

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

---

DELAWARE VALLEY PLUMBING SUPPLY, INC.

CIVIL ACTION NO.

Plaintiffs,

vs.

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

Defendants.

---

**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, Delaware Valley Plumbing Supply, Inc. (“Plaintiff”) commenced this lawsuit against Merchants in the Superior Court of New Jersey, Camden County, docket no. CAM-L-001866-20, by filing a Complaint on June 1, 2020 (the “Action”). *See* Ex. A.
2. This Action is an insurance coverage dispute. Plaintiff alleges that Merchants insured it pursuant to an Advantage Plus Businessowners Policy bearing policy no. BOPI041763 for the policy period of July 1, 2019 to July 1, 2020 (the “Policy”) and

covered Plaintiff's showrooms located at 476 Centennial Boulevard, Ste. 12, Voorhees, NJ 08043 (the "Vorhees Location") and 450 Henderson Road, Ste. A, King of Prussia, PA 19406 (the "King of Prussia Location") *See* Ex. A ¶¶ 7-13

3. Plaintiff alleges that Merchants incorrectly denied its claim for business interruption coverage due to the COVID-19 pandemic. *See* Ex. A, Counts I-IV.

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 June 1, 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 its Vorhees Showroom and King of Prussia

Showroom were shut down, and continuing to be shut down, due to the COVID-19 pandemic, and for continuing business income losses.

**DIVERSITY OF CITIZENSHIP**

8. According to Plaintiff's Complaint, Plaintiff is a corporation organized under the laws of New Jersey with a principle place of business located at 476 Centennial Boulevard, Ste. 14, Vorhees, NJ 08043. *See* Ex. A at ¶ 1.

9. Plaintiff's showrooms are located in Vorhees, NJ and King of Prussia, PA. *See* Ex. A at ¶ 7.

10. 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.

11. 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**

12. 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 no. CAM-L-001866-20 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 6, 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.: 17320.21518  
*Attorneys for Plaintiff*

**DELAWARE VALLEY PLUMBING  
SUPPLY INC.**

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, DELAWARE VALLEY PLUMBING SUPPLY INC. (“DVPS” or “Plaintiff”), having a place of business at 476 Centennial Blvd., Ste. 14 in the Township of Voorhees, County of Camden and State of New Jersey, through its undersigned counsel, by way of Complaint, avers the following:

**PARTIES**

1. Plaintiff, DVPS, is a corporation, lawfully registered to conduct business in the State of New Jersey, with a mailing address of 476 Centennial Blvd., Ste. 14, Voorhees, NJ 08043.
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. DVPS is a retail business with showrooms offering sales and design services relative to plumbing fixates for, including, but not limited to, kitchens, bathrooms, and utility rooms, for new construction and renovations.

7. DVPS has showrooms at the following locations:

- a. 476 Centennial Blvd., Ste. 12, Voorhees, NJ 08043 ("Voorhees Location");  
and
- b. 450 S. Henderson Rd., Ste. A., King of Prussia, PA 19406 ("King of Prussia Location").

8. DVPS purchased a Merchants Advantage Plus Businessowners Policy from Merchants Mutual bearing Policy No.: BOPI041763 (the "Policy").

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

10. The Policy is contained on form BP 04 98 01 10.

11. The Policy Period is from July 1, 2019 to July 1, 20120.
12. The Policy provides coverage for the Voorhees Location.
13. The Policy provides coverage for the King of Prussia Location.
14. The Policy provides coverage for "Action of Civil Authority."
15. The Policy provides coverage for "Business Income and Extra Expense."
16. 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.
17. On March 11, 2020, COVID-19 was declared to be a global pandemic by the World Health Organization.
18. On March 13, 2020, the President of the United States of America declared a national emergency as a result of COVID-19.
19. On March 19, 2020, the Governor of Pennsylvania, Tom Wolf, ordered the closure of all businesses that are not life sustaining.
20. 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 16 through 20 are collectively referred to as "Governmental Actions").
21. As a result of the above-referenced Governmental Actions, DVPS 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.
22. As a result of the Governmental Actions, DVPS was required to close its showrooms.
23. On May 8, 2020, DVPS submitted a claim for coverage to Merchants Mutual for the losses it suffered.



24. On May 11, 2020, Merchants Mutual denied DVPS's claim for coverage.

**COUNT I – BREACH OF CONTRACT – VOORHEES LOCATION**

25. Plaintiff hereby incorporates by reference paragraphs 1 through 24 above as if set forth in full.

26. The Policy is an enforceable contract between DVPS and Merchants Mutual.

27. The Policy provides "Action of Civil Authority" coverage for the Voorhees Location.

28. The Policy provides coverage for "Business Income and Extra Expense" coverage for the Voorhees Location.

29. DVPS suffered an insured loss at the Voorhees Location.

30. Defendant's refusal to provide coverage for losses suffered at the Voorhees Location 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.) -  
VOORHEES LOCATION**

31. Plaintiff hereby incorporates by reference paragraphs 1 through 30 above as if set forth in full herein.

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

33. Plaintiff's losses at the Voorhees Location continue to accrue as of the filing of this complaint as a result of the Governmental Actions.

34. Defendant's May 11, 2020 disclaimer letter precludes coverage for both past, present, and future losses at the Voorhees Location.

35. 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 at the Voorhees Location 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 at the Voorhees Location as a result of the Governmental Actions.

**COUNT III – BREACH OF CONTRACT – KING OF PRUSSIA LOCATION**

36. Plaintiff hereby incorporates by reference paragraphs 1 through 35 above as if set forth in full.

37. The Policy is an enforceable contract between DVPS and Merchants Mutual.

38. The Policy provides “Action of Civil Authority” coverage for the King of Prussia Location.

39. The Policy provides coverage for “Business Income and Extra Expense” coverage for the King of Prussia Location.

40. DVPS suffered an insured loss at the King of Prussia Location.

41. Defendant's refusal to provide coverage for losses suffered at the King of Prussia Location 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.) –  
KING OF PRUSSIA LOCATION**

42. Plaintiff hereby incorporates by reference paragraphs 1 through 41 above as if set forth in full herein.

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

44. Plaintiff's losses at the King Of Prussia Location continue to accrue as of the filing of this complaint as a result of the Governmental Actions.

45. Defendant's May 11, 2020 disclaimer letter precludes coverage for both past, present, and future losses at the King of Prussia Location.

46. 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:

- c. Declaring that Plaintiff's losses at the King of Prussia Location as a result of the Governmental Actions are insured losses under the Policy; and  
Declaring that Defendant is obligated to pay the full amount of losses incurred at the King of Prussia Location as a result of the Governmental Actions.

**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: June 1, 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 DELAWARE VALLEY PLUMBING SUPPLY INC. 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: June 1, 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: June 1, 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: June 1, 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*

---

By: Robert W. Williams, Esq.

*/s/ Ashley S. Nechemia*

---

By: Ashley S. Nechemia, Esq.

Dated: June 1, 2020

## Civil Case Information Statement

**Case Details: CAMDEN | Civil Part Docket# L-001866-20**

**Case Caption:** DELAWARE VALLEY PLUM BING SUPP  
VS MERCHANTS MUTU

**Case Initiation Date:** 06/01/2020

**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 : Delaware Valley Plumbing  
Suppl

**Name of Defendant's Primary Insurance Company**  
(if known): None

**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:** Delaware Valley Plumbing  
Suppl? 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)*

06/01/2020

Dated

/s/ ASHLEY S NECHEMIA

Signed



CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE