

Note:

Copies of some of the charter documents above, particularly those filed before June 1988 and recently filed documents (filed less than 20 work days from the current date), may not be available for online download.

- For older filings, contact the Division for instructions on how to order.
- For recent filings, allow 20 work days from the estimated filing date, revisit the service center at <https://www.njportal.com/DOR/businessrecords/Default.aspx> periodically, search for the business again and build a current list of its filings. Repeat this procedure until the document shows on the list of documents available for download.

The Division cannot provide information on filing requests that are in process. Only officially filed documents are available for download.