

MITCHELL SANDLER LLC
Andrew L Sandler, Esq., I.D. # 40142
Stephen M. LeBlanc, Esq. (*pro hac vice*
forthcoming)
Rebecca Guiterman, Esq. (*pro hac vice*
forthcoming)
1120 20th Street NW, Suite 725
Washington, DC 20036
Telephone: (202) 886-5260

McKool Smith, P.C.
Robin Cohen, Esq. (*pro hac vice* forthcoming)
John Briody, Esq. (*pro hac vice* forthcoming)
One Manhattan West
395 9th Avenue, 50th Floor
New York, NY 10001
Telephone: (212) 402-9400
Facsimile: (212) 402-9444

Patrick Pijls, Esq. (*pro hac vice* forthcoming)
300 Crescent Court, Suite 1500
Dallas, TX 75201
Telephone: (214) 978-4000
Facsimile: (214) 978-4044

Attorneys for Plaintiffs

**Nostalgic Partners LLC d/b/a Staten Island
Yankees**

75 Richmond Terrace
Staten Island, NY 10301-1950

and

Greenville Drive LLC

935 South Main Street, Suite 202
Greenville, SC 29601-3345

and

**7th Inning Stretch LP d/b/a Delmarva
Shorebirds**

P.O. Box 1557
Salisbury, MD 21802-1557

Plaintiffs,

v.

Philadelphia Indemnity Insurance Co.

One Bala Plaza, Suite 100
Bala Cynwyd, PA 19004

Defendant.

PHILADELPHIA COUNTY
COURT OF COMMON PLEAS

COMMERCE COURT

JULY TERM, 2020

JURY TRIAL DEMANDED

No: _____

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 without further notice for any money claimed in the 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 at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

**Philadelphia Bar Association
Lawyer Referral
and Information Service
One Reading Center
Philadelphia, Pennsylvania 19107
(215) 238-6333
TTY (215) 451-6197**

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 ascntar 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 notificacion. Ademas, 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 u 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.

**Asociacion De Licenciados
De Filadelfia
Servicio De Referencia E
Informacion Legal
One Reading Center
Filadelfia, Pennsylvania 19107**

MITCHELL SANDLER LLC

Andrew L Sandler, Esq., I.D. # 40142
Stephen M. LeBlanc, Esq. (*pro hac vice*
forthcoming)
Rebecca Guiterman, Esq. (*pro hac vice*
forthcoming)
1120 20th Street NW, Suite 725
Washington, DC 20036
Telephone: (202) 886-5260

McKool Smith, P.C.

Robin Cohen, Esq. (*pro hac vice* forthcoming)
John Briody, Esq. (*pro hac vice* forthcoming)
One Manhattan West
395 9th Avenue, 50th Floor
New York, NY 10001
Telephone: (212) 402-9400
Facsimile: (212) 402-9444

Patrick Pijls, Esq. (*pro hac vice* forthcoming)
300 Crescent Court, Suite 1500
Dallas, TX 75201
Telephone: (214) 978-4000
Facsimile: (214) 978-4044

Attorneys for Plaintiffs

Nostalgic Partners LLC d/b/a Staten Island

Yankees
75 Richmond Terrace
Staten Island, NY 10301-1950

and

Greenville Drive LLC

935 South Main Street, Suite 202
Greenville, SC 29601-3345

and

**7th Inning Stretch LP d/b/a Delmarva
Shorebirds**

P.O. Box 1557
Salisbury, MD 21802-1557

Plaintiffs,

v.

Philadelphia Indemnity Insurance Co.

One Bala Plaza, Suite 100
Bala Cynwyd, PA 19004

Defendant.

PHILADELPHIA COUNTY
COURT OF COMMON PLEAS

COMMERCE COURT

JULY TERM, 2020

JURY TRIAL DEMANDED

No: _____

PLAINTIFFS' ORIGINAL COMPLAINT

Plaintiffs Nostalgic Partners LLC d/b/a Staten Island Yankees, Greenville Drive LLC and 7th Inning Stretch LP d/b/a Delmarva Shorebirds (the “Teams”), by and through their undersigned attorneys, as and for their Complaint against Defendant Philadelphia Indemnity Insurance Co., allege as follows:

INTRODUCTION

1. In 2019, for the 15th straight year, more than 40,000,000 fans attended games played by 160 Minor League Baseball (“MiLB”) teams located in smaller cities and communities throughout the United States. An excursion to the minor league ballpark has been a low-cost American family tradition for more than 100 years. This is the first year in that entire period of time—through prior pandemics, two world wars, and many other global and national crises—that those magic words, “Play Ball,” will not be heard in any of the ballparks around the country in which minor league baseball is played.

2. There are several causes of the first-ever cessation of Minor League Baseball in 2020. These include continuing concerns for the health and safety of players, employees, and fans related to the SARS-CoV-2 virus; action and inaction by federal and state governments related to controlling the spread of the virus; and the decision by Major League Baseball (“MLB”) that its teams will not meet their contractual obligations to provide players under contract to their affiliated minor league teams.

3. The result of the cancellation of much or all of the MiLB season is catastrophic financial losses for all minor league teams, including the Plaintiff Teams.

4. The operating model for MiLB teams is entirely dependent on receiving players, coaches, and other team personnel from the MLB team with which they have an affiliation

agreement requiring that MLB team to provide players and other personnel. It is also dependent on being permitted by federal, state, and local governments to allow the admission of the thousands of fans who flock to every minor league game to enjoy a ball game, partake in the entertainment and food and beverage amenities associated with the minor league baseball experience, and purchase baseball caps and other merchandise sold in the ballpark. Though some MiLB teams have limited revenue from advertising and sponsorships, this revenue is largely tied to the number of fans the team can attract to the ballpark in a given year.

5. The vast majority of MiLB teams' operating expenses, by contrast, bears little relationship to whether the teams are able to bring fans to the ballpark for ball games. The largest expense for many teams is the lease they pay to the municipal owners of the ballpark in which they play games. Most teams are responsible for a fixed lease payment of as much as one million dollars or more. In addition, MiLB teams generally have permanent employees needed to operate the team over an annual business cycle. The teams also have incurred many 2020 expenses related to marketing and advertising and the purchase and stocking of merchandise and food and beverage in preparation for the 2020 baseball season. Thus, on average, MiLB teams incur more than \$2,000,000 in expenses to operate their teams without regard to whether they suffer interruption of their operations.

6. Because of this business model, which requires variable revenue tied to game attendance but significant fixed operating expenses, and the fact that most MiLB team owners are small business owners or family businesses rooted in the community in which they own a team, the teams have little prospect for economic survival if the operation of their businesses is interrupted for any significant period of time within a season. These dire economic consequences are worsened by the obligation many teams will have to refund ticket, event, advertising, and

sponsorship revenue received in expectation that a full season of minor league baseball would be played in 2020.

7. Given the business model for MiLB as described above, prudent owners of MiLB teams, including the Plaintiff Teams, purchased business-interruption insurance from their insurers and paid significant premiums to protect themselves from business interruption, including the cancellation of games. The Teams each purchased nearly identical insurance policies providing such coverage from Defendant Philadelphia Indemnity Insurance Co. These “all risks” policies cover the MiLB teams for business interruption in circumstances where, as here, there has been direct physical loss or damage, including, but not limited to loss of use, to the teams’ ballparks or elsewhere caused by the SARS-CoV-2 virus, the governmental response to it, or the MiLB teams’ inability to obtain players. As described in detail below, however, Defendant Philadelphia Indemnity Insurance Co. has failed to meet its obligations to the Plaintiff Teams, thereby placing the Teams in serious risk of economic failure and jeopardizing the future of America’s Pastime as we know it.

8. The Teams thus bring this action against Philadelphia Indemnity Insurance Co. for breach of contract and a declaratory judgement that they are entitled to the full amount of coverage for which they paid premiums and of which they badly need.

THE PARTIES

9. Nostalgic Partners LLC d/b/a Staten Island Yankees (“Staten Island Yankees”)¹ is a limited liability company that owns and/or operates a minor league baseball team in Staten Island, New York. During the applicable period of loss, the Staten Island Yankees were insured by Philadelphia Indemnity Insurance Co. under Policy No. PHPK2043111.

¹ Each Plaintiff owns and/or operates a minor league baseball team and is referred to herein by the name of that team.

10. Plaintiff Greenville Drive LLC (“Greenville Drive”) is a limited liability company that owns and/or operates a minor league baseball team in Greenville, South Carolina. During the applicable period of loss, the Greenville Drive were insured by Philadelphia Indemnity Insurance Co. under Policy No. PHPK2079457.

11. Plaintiff 7th Inning Stretch LP d/b/a Delmarva Shorebirds (“Delmarva Shorebirds”) is a limited partnership that owns and/or operates a minor league baseball team in Salisbury, Maryland. During the applicable period of loss, the Delmarva Shorebirds were insured by Philadelphia Indemnity Insurance Co. under Policy No. PHPK2113479.

12. Defendant Philadelphia Indemnity Insurance Co. (“Philadelphia”) is a corporation organized under the laws of Pennsylvania with its principal place of business in Pennsylvania.

JURISDICTION AND VENUE

13. The Court has subject-matter jurisdiction over this action under 42 Pa.C.S.A. § 931(a) and has general personal jurisdiction pursuant to 42 Pa.C.S.A. § 5301 because Defendant Philadelphia Indemnity Insurance Co. is incorporated under the laws of Pennsylvania and maintains its principal place of business therein.

14. The Court is a proper venue for this action under Pennsylvania Rule of Civil Procedure 2179(b) because Defendant regularly conducts business in Philadelphia County.

15. The action is properly before the Commerce Court because the case involves insurance coverage disputes arising from commercial insurance policies among business enterprises.

FACTUAL ALLEGATIONS

I. THE NATURE OF THE COVID-19 PANDEMIC

16. COVID-19 is an infectious disease caused by a recently discovered novel coronavirus, formally known as SARS-CoV-2. The first instances of the disease spreading to humans were diagnosed in China in or around December 2019, and the first reported case in the United States was in January 2020.

17. The impact of the virus and the resulting pandemic on life and property has been staggering. Though testing has been severely limited, as of the filing date of this Complaint, more than 2,500,000 Americans have had confirmed cases of COVID-19, and more than 125,000 have died from it.

18. The virus is easily transmitted from person to person and from surface to person. According to the World Health Organization (the “WHO”), the virus can spread from person to person through small droplets from the nose or mouth that are spread when a person with COVID-19 coughs or exhales. These droplets land on objects and surfaces around the person. Other people then catch the virus by touching these objects or surfaces, then touching their eyes, noses, or mouths. People can also catch the virus if they breathe in droplets from a person infected with the virus who coughs or exhales droplets.²

19. Infected individuals can be completely asymptomatic—and thus unaware that they may be spreading the virus through the mere touching of objects and surfaces. Indeed, studies have estimated that more than 40% of infected individuals may never develop any

² *Q&A on Coronaviruses (COVID-19)*, World Health Organization (April 17, 2020), <https://www.who.int/news-room/q-a-detail/q-acoronaviruses>.

symptoms.³ But even individuals who appear healthy and present no identifiable symptoms of the disease might still spread the virus by breathing, speaking, or touching objects and surfaces.

20. According to a report in *The New York Times*, “[a]n infected person talking for five minutes in a poorly ventilated space can also produce as many viral droplets as one infectious cough.”⁴ And one human sneeze can expel droplets that can travel up to 27 feet at nearly a hundred miles an hour.⁵

21. Although these droplets are smaller than mold, rust, or paint chips, they are physical objects that travel and attach to other surfaces and cause harm.

22. Current evidence suggests that SARS-CoV-2 may remain viable for hours to days on surfaces made from a variety of materials.⁶ The virus can survive and remain virulent on stainless steel and plastic for 3 to 6 days, on glass and banknotes for 3 days, and on wood and cloth for 24 hours.⁷ Testing of similar viruses suggests that SARS-CoV-2 can survive on ceramics, silicon, and paper for at least 5 days. And the Centers for Disease Control (the “CDC”) confirmed that the virus was identified on surfaces of the *Diamond Princess* cruise ship a full 17 days after the cabins were vacated.⁸

³ Erika Edwards, *Asymptomatic COVID-19 Cases May Be More Common Than Suspected* (May 27, 2020, 12:43 PM), <https://www.nbcnews.com/health/health-news/asymptomatic-covid-19-cases-may-be-more-common-suspected-n1215481>.

⁴ See Yuliya Pashina-Kottas, et al., *This 3-D Simulation Shows Why Social Distancing Is So Important*, *The New York Times* (April 21, 2020), available at <https://www.nytimes.com/interactive/2020/04/14/science/coronavirus-transmission-cough-6-feet-ar-ul.html> (last visited June 12, 2020).

⁵ Sarah Gibbens, “See how a sneeze can launch germs much farther than 6 feet,” *National Geographic* (April 17, 2020), available at www.nationalgeographic.com/science/2020/04/coronavirus-covid-sneeze-fluid-dynamics-in-photos/ (last visited June 12, 2020).

⁶ *Cleaning and Disinfection for Community Facilities*, Centers for Disease Control and Prevention (May 27, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>.

⁷ Letter from Neeltje van Doremalen et al. to N. Eng. Journal of Med. (April 16, 2020), available at <https://www.nejm.org/doi/pdf/10.1056/NEJMc2004973>.

⁸ *Public Health Responses to COVID-19 Outbreaks on Cruise Ships—Worldwide, February–March 2020*, Centers for Disease Control and Prevention (March 27, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm>.

23. Without a vaccine to protect against COVID-19, effective control of the pandemic relies on measures designed to reduce human-to-human and surface-to-human exposure. The CDC have stated that the virus can spread when people are within 6 feet of each other or when a person comes in contact with a surface or object that has the virus on it.

24. The nature of the virus has caused authorities to issue stay-in-place orders to protect persons and property. Indeed, authorities in each of the Teams' respective states have issued such orders, and many such orders observe the virus's threat to property.

25. For these reasons, it is statistically certain that the virus is present at the Teams' ballparks and nearby properties or that the threat of the virus's presence at the ballparks is imminent. Moreover, the ballparks are incapable of their intended function—serving as a venue for ball games attended by fans.

26. The nature of the virus, and the social distancing required to mitigate its spread, have contributed to cancellations of the Teams' MiLB games.

II. GOVERNMENTS' RESPONSES TO THE PANDEMIC

27. On December 31, 2019, the Chinese government notified the WHO of a “pneumonia of unknown cause” discovered in China's Wuhan province. On January 3, 2020, the U.S. federal government received its first formal notification of the outbreak in China. The United States reported its first COVID-19 case on January 20, and on January 30, the WHO declared the COVID-19 pandemic a “Public Health Emergency of International Concern.” Yet in the first few months of 2020, the federal government failed to recognize the severity of the pandemic and did not contain the virus.

28. By the beginning of February, 11,000,000 people in China's Wuhan province were under quarantine, and the extent of human-to-human transmission was clear. Aside from limiting travel from Wuhan, however, the U.S. federal government took little action. Even

though funding and medical equipment were being depleted by the day, the U.S. federal government did not authorize new funds or require the production of testing kits, ventilators, or personal protective equipment for healthcare workers.

29. In February, the virus spread throughout the United States largely undetected. Though the CDC began shipping testing kits to laboratories on February 5, the kits were later determined to be flawed, rendering the test unreliable. By February 26, the CDC were still testing fewer than 100 patients daily, notwithstanding that the CDC were telling state and local officials that their testing capacity was more than adequate to meet current testing demands.

30. On March 13, 2020, the U.S. federal government declared a national emergency. Three days later, the CDC and members of the national Coronavirus Task Force issued public guidance, styled as “30 Days to Slow the Spread,” that advocated for the first time far-reaching social-distancing measures, such as working from home; avoiding shopping trips and gatherings of more than 10 people; and staying away from bars, restaurants, and food courts.

31. The failure of the federal government to build an effective wall preventing the continued migration of the virus from states that were hit early to the rest of the country meant that states took the lead in combating the virus’s spread. State after state imposed sweeping restrictions on citizens’ daily lives to protect them and stop the spread. Most states restricted or prohibited the operation of non-essential businesses, prohibited public gatherings, or required individuals to stay at home except for essential purposes.

32. According to a Columbia University study, if the government had imposed social-distancing measures just one week earlier—on March 8 instead of March 15—the United States would have avoided 703,975 confirmed cases (62%) and 35,927 reported deaths (55%) as of

May 3.⁹ And if social distancing and lockdowns had begun just two weeks earlier—on March 1—the country would have seen a reduction of 960,937 (84%) cases and 53,990 (83%) deaths.

33. The governmental response to the virus is a cause of the Teams' business interruptions.

III. MAJOR LEAGUE BASEBALL DOES NOT PROVIDE PLAYERS

34. Fans come to MiLB baseball games to see the players. But the Teams do not employ or manage the baseball players who draw fans to the park. Rather, Major League Baseball teams supply the players to each Team through player development contracts.

35. Each Team manages the business aspects of its operations, such as marketing and promotions and sales of tickets, parking, advertising, concessions, and merchandise. But under the player development contracts, the parent Major League Baseball club controls and makes all decisions related to the players, including paying their salaries and determining which teams they play for and when.

36. The Teams' players are thus under the exclusive control of the parent club, which decides which players the Team receives and, indeed, whether it receives any players at all.

37. The Professional Baseball Agreement entered into between Major League and Minor League Baseball and the Player Development Contract between MLB and MiLB teams set forth the contractual obligations of the MLB teams to supply players to the MiLB teams. Pursuant to those agreements, MLB teams were required to provide players to MiLB teams to enable the start of the MiLB season in early-April 2020. However, MLB has informed MiLB that

⁹ Jeffrey Shaman et al., *Differential Effects of Intervention Timing on COVID-19 Spread in the United States*, MedRxiv (May 29, 2020), <https://www.medrxiv.org/content/10.1101/2020.05.15.20103655v2.full.pdf+html>.

it will not be providing MiLB with players for the 2020 season. As a result, MiLB's 2020 season has been cancelled.

38. MLB's denial of players to the MiLB Teams is a cause of the Teams' business interruptions.

IV. THE TEAMS SUFFER BUSINESS-INCOME LOSSES

39. As a result of the virus, the governmental response, and Major League Baseball's failure to provide baseball players, the Teams have been deprived of their primary source of revenue—fans coming to the ballpark and paying for game tickets, merchandise, food and beverage, and partaking in other amenities. Though some MiLB teams have limited revenue from advertising and sponsorships, this revenue is largely tied to the number of fans the team can attract to the ballpark in a given year.

40. 2019, for example, was a stellar year for MiLB. More than 40,000,000 fans attended such games, marking the 15th consecutive season that MiLB's teams drew more than 40,000,000 fans. The 2019 season also marked MiLB's largest year-over-year increase in attendance since the 2006 season and marked the 9th-largest single-season total in MiLB's history.

41. This year, however, there are no games and no fans. As such, the Teams' primary income streams have come to a halt. Yet the fixed costs of operating a baseball stadium remain, such as fixed lease payments and payroll for permanent employees needed to operate the team over an annual business cycle.

42. The Teams have therefore suffered, and will continue to suffer, significant business-income losses, expenses, and damages in a number of forms, including, but not limited to:

- a. Loss of or diminished ticket sales;

- b. Loss of or diminished parking sales;
 - c. Loss of or diminished concessions sales;
 - d. Loss of or diminished merchandise sales; and
 - e. Loss of or diminished advertising sales.
43. The Teams have incurred, and will continue to incur, further losses, expenses, and damages in the form of normal operating expenses, including, but not limited to, lease payments and payroll costs.
44. With no players, no games, and no fans, the Teams' losses of business income for the 2020 MiLB baseball season have been near total. With virtually no source of income, and accruing expenses, the Teams face catastrophic financial losses.

V. THE POLICIES PROVIDE COVERAGE

45. In exchange for substantial premiums, Philadelphia sold the policies covering the Teams as the named insureds (the "Policies").
46. The Policies are substantively identical, except for variations with respect to the policy period, covered locations, and limits of liability. Each is a commercial all-risk first-party property & casualty policy with identical grants of coverage for "business income" losses. To simplify presentation of the coverage disputes at issue in this suit, the Teams set forth relevant provisions of the policy of Greenville Drive LLC (the "Policy"), attached as Exhibit A. The nearly identical policies of the Staten Island Yankees and Delmarva Shorebirds are attached as Exhibits B – C.

47. The Policy’s period of coverage is from December 31, 2019 to December 31, 2020. Ex. A at 10.¹⁰

48. The Policy provides coverage per occurrence. Ex. A at 231.

49. The Policy is divided into, among other types of coverage, a “Property Coverage Form,” *see* Ex. A at 177–200, and a “Business Income with Extra Expense Coverage Form,” *see id.* at 227–39.

50. The Property Coverage Form covers “direct physical ‘loss’¹¹ to Covered Property¹² caused by or resulting from any of the Covered Causes of Loss.”¹³ Ex. A at 177.

51. The limit of insurance applies per occurrence. Ex. A at 190-91.

52. The Property Coverage Form provides “Additional Coverages.” *See* Ex. A at 180–85.

53. The Business Income with Extra Expense Coverage Form covers “the actual loss of Business Income [the policyholder] sustain[s] due to the necessary suspension of [the policyholder’s] ‘operations’ during the ‘period of restoration’. The suspension must be caused by direct physical ‘loss’ to property at the premises described in the Declarations, or within 1000

¹⁰ Staten Island Yankees (October 1, 2019 to October 1, 2020); Delmarva Shorebirds (March 30, 2020 to March 30, 2021). The Delmarva Shorebirds are also covered under an all-risk property & casualty policy with business income coverage issued by Philadelphia for the period of March 30, 2019 through March 30, 2020.

¹¹ “‘Loss’ means accidental loss or damage.” Ex. A at 200.

¹² “Covered Property” means, among other things, the “buildings or structures” described in the declarations. Ex. A at 177–79, 199.

¹³ “Covered Causes of Loss means Risks of Direct Physical Loss unless the ‘loss’ is:

1. Excluded in Section **B., Exclusions**; or

2. Limited in Section **C., Limitations**;

that follow.”

Ex. A at 180, 201.

feet of the premises, caused by or resulting from any of the Covered Causes of Loss.” Ex. A at 227–28.

54. “Business Income means the: **a.** Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and **b.** Continuing normal operating expenses incurred, including payroll.” Ex. A at 228.

55. The Business Income with Extra Expense Coverage Form provides “Additional Coverages.” *See* Ex. A at 228–31.

56. The Additional Coverages include certain Extra Expenses. “Extra Expenses means necessary expenses [the policyholder] incur[s] during the ‘**period of restoration**’¹⁴ that [the policyholder] would not have incurred if there had been no direct physical ‘**loss**’ to property caused by or resulting from any of the Covered Causes of Loss.” Ex. A at 228.

57. The Additional Coverages include “the actual loss of Business Income [the policyholder] sustain[s] and necessary Extra Expenses [the policyholder] incur[s] caused by action of Civil Authority that prohibits access to the described premises due to direct physical ‘**loss**’ to property other than at the described premises caused by or resulting from any of the Covered Causes of Loss.” Ex. A at 228–29.

¹⁴ “‘**Period of Restoration**’ means the period of time that

a. Begins:

- (1) 72 hours after the time of direct physical ‘**loss**’ for Business Income coverage; or
- (2) Immediately after the time of direct physical ‘**loss**’ for Extra Expense coverage; and

b. Ends on the earlier of:

- (1) The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
- (2) The date when business is resumed at a new permanent location.”

Ex. A at 238.

58. The Additional Coverages include “the actual loss of ‘**Rental Value**’¹⁵ [the policyholder] incur[s] during the period.” Ex. A at 230.

