

Exhibit

A

SUMMONS

Attorney(s) MAGGS & McDERMOTT, LLC
Office Address 3349 HIGHWAY 138, BLDG C, STE D
Town, State, Zip Code WALL, NJ 07719

Telephone Number 732 223 9870
Attorney(s) for Plaintiff _____
GARMANY OF RED BANK, INC.

**Superior Court of
New Jersey**

Monmouth County
LAW Division

Docket No: MON-L-1628-20

Plaintiff(s)

vs.

HARLEYSVILLE INSURANCE
COMPANY, et al
Defendant(s)


**CIVIL ACTION
SUMMONS**

From The State of New Jersey To The Defendant(s) Named Above:

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 35 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.njcourts.gov/forms/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 \$175.00 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 35 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.njcourts.gov/forms/10153_deptyclerklawref.pdf.


Clerk of the Superior Court

DATED: 05/29/2020

Name of Defendant to Be Served: HARLEYSVILLE INSURANCE COMPANY, c/o NJ Dept. of Banking

Address of Defendant to Be Served: & Ins., PO Box 325, Trenton, New Jersey 08625

**Directory of Superior Court Deputy Clerk's Offices
County Lawyer Referral and Legal Services Offices**

ATLANTIC COUNTY:

Deputy Clerk of the Superior Court
Civil Division, Direct Filing
1201 Bacharach Blvd., First Fl.
Atlantic City, NJ 08401

LAWYER REFERRAL
(609) 345-3444
LEGAL SERVICES
(609) 348-4200

BERGEN COUNTY:

Deputy Clerk of the Superior Court
Civil Division, Room 115
Justice Center, 10 Main St.
Hackensack, NJ 07601

LAWYER REFERRAL
(201) 488-0044
LEGAL SERVICES
(201) 487-2166

BURLINGTON COUNTY:

Deputy Clerk of the Superior Court
Central Processing Office
Attn: Judicial Intake
First Fl., Courts Facility
49 Rancocas Rd.
Mt. Holly, NJ 08060

LAWYER REFERRAL
(609) 261-4862
LEGAL SERVICES
(609) 261-1088

CAMDEN COUNTY:

Deputy Clerk of the Superior Court
Civil Processing Office
Hall of Justice
1st Fl., Suite 150
101 South 5th Street
Camden, NJ 08103

LAWYER REFERRAL
(856) 482-0618
LEGAL SERVICES
(856) 964-2010

CAPE MAY COUNTY:

Deputy Clerk of the Superior Court
9 N. Main Street
Cape May Court House, NJ 08210

LAWYER REFERRAL
(609) 463-0313
LEGAL SERVICES
(609) 465-3001

CUMBERLAND COUNTY:

Deputy Clerk of the Superior Court
Civil Case Management Office
60 West Broad Street
P.O. Box 10
Bridgeton, NJ 08302

LAWYER REFERRAL
(856) 696-5550
LEGAL SERVICES
(856) 691-0494

ESSEX COUNTY:

Deputy Clerk of the Superior Court
Civil Customer Service
Hall of Records, Room 201
465 Dr. Martin Luther King Jr. Blvd.
Newark, NJ 07102

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(973) 622-6204
LEGAL SERVICES
(973) 624-4500

GLOUCESTER COUNTY:

Deputy Clerk of the Superior Court
Civil Case Management Office
Attn: Intake
First Fl., Court House
1 North Broad Street
Woodbury, NJ 08096

LAWYER REFERRAL
(856) 848-4589
LEGAL SERVICES
(856) 848-5360

HUDSON COUNTY:

Deputy Clerk of the Superior Court
Superior Court, Civil Records Dept.
Brennan Court House--1st Floor
583 Newark Ave.
Jersey City, NJ 07306

LAWYER REFERRAL
(201) 798-2727
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(201) 792-6363

HUNTERDON COUNTY:

Deputy Clerk of the Superior Court
Civil Division
65 Park Avenue
Flemington, NJ 08822

LAWYER REFERRAL
(908) 236-6109
LEGAL SERVICES
(908) 782-7979

MERCER COUNTY:

Deputy Clerk of the Superior Court
Local Filing Office, Courthouse
175 S. Broad Street, P.O. Box 8068
Trenton, NJ 08650

LAWYER REFERRAL
(609) 585-6200
LEGAL SERVICES
(609) 695-6249

MIDDLESEX COUNTY:

Deputy Clerk of the Superior Court,
Middlesex Vicinage
2nd Floor - Tower
56 Paterson Street, P.O. Box 2633
New Brunswick, NJ 08903-2633

LAWYER REFERRAL
(732) 828-0053
LEGAL SERVICES
(732) 249-7600

MONMOUTH COUNTY:

Deputy Clerk of the Superior Court
Court House
P.O. Box 1269
Freehold, NJ 07728-1269

LAWYER REFERRAL
(732) 431-5544
LEGAL SERVICES
(732) 866-0020

MORRIS COUNTY:

Morris County Courthouse
Civil Division
Washington and Court Streets
P. O. Box 910
Morristown, NJ 07963-0910

LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 285-6911

OCEAN COUNTY:

Deputy Clerk of the Superior Court
118 Washington Street, Room 121
P.O. Box 2191
Toms River, NJ 08754-2191

LAWYER REFERRAL
(732) 240-3666
LEGAL SERVICES
(732) 341-2727

PASSAIC COUNTY:

Deputy Clerk of the Superior Court
Civil Division
Court House
77 Hamilton Street
Paterson, NJ 07505

LAWYER REFERRAL
(973) 278-9223
LEGAL SERVICES
(973) 523-2900

SALEM COUNTY:

Deputy Clerk of the Superior Court
Attn: Civil Case Management Office
92 Market Street
Salem, NJ 08079

LAWYER REFERRAL
(856) 935-5629
LEGAL SERVICES
(856) 691-0494

SOMERSET COUNTY:

Deputy Clerk of the Superior Court
Civil Division
P.O. Box 3000
40 North Bridge Street
Somerville, N.J. 08876

LAWYER REFERRAL
(908) 685-2323
LEGAL SERVICES
(908) 231-0840

SUSSEX COUNTY:

Deputy Clerk of the Superior Court
Sussex County Judicial Center
43-47 High Street
Newton, NJ 07860

LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 383-7400

UNION COUNTY:

Deputy Clerk of the Superior Court
1st Fl., Court House
2 Broad Street
Elizabeth, NJ 07207-6073

LAWYER REFERRAL
(908) 353-4715
LEGAL SERVICES
(908) 354-4340

WARREN COUNTY:

Deputy Clerk of the Superior Court
Civil Division Office
Court House
413 Second Street
Belvidere, NJ 07823-1500

LAWYER REFERRAL
(908) 859-4300
LEGAL SERVICES
(908) 475-2010

James A. Maggs, Esq. (039841991)
Michael M. DiCicco Esq. (016511983)
MAGGS McDERMOTT & DiCICCO, LLC
Allaire Corporate Center
3349 Highway 138, Building C, Suite D
Wall, New Jersey 07719
Phone: (732) 223-9870
Fax: (732) 223-7367
Attorneys for Plaintiff, Garmany of Red Bank, Inc.
Our File No. 5512.0001

<p>GARMANY OF RED BANK, INC.,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>HARLEYSVILLE INSURANCE COMPANY and NATIONWIDE MUTUAL INSURANCE COMPANY,</p> <p style="text-align: center;">Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION – MONMOUTH COUNTY</p> <p>DOCKET NO. MON-L</p> <p style="text-align: center;"><i>CIVIL ACTION</i></p> <p style="text-align: center;">COMPLAINT FOR DECLARATORY RELIEF</p>
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Plaintiff, Garmany of Red Bank, Inc. (“Garmany”) by way of Complaint against Harleysville Insurance Company and Nationwide Mutual Insurance Company, hereby says:

INTRODUCTION

1. This is an action for declaratory relief, pursuant to N.J.S.A. 2A:16-50 to -62, for the purposes of determining insurance coverage for Plaintiff Garmany under a comprehensive general liability policy issued by Defendants.

2. Garmany seeks such a declaration under the policy as set forth hereinafter to recover lost business income and expenses resulting from the order of civil authority to address the global pandemic of Coronavirus disease 2019 (“COVID-19”).

PARTIES

3. Garmany, located at 121 Broad Street, Red Bank, New Jersey, Monmouth County, is an upscale men and women’s clothing store authorized to do business and is doing business in

New Jersey. Garmany is regarded as one of the top 10 independent retail establishments in the country.

4. At all relevant times, Defendants Harleysville Insurance Company and Nationwide Mutual Insurance Company (collectively, “Harleysville”) are corporations licensed and authorized to do business and are doing business in New Jersey and maintain their principal place of business at 355 Maple Avenue, Harleysville, Pennsylvania.

5. Harleysville issued the comprehensive general liability insurance policy to Garmany in Monmouth County, New Jersey. That policy forms the basis of the claims made in this action.

JURISDICTION AND VENUE

6. The Court has jurisdiction over Harleysville because Harleysville is licensed and authorized to and is doing business in New Jersey and provides insurance services and/or coverage for property and persons located in New Jersey. Harleysville issues insurance policies in New Jersey including the policy at issue herein.

7. Venue is proper in Monmouth County, pursuant to New Jersey Court Rules 4:3-2(a)(2) and 4:3-2(b), because the cause of action arose in Monmouth County and because Garmany is based in and resides in Monmouth County.

