

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

KING COBRA GROUP, LLC d/b/a  
COBRA LOUNGE INDIVIDUALLY  
AND ON BEHALF OF A CLASS OF  
SIMILARLY SITUATED PERSONS,

Plaintiff,

v.

MOTORISTS COMMERCIAL  
MUTUAL INSURANCE COMPANY,

Defendant.

Civil Action No. 20-1012

**NOTICE OF REMOVAL**

NOW, comes Defendant, Motorists Commercial Mutual Insurance Company (“MCMIC”), by and through its attorneys, BURNS WHITE LLC, and files this Notice of Removal pursuant to 28 U.S.C. § 1441 and 28 U.S.C. § 1332(d). MCMIC submits that the United States District Court for the Western District of Pennsylvania has original diversity jurisdiction over this civil action and that this matter may be removed to the District Court in accordance with the procedures provided at 28 U.S.C. § 1446. In addition, and in the alternative, MCMIC submits that the Court has jurisdiction over this putative class action pursuant to the Class Action Fairness Act of 2005 (“CAFA”). In further support of Removal, MCMIC states as follows:

**I. THE COURT’S DIVERSITY JURISDICTION**

1. MCMIC timely files this Notice of Removal based on the Court’s non-discretionary, original, diversity jurisdiction, and, in so doing asserts that:

- a. Where the Complaint expressly alleges a “breach of contract” claim relative to first party property coverages that seeks money damages – a claim that

can, alone, be adjudicated in the absence of any declaratory relief sought in the Complaint – the Complaint asserts an independent claim for legal relief, for which jurisdiction is non-discretionary and as to which the DJA and Brillhart/Wilton abstention principles do not apply;

- b. Where the denial of coverage at issue allegedly occurred in the past, the Complaint does not, in fact, seek a declaratory judgment applicable to future conduct or obligations, irrespective of the label Plaintiff chose to assign to its claim, and, therefore, the DJA and Brillhart/Wilton abstention principles do not apply; and
- c. Even if the Complaint could be read to exclusively seek declaratory relief, the Court should not decline to exercise jurisdiction under Brillhart/Wilton abstention principles, and, in this regard, MCMIC seeks the full opportunity to brief the Court upon a motion to abstain, if made; however, MCMIC presents certain case law and argument for the Court's consideration on this Notice of Removal. If and when such a motion is filed, the motion should be denied, because all of the factors identified by the Third Circuit for determination of such a motion weigh squarely in favor of accepting jurisdiction.

2. As it relates to the litigation of the claims at issue in federal court, MCMIC submits that (i) Plaintiff's counsel in this matter has filed and is already litigating similar insurance coverage issues (including the applicable virus exclusion) in another lawsuit in the United States District Court for the Western District of Pennsylvania (Windber Hospital v. Travelers, 3:20-cv-

00080-KRG),<sup>1</sup> and (ii) cases involving similar coverage issues have been filed and are pending in the United States District Court for the Western District of Pennsylvania (Geneva Foreign & Sports, Inc. v. Erie Insurance Company of New York, 1:20-cv-00093-SPB), the United States District Court for the Middle District of Pennsylvania (Kahn v. Penn Nat'l, 1:20-cv-00781-JEJ), and the United States District Court for the Eastern District of Pennsylvania (Independence Restaurant Group, LLC v. Certain Underwriters at Lloyd's London, 2:20-cv-02365-CFK; Sidkoff, Pincus & Green, P.C. v. Sentinel Ins. Co., 2:20-cv-02083 (MDL pending)), among others. Accordingly, litigation of the insurance coverage issues arising out of the COVID-19 pandemic in federal court is almost certain to occur.

### **TIMELINESS OF REMOVAL**

3. This Notice of Removal is timely filed within thirty (30) days of (i) the filing of this lawsuit by “King Cobra Group, LLC d/b/a Cobra Lounge Individually and on Behalf of Similarly Situated Persons” (“Cobra” or “Plaintiff”) in the Court of Common Pleas of Allegheny County, Pennsylvania, at Docket No. GD-20-006546 (“Lawsuit”), and (ii) MCMIC’s receipt of a copy of the Complaint filed in the Lawsuit. 28 U.S.C.A. § 1446(b).