59. The Policy purports to exclude from coverage “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.” Ex. A at 40. The so-called virus exclusion does not preclude the Teams’ claims for coverage, however. Nor does any other policy provision exclude the Teams’ claims for coverage. Notably, the Staten Island Yankees’ policy contains no so-called virus exclusion.

VI. THE INSURER DENIES THE TEAMS’ CLAIMS FOR COVERAGE

60. All Teams have made claims for coverage with Philadelphia under the Policies.

61. In April 2020, Philadelphia denied the Staten Island Yankees’ claim for coverage on various inapplicable grounds, including that the Team’s losses do not result from direct physical loss or damage to property.

62. On May 19, 2020, Philadelphia denied the Greenville Drive’s claim for coverage on various inapplicable grounds, including that the Team’s losses (1) do not result from direct physical loss or damage to property and (2) are barred by the so-called virus exclusion.

¹⁵ “‘**Rental Value**’ means:

- a. Total anticipated rental income from tenant occupancy of the premises described in the Declarations as furnished and equipped by [the policyholder]; and
- b. Amount of all charges which are the legal obligation of the tenant(s) and which would otherwise be [the policyholder’s] obligations; and
- c. Fair rental value of any portion of the described premises which is occupied by [the policyholder].”

Ex. A at 239.

63. On June 15, 2020, Philadelphia denied the Delmarva Shorebirds' claim for coverage on various inapplicable grounds, including that the Team's losses (1) do not result from direct physical loss or damage to property and (2) are barred by the so-called virus exclusion.

64. Philadelphia's positions denying coverage to the Teams are wrong. As set forth herein, there has been direct physical loss or damage, including, but not limited to, loss of use at the Teams' ballparks or elsewhere caused by the SARS-CoV-2 virus, the governmental response to it, or the Teams' inability to obtain players. Moreover, the so-called virus exclusion does not defeat the Teams' claims for coverage because, among other reasons, it is void, unenforceable, inapplicable, or not included in the policy.

FIRST CAUSE OF ACTION
(Breach of Contract)

65. The Teams repeat and reallege the allegations set forth in the foregoing paragraphs of this Complaint as if fully set forth herein.

66. The policies Philadelphia issued to the Teams are valid and enforceable contracts between the Teams and Philadelphia.

67. As described above, the Teams have sustained, and are continuing to sustain, losses covered under these policies.

68. The Teams provided prompt notice of their losses, performed all obligations required of them under the respective policies, and were ready, willing, and able to perform their obligations under the policies.

69. Under the terms of the policies, Philadelphia must pay up to the policies' limits of insurance for the Teams' covered loss, subject only to sublimits, time limits, or deductibles for specific coverages.

70. Philadelphia has not paid any or all amounts due to the Teams in connection with their claims. Instead, Philadelphia has asserted various inapplicable bases to wrongfully deny coverage for the Teams' claims.

71. As a direct and proximate result of Philadelphia's breaches of contract, the Teams have suffered and will continue to suffer damages in an amount to be determined at trial, plus consequential damages, attorneys' fees, and pre- and post-judgment interest to the extent permitted by law.

SECOND CAUSE OF ACTION
(Declaratory Judgement)

72. Plaintiffs repeat and reallege the allegations set forth in the foregoing paragraphs of this Complaint as if fully set forth herein.

73. Pursuant to the terms of the Policies, Philadelphia is obligated to pay, up to the limit of liability or any applicable sublimit or time period, for property damage or business-interruption losses covered under the Policies and not otherwise excluded from coverage.

74. As detailed above, the Teams' losses are covered under multiple coverages of the Policies and are not excluded from coverage.

75. Philadelphia disputes its legal obligations to pay the Teams' claims.

76. Pursuant to the Pennsylvania Declaratory Judgment Act, 42 Pa.C.S.A. § 7532, the Teams are entitled to a declaration by this Court of Philadelphia's obligations under the Policies.

77. An actionable and justiciable controversy exists between the Teams and Philadelphia concerning the proper construction of the Policies, and the rights and obligations of the parties thereto, with respect to the Teams' claims for expenses or losses arising out of the coronavirus pandemic.

78. Pursuant to 42 Pa.C.S.A. § 7532, this Court should enter a declaratory judgment in favor of the Teams and against Philadelphia, declaring that there is coverage available for the Teams' claims up to the full limits or applicable sublimits of the Policies and, pursuant to 42 Pa.C.S.A. § 7538, declaring any other relief this Court deems proper. Such a declaration would resolve the current controversy between the Teams and Philadelphia.

PRAYER FOR RELIEF

WHEREFORE, the Teams pray for relief as follows:

- (a) On the First Cause of Action, the Teams request that the Court enter judgment against Philadelphia, awarding the Teams damages in an amount to be determined at trial, but more than \$50,000, plus consequential damages, attorneys' fees, and pre- and post-judgment interest to the extent permitted by law;
- (b) On the Second Cause of Action, the Teams request that the Court enter a declaratory judgment in favor of the Teams against Philadelphia that the Teams' losses are covered under the Policies, declaring that Philadelphia is required to pay the Teams, up to the applicable limits of the Policies, for claimed amounts under the Policies;
- (c) For all Causes of Action, all pre-judgment and post-judgment interest as allowed by law and all the Teams' costs incurred as a consequence of having to prosecute this lawsuit, including attorneys' fees; and
- (d) The Teams request such other and further relief as the Court deems just and proper.

JURY DEMAND

The Teams hereby demand a trial by jury on all issues so triable.

Date: July 2, 2020

Respectfully submitted,

/s/ Andrew L Sandler
Andrew L Sandler (PA Bar I.D. 40142)
Stephen LeBlanc (*pro hac vice* forthcoming)
Rebecca Guiterman (*pro hac vice* forthcoming)
MITCHELL SANDLER LLC
1120 20th Street NW, Suite 725
Washington, DC 20036
Telephone: (202) 886-5260

Attorneys for Plaintiffs

Robin Cohen (*pro hac vice* forthcoming)
John Briody (*pro hac vice* forthcoming)
McKool Smith, P.C.
One Manhattan West
395 9th Avenue, 50th Floor
New York, NY 10001
Telephone: (212) 402-9400
Facsimile: (212) 402-9444

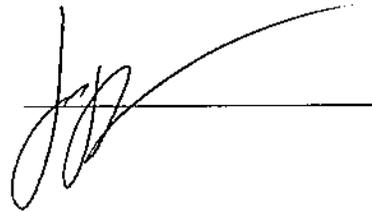
Patrick Pijls (*pro hac vice* forthcoming)
McKool Smith, P.C.
300 Crescent Court, Suite 1500
Dallas, TX 75201
Telephone: (214) 978-4000
Facsimile: (214) 978-4044

Attorneys for Plaintiffs

VERIFICATION

I, Jason Dorman, hereby verify and say that I am authorized to make this Verification on behalf of Nostalgic Partners LLC d/b/a Staten Island Yankees, a Plaintiff in this action, and that the statements made in the foregoing are true and correct to the best of my knowledge, information and belief. I understand that any false statements made herein are subject to the penalties of 18 Pa. Cons. Stat. Ann. § 4904 relating to unsworn falsification to authorities.

DATE:



VERIFICATION

I, Jordan Smith, hereby verify and say that I am authorized to make this Verification on behalf of Greenville Drive LLC, a Plaintiff in this action, and that the statements made in the foregoing are true and correct to the best of my knowledge, information and belief. I understand that any false statements made herein are subject to the penalties of 18 Pa. Cons. Stat. Ann. § 4904 relating to unsworn falsification to authorities.

DATE: 07/02/2020

A handwritten signature in black ink, appearing to read "Jordan Smith", written in a cursive style.

VERIFICATION

I, Pat Filippone, hereby verify and say that I am authorized to make this Verification on behalf of 7th Inning Stretch LP d/b/a Delmarva Shorebirds, a Plaintiff in this action, and that the statements made in the foregoing are true and correct to the best of my knowledge, information and belief. I understand that any false statements made herein are subject to the penalties of 18 Pa. Cons. Stat. Ann. § 4904 relating to unsworn falsification to authorities.

DATE: 7-1-20

A handwritten signature in black ink, appearing to read "Pat Filippone", is written over a horizontal line.