FACTUAL BACKGROUND

8. Garmany and Harleysville entered into a contract of insurance whereby in exchange for the payment of premiums by Garmany, Harleysville promised to indemnify Garmany for losses under coverages known as Earnings, Extra Expense, and Interruption by Civil Authority at the insured premises known as 117-121 Broad Street, Red Bank, New Jersey (the “Insured Premises”).

9. The contract of insurance is memorialized by General Liability Policy Number MPA00000050730B with a policy period of April 28, 2019 through April 28, 2020. (the “Policy”).

10. Garmany has paid all premiums due and continues to pay all premiums under the Policy.

11. The Policy is currently in full force and effect and provides various coverages to Garmany including Earnings, Extra Expense, and Interruption by Civil Authority.

12. Under the Earnings coverage, Harleysville is obligated to pay Garmany for actual loss of net income and continuing operating expenses sustained during an interruption of business operations which interruption is caused by direct physical loss of or damage at the Insured Premises as a result of a covered peril.

13. Under the Extra Expense coverage, Harleysville is obligated to pay Garmany for necessary expenses incurred during the restoration period that result from physical loss or damage to the Insured Premises.

14. Under the Interruption by Civil Authority coverage, Harleysville is obligated to pay Garmany for loss of Earnings and Extra Expense sustained while access to the Insured Premises is denied by an order of civil authority as a result of direct physical loss of or damage to property other than to the Insured Premises that is caused by a covered peril.

15. The Policy covers all losses under the aforementioned coverages unless a valid exclusion to the coverage and loss is contained in the Policy.

16. COVID-19 is a highly contagious respiratory illness caused by a virus which spreads from person to person by droplets produced when an infected person coughs or sneezes and from contact with surfaces where those droplets have landed.

17. In response to the COVID-19 pandemic, on March 9, 2020, Governor Philip D. Murphy, in his official capacity as of Governor of New Jersey, issued Executive Order No. 103 declaring a Public Health Emergency and State of Emergency in New Jersey.

18. In response to the COVID-19 pandemic, on March 21, 2020, Governor Philip D. Murphy, in his official capacity as Governor of New Jersey, issued Executive Order No. 107 which among other things, required all non-essential retail businesses to close to the public.

19. Executive Order 103 and Executive Order 107 are hereinafter collectively referred to as the “Executive Orders.”

20. As a result of the Executive Orders, access of the public to the Insured Premises for purposes of shopping has been shut down.

21. Although the virus is not physically present at the Insured Premises, the virus is physically impacting public and private property and causing physical loss and damage elsewhere resulting in issuance of the Executive Orders and triggering coverage under Interruption by Civil Authority. Any effort by Harleysville to deny the physical impact and physical loss and damage to property constitutes a false and potentially fraudulent misrepresentation that could endanger policyholders and the public.

22. On or about April 21, 2020, Garmany provided Harleysville with notice of a claim for Earnings and Extra Expense coverage under the Policy.

23. On April 29, 2020, Harleysville denied Garmany’s claim.

24. Harleysville denied coverage based on its assertion that: (a) there was no direct physical loss or damage to covered property at an insured premises; (b) the suspension of operations was not caused by direct physical loss or damage to property other than an insured premises; and (c) COVID-19 is not a covered cause of loss per the Virus Exclusion.

25. The Policy contains an exclusion for losses under coverages for Earnings, Extra Expense, and Interruption by Civil Authority caused by, resulting from, or relating to any virus. Harleysville may assert other exclusions to the aforementioned coverages (collectively, the “Virus Exclusion”).

26. Upon information and belief, Harleysville proffered the Virus Exclusion to the New Jersey Department of Banking and Insurance (“the Department”) as a clarification to policy intent. Upon information and belief, Harleysville represented that the endorsement clarifies that losses caused by, resulting from, or relating to any virus is excluded.

27. However, rather than simply clarifying policy intent, Harleysville added the Virus Exclusion to eliminate virus-caused property-damage coverage without advising the Department that there was such a sweeping change in coverage or that rates should be reduced as a result of the proffered exclusion.

28. Those omissions and representations by Harleysville were knowingly false, or recklessly or negligently made and had the effect of misleading the Department to the detriment of all insureds of Harleysville including Garmany.

29. As a result of Harleysville’s conduct, the Virus Exclusion in the Policy is void and unenforceable.

30. The Virus Exclusion is of no force and effect with respect to the Policy because it violates United States public policy as referenced in H.R. 6494 introduced on April 14, 2020 and New Jersey public policy as referenced in New Jersey Assembly Bill No. 3844 introduced on March 16, 2020 (“New Jersey Assembly Bill”).