4. Plaintiff initiated the Lawsuit by filing a Complaint on June 5, 2020. (See Ex. 1.)

5. MCMIC received a copy of the Complaint filed in the Lawsuit on June 11, 2020.

### **STATE COURT RECORDS**

6. In addition to the Complaint, a copy of the state court docket is attached hereto at Exhibit 2.

---

<sup>1</sup> A court may take judicial notice of “any matters incorporated by reference or integral to the claim, items subject to judicial notice, matters of public record, orders, [and] items appearing in the record of the case.” Netherlands Ins. Co. v. Butler Area Sch. Dist., 256 F. Supp. 3d 600, 604, n. 3 (W.D. Pa. 2017) (Schwab, J.) (taking judicial notice of public documents), *quoting* Buck v. Hampton Twp. Sch. Dist., 452 F.3d 256, 260 (3d Cir. 2006); *see also* Kendall v. Lancaster Expl. & Dev. Co., LLC, 323 F. Supp. 3d 664, 671 (M.D. Pa. 2018) (taking judicial notice of docket and documents filed in other matters as public records) (citation omitted).

7. Upon information and belief, the documents attached hereto at Exhibits 1 and 2 reflect and constitute all of the pleadings, process, and orders, which were served on MCMIC and filed in connection with the state court action.

**COMPLETE DIVERSITY**

**A. Whether Plaintiff is a Corporation, as it Alleges, or a Limited Liability Company, Neither it Nor any of its Members Are Citizens of Ohio.**

8. According to Plaintiff's sworn, verified allegations, "made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities," Plaintiff is "a corporation organized and existing under the Commonwealth of Pennsylvania, with its principal place of business located at 4305 Main Street, Pittsburgh, Allegheny County, Pennsylvania." (See Ex. 1, at ¶ 1, Verification.)

9. The Court must accept as true a plaintiff's allegations regarding its own corporate form in considering whether diversity exists. Steel Valley Auth. v. Union Switch & Signal Div., 809 F.2d 1006, 1010 (3d Cir. 1987) (in considering remand of a removed case, "the district court must assume as true all factual allegations of the complaint").

10. Indeed, Plaintiff is in the best position to plead factually accurate, sworn facts relative to its form and potential membership. See Lincoln Ben. Life Co. v. AEI Life, LLC, 800 F.3d 99, 108 (3d Cir. 2015) ("The unincorporated association . . . is in the best position to ascertain its own membership.").

11. For purposes of pleading removal, therefore, MCMIC is entitled to rely on Plaintiff's own sworn allegation that it is a "corporation" organized under Pennsylvania law.

12. Given that Plaintiff alleges under oath that it is a "corporation," the need for additional investigation into Plaintiff's citizenship, to the extent called for under Lincoln Benefit Life Co. v. AEI Life, LLC, 800 F.3d 99 (3d Cir. 2015), had Plaintiff pleaded that it is an

unincorporated entity, does not arise. Any factual issue as to the truth of Plaintiff's allegation in this regard is not subject to resolution at the pleading (Notice of Removal) stage, but must be subject to discovery and jurisdictional fact-finding and evidentiary hearing. Lincoln Ben., 800 F.3d at 102 (“If the defendant [here, Plaintiff] thereafter mounts a factual challenge, the plaintiff [here, Defendant] *is entitled to* limited discovery for the purpose of establishing that complete diversity exists.”) (emphasis added).

13. Nevertheless, in addition and in the alternative, after reasonable investigation and upon information and belief, Plaintiff King Cobra Group, LLC, exists as a Pennsylvania limited liability company, the members of which are citizens of Pennsylvania, not Ohio.

14. Based on self-published information, “Cobra Lounge” is the name under which “King Cobra, LLC” operates a restaurant located at 4305 Main Street, Pittsburgh, Pennsylvania 15224. (See Ex. 3.)

15. However, based on publicly available information from the Pennsylvania Secretary of State, there is no such entity as “King Cobra, LLC.” (See Ex. 4.)

16. Rather, based on publicly available information from the Pennsylvania Secretary of State, there is an entity identified as King Cobra Group, LLC, that maintains an address at 4305 Main Street, Pittsburgh, Pennsylvania. (See Ex. 4.)

17. According to the Certificate of Organization of King Cobra Group, LLC obtained from the Pennsylvania Secretary of State, the organizers of King Cobra Group, LLC are Miranda Piso, Derek Burnell, and Matthew Emling, and the company's registered address is 4305 Main Street, Pittsburgh, Pennsylvania 15224. (See Exhibit 5.)

18. Based on information available through the Pennsylvania Secretary of State, Miranda Piso and Derek Burnell both maintain an address at 3720 Butler Street, Pittsburgh, Pennsylvania 15201. (See Ex. 5.)

19. Based on information available through the Pennsylvania Secretary of State, Matthew Emling maintains an address at 731 Superior Street, Carnegie, Pennsylvania 15106. (See Ex. 5.)