31. H.R. 6494, entitled the “Business Interruption Insurance Coverage Act of 2020,” provides in pertinent part:

SEC. 2. BUSINESS INTERRUPTION COVERAGE REQUIREMENTS.

Effective upon the date of the enactment of this Act, each insurer that offers or makes available business interruption insurance coverage—

(1) shall make available, in all of its policies providing business interruption insurance, coverage for losses resulting from—

(A) any viral pandemic;

(B) any forced closure of businesses, or mandatory evacuation, by law or order of any government or governmental officer or agency, including the Federal Government and State and local governments; or

(C) any power shut-off conducted for public safety purposes; and

(2) shall make available business interruption insurance coverage for losses specified in paragraph (1) that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than those specified in paragraph (1).

...

(a) General Nullification.—Any exclusion in a contract for business interruption insurance that is in force on the date of the enactment of this Act shall be void to the extent that it excludes losses specified in section 2(1).

(b) General Preemption.—Any State approval of any exclusion of losses from a contract for business interruption insurance that is in force on the date of the enactment of this Act shall be void to the extent that it excludes losses specified in section 2(1).

32. New Jersey Assembly Bill provides in pertinent part:

Notwithstanding the provisions of any other law, rule or regulation to the contrary, every policy of insurance insuring against loss or damage to property, which includes the loss of use and occupancy and business interruption in force in this State on the effective date of this act, shall be construed to include among the covered perils under that policy coverage for business interruption due to global virus transmission or pandemic, as provided in the Public Health Emergency and State of Emergency declared by the Governor in Executive Order 103 of 2020 concerning the coronavirus disease 2019 pandemic.

33. The Virus Exclusion is not applicable to coverage sought by Garmany based on the nature and cause of the loss suffered by Garmany and limitation of the exclusion.

FIRST COUNT

(Declaratory Judgement Under The Policy)

34. Garmany repeats the allegations set forth in Paragraphs 1-33 as if set forth at length herein.

35. Garmany seeks a Declaratory Judgment that the aforementioned coverages provided under the Policy are applicable to indemnify it for the losses and damage suffered by Garmany as a result of the shutdown caused by the issuance of the Executive Orders.

36. As a result of the issuance of the Executive Orders and the resulting shutdown, the aforementioned coverages have been triggered.

37. As a result of the issuance of the Executive Orders, Garmany has suffered losses and damages subject to indemnity by Harleystown under the Policy.

38. An actual case of controversy exists between Garmany and Harleystown as to the rights of Garmany and the duties and obligations of Harleystown under the Policy.

39. Garmany contends that under the Policy: (a) the Executive Orders trigger coverage because they prohibit access to the Insured Premises; (b) the shutdown resulting from the Executive Orders constitute an interruption of business operations; (c) the Virus Exclusion is void and unenforceable as violative of New Jersey public policy; and (d) coverage is provided to Garmany for any current and future losses or damage including Earnings and Extra Expense caused by the Executive Orders and any future civil authority orders resulting in a shutdown.

40. Harleystown disagrees and objects to the aforementioned contentions by Garmany.

41. Garmany expressly does not seek a determination of whether the COVID-19 is physically present in the Insured Premises or the amount of damages suffered.

42. Pursuant to the New Jersey Declaratory Judgment Act, Garmany is entitled to a declaration by the Court of its rights and the duties and obligations of Harleystown under the Policy as set forth herein.

WHEREFORE, Garmany demands judgment in its favor and against Harleystown as follows:

- (a) declaring that the Executive Orders trigger coverage under the Policy because it prohibits access to the Insured Premises;
- (b) declaring that the shutdown resulting from the Executive Orders constitute an interruption of business operations under the Policy;
- (c) declaring that the Virus Exclusion is void and unenforceable as violative of New Jersey public policy;
- (d) declaring that coverage is provided to Garmany for any current and future losses or damage including Earnings and Extra Expense caused by the Executive Orders and any future civil authority orders resulting in a shutdown;
- (e) awarding attorney's fees and costs of suits; and
- (f) awarding such other relief as the Court deems just and proper.

MAGGS McDERMOTT & DiCICCO, LLC
*Attorneys for Plaintiff, Garmany of Red
Bank, Inc.*

By: /s James A. Maggs
JAMES A. MAGGS, ESQ.

/s Michael M. DiCicco
MICHAEL M. DiCICCO, ESQ.

Dated: May 27, 2020

CERTIFICATION

Pursuant to Rule 4:5-1, I certify that the matter in controversy is not the subject of any other action pending in any court or pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated. I am aware of my continuing obligation to amend this Certification if circumstances change. I certify that the forgoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s Michael M. DiCicco
MICHAEL M. DiCICCO, ESQ.

Dated: May 27, 2020