20. Based on information available through the Allegheny County Real Estate Portal, 731 Superior Street, Carnegie, Pennsylvania is a residential address owned by Matthew Emling. (See Ex. 6.)

21. “[E]ven the most convoluted association is, at bottom, made up of natural persons and/or corporations, for which bare allegations of citizenship suffice.” Lincoln Ben., 800 F.3d at 106.

22. Under any reasonable potentiality, both at the time that Plaintiff initiated this action and at the time of this Removal, Plaintiff and/or all of its members were and are citizens of Pennsylvania.

23. Under any reasonable potentiality, both at the time that Plaintiff initiated this action and at the time of this Removal, Plaintiff and/or all of its members were not and are not citizens of Ohio.

24. “Depriving a party of a federal forum simply because it cannot identify all of the members of an unincorporated association is not a rational screening mechanism. The membership of an LLC is often not a matter of public record. Thus, a rule requiring the citizenship of each member of each LLC to be alleged affirmatively before jurisdictional discovery would effectively

shield many LLCs from being sued in federal court without their consent. This is surely not what the drafters of the Federal Rules intended.” Lincoln Ben., 800 F.3d at 108–09.

25. To be certain, “[a] State X [party] may ... survive a facial challenge [to diversity] by alleging that none of the [opposing party’s] association’s members are citizens of State X.” Id. at 107.

26. Allegations “on information and belief” that a party is not a citizen of a particular state “suffice[ ] to establish diversity.” Id.

27. Here, after reasonable investigation and upon information and belief, none of Plaintiff limited liability company’s members are citizens of Ohio.

28. Here, after reasonable investigation and upon information and belief, Plaintiff and all of its members are not citizens of Ohio.

**B. MCMIC is a Citizen of Ohio, Not Pennsylvania.**

29. For its part, MCMIC, the lone defendant in the Lawsuit, is not a Pennsylvania entity, nor does MCMIC maintain its principal place of business in Pennsylvania. (See Ex. 1, at ¶ 3.)

30. Rather, MCMIC is a mutual insurance company organized under the laws of the State of Ohio with its principal place of business in Ohio, specifically, at 471 E. Broad Street, Columbus, Ohio. (See Ex. 1, at ¶ 3.)

31. Both at the time that Plaintiff initiated this action and at the time of this Removal, MCMIC was and is a citizen of Ohio.

32. Both at the time that Plaintiff initiated this action and at the time of this Removal, MCMIC was not and is not a citizen of Pennsylvania.

33. Accordingly, where Plaintiff and all of its members (Pennsylvania) and Defendant (Ohio) are citizens of different states, the requirement of pleading complete diversity for removal is satisfied as a matter of law. See Lincoln Ben., 800 F.3d at 107.

### **NON-DISCRETIONARY JURISDICTION**

34. In the Complaint, Plaintiff asserts a claim for legal relief – specifically, allegations asserting a “breach of contract,” and all its elements, seeking money damages for breach of the Policy – but labeled as a claim for “Declaratory Judgment.” (See Ex. 1, generally.)

35. As a general matter, a complaint that seeks money damages seeks legal relief, not declaratory relief, and should not be treated as seeking declaratory relief. See Reifer v. Westport Ins. Corp., 751 F.3d 129, 137 (3d Cir. 2014) (“It may, in some circumstances, be possible for a party’s claim for legal relief to masquerade as a declaratory judgment, improperly activating discretionary jurisdiction.”).<sup>2</sup>

36. A claim that does not seek a declaration as to future conduct, but seeks relief as to past conduct, does not seek declaratory relief.

Declaratory judgments are meant to define the legal rights and obligations of the parties in the anticipation of some future conduct. Declaratory judgments are not meant simply to proclaim that one party is liable to another.

Andela v. Admin. Office of U.S. Courts, 569 F. App’x 80, 83 (3d Cir. 2014) (citations omitted).

37. Because the Complaint seeks legal relief for money damages due to breach of contract, the Court has no discretion to abstain from exercising its jurisdiction under

---

<sup>2</sup> MCMIC notes that the Complaint at issue in Reifer (4:12-cv-00533-MWB, Doc. 2), which is a matter of public record and subject to judicial notice, was devoid of any “breach of contract” allegations and sought only a declaration that the insurer was obligated to pay a judgment entered in another case, distinguishing it from the claims that appear in the Complaint filed in the instant matter – rendering the Complaint at issue here more akin to the Complaints in both Rarick v. Federated Serv. Ins. Co., 852 F.3d 223 (3d Cir. 2017) (2:13-cv-03286-JFL, Doc. 1) and Schodle v. State Farm Mut. Auto. Ins. Co., 2017 WL 1177133 (E.D. Pa. Mar. 30, 2017) (2:17-cv-00407-HB, Doc. 1) – that is, a breach of contract claim masquerading as a declaratory judgment improperly seeking to activate discretionary jurisdiction.



Brillhart/Wilton abstention principles. Wilton v. Seven Falls Co., 515 U.S. 277, 284 (1995) (federal courts have a “virtually unflagging obligation” to “exercise the jurisdiction conferred on them by Congress”).

38. Even if the Complaint seeks declaratory relief, in part, it asserts an independent claim for damages – “[w]hen a complaint contains claims for both legal and declaratory relief, a district court must determine whether the legal claims are independent of the declaratory claims.” Rarick v. Federated Serv. Ins. Co., 852 F.3d 223, 229 (3d Cir. 2017); Schodle v. State Farm Mut. Auto. Ins. Co., 2017 WL 1177133, at \*2 (E.D. Pa. Mar. 30, 2017), *quoting* Rarick, 852 F.3d at 229.

39. “If the legal claims are independent, the court has a ‘virtually unflagging obligation’ to hear those claims,” and Brillhart/Wilton abstention principles are inapplicable. Rarick, 852 F.3d at 229; Schodle, 2017 WL 1177133, at \*2, *quoting* Rarick, 852 F.3d at 229.

40. As a general matter, where a breach of contract is alleged, breach of contract claims are independent from declaratory judgment claims concerning the contract provisions, because the breach of contract claim can be decided without the need for a declaration. See Walsh/Granite JV v. HDR Eng’g, Inc., 2017 WL 11485584, at \*2 (W.D. Pa. Nov. 7, 2017) (Fischer, J.) (“legal claims are independent of the declaratory judgment claim because ‘they are alone sufficient to invoke the court’s subject matter jurisdiction and can be adjudicated without the requested declaratory relief.’”), *quoting* Rarick, 852 F.3d at 228. The same is true of claims for breach of an insurance policy. Schodle, 2017 WL 1177133, at \*2.

41. Independence is established when the legal claim is “‘alone sufficient to invoke the court’s subject matter jurisdiction and can be adjudicated without the requested declaratory

relief.” Griggs Rd., L.P. v. Selective Way Ins. Co. of Am., 2017 WL 2645542, at \*4 (M.D. Pa. June 19, 2017), *citing and quoting* Rarick, 852 F.3d at 228.

42. In the context of an insured seeking monetary damages for an insurer’s alleged breach of a first-party property insurance policy, as Plaintiff seeks here, the claim for damages is independent of any claim for declaratory relief, and is not subject to abstention in the absence of a parallel state court proceeding. Griggs Rd., 2017 WL 2645542, at \*4, *citing* Schodde, 2017 WL 1177133, at \*2 (“[B]ecause Plaintiffs are undoubtedly seeking monetary relief they aver is owed under the policy, a resolution of the instant controversy can be fully accomplished through the adjudication of the breach of contract claim.”).

43. “[D]epriving access to a federal forum simply because there is a request for declaratory relief ‘seems especially unwarranted given that nearly all claims, including those for damages or injunctive relief, effectively ask a court to declare the rights of the parties to the suit.’” Rarick, 852 F.3d at 228, *quoting* VonRosenberg v. Lawrence, 781 F.3d 731, 735 (4th Cir. 2015).

44. Here, the Complaint alleges that Plaintiff submitted a claim under the Policy seeking coverage for “losses, damages, and expenses caused by the COVID-19 pandemic.” (Ex. 1, at ¶¶ 10, 25, 29, 30.)

45. The Complaint alleges that MCMIC has disclaimed, denied, refused and/or failed to acknowledge coverage under the policies in question relative to the claims at issue. (Ex. 1, at ¶¶ 37, 38, 47(d), 47(e), 67, 68, 71, 72, 73, 74.)

46. The Complaint (i) alleges that Plaintiff (and the members of the purported class) are entitled to “coverage for the losses, damages, and expenses caused by the COVID-19 pandemic,” (ii) alleges that the failure to provide that coverage constituted “*a material breach of [the MCMIC] [P]olicy*” in “*direct violation of the specific terms and provisions of the [MCMIC]*

*Policy*,” and (iii) seeks the coverage – that is, monetary relief – allegedly due. (See e.g., Ex. 1, at ¶¶ 47(e), 65, 66, 69, 70, 72, 73, 74.) (emphasis added).

47. Inconsistent with a claim seeking declaratory relief, Plaintiff has confirmed that it seeks money damages in an amount in excess of the applicable arbitration limit. (See Ex. 1, at Civil Cover Sheet.)

48. Accordingly, Plaintiff’s claim for money damages is premised on an alleged breach of contract that it contends has already occurred. Such a claim can be fully determined even if Plaintiff did not seek declaratory relief, and it is therefore independent for purposes of determining the basis of the Court’s jurisdiction.

49. Plaintiff’s allegations here are materially different from those in other cases in which neither party alleges that the other is in “breach,” such that neither is yet entitled to monetary relief under the contract, but in which one party seeks a declaration as to the rights and obligations of the parties prior to any breach. In that instance, elimination of the claim for declaratory relief would leave no independent legal claim for breach of contract. See R.R. Street & Co. v. Vulcan Materials Co., 569 F.3d 711, 717 (7th Cir. 2009) (insured’s claim for money damages for breach of contract was independent of declaratory relief claim; “Put simply, the non-declaratory claims are independent of the declaratory claim because they could stand alone in federal court – both jurisdictionally and substantively – irrespective of the declaratory claim.”) (cited with approval in Rarick, 852 F.3d at 228).

50. Plaintiff’s attempt to “artfully plead” a “declaratory judgment” claim should not be permitted to control the Court’s jurisdiction and/or deprive MCMIC of its right to remove this matter to federal court. See, generally, United Jersey Banks v. Parell, 783 F.2d 360, 367 (3d Cir. 1986) (artful pleading cannot deprive a party of a federal forum), citing 14A Wright & Miller,

Federal Prac. and Proc. § 3722 at 270; Eitmann v. New Orleans Public Service, Inc., 730 F.2d 359, 365 (5th Cir. 1984) (plaintiff cannot defeat removal by fraudulent means or artful pleading).

51. But further, the Court can forego the need to look through Plaintiff's artful pleading where, as here, the Complaint contains an independent and expressly stated claim for breach of contract, rendering the "declaratory judgment" claim superfluous and jurisdiction non-discretionary, such that removal must be permitted. Schodle, 2017 WL 1177133, at \*2 (denying remand where "breach of contract claim is the essence of this lawsuit," such that the court "need not decide if it is an effort at artful pleading designed to defeat federal jurisdiction"); Rarick, 852 F.3d at 229 (citing the court's virtually unflagging obligation to hear independent legal claims); see also Walsh/Granite, 2017 WL 11485584, at \*2 (acknowledging the independent nature of breach of contract and declaratory judgment claims).

52. As the court said in Schodle:

[T]he motion to remand *must be denied*. The non-declaratory breach of contract claim is independent of the declaratory judgment claim inasmuch as it is alone sufficient to invoke subject matter jurisdiction and can be adjudicated even if the claim for declaratory judgment was to be dismissed. The breach of contract claim is the essence of this lawsuit. The insured surely wants monetary relief, not simply a declaration of his rights. The case before us is somewhat unusual in that it is the insured, rather than the insurer, who seeks declaratory relief. It is puzzling that he has brought this extraneous claim which really adds nothing to his case.

2017 WL 1177133, at \*2 (emphasis added).

**THE COURT SHOULD NOT ABSTAIN  
EVEN IF JURISDICTION IS DISCRETIONARY**

53. If a motion to abstain is made (or on the Court's own motion), MCMIC respectfully requests the opportunity to brief the issues raised by the Court, as they are not subject to full and fair determination based only on a Notice of Removal.

54. Nevertheless, MCMIC would show the Court as follows: “The discretion courts exercise in actions seeking only declaratory relief is ‘substantial’ but nonetheless ‘bounded and reviewable.’” Kelly, 868 F.3d at 282, *quoting* Reifer, 751 F.3d at 140. “[T]he ‘wholesale’ dismissal of certain types of cases brought under the DJA is improper, as litigants should not be unjustifiably denied the right to obtain an authorized remedy in federal court.” Id., *quoting* Reifer, 751 F.3d at 147.

55. “Courts should first determine whether there is a ‘parallel state proceeding.’ Although the existence of a parallel state proceeding is but one factor for courts to consider, it is a significant factor that is treated with ‘increased emphasis.’” Id., *quoting* Reifer, 751 F.3d at 143, 144.

56. “[T]he absence of pending parallel state proceedings *militates significantly in favor of exercising jurisdiction*, although it alone does not require such an exercise.” Id., *quoting* Reifer, 751 F.3d at 147 (emphasis added).

57. There is no pending parallel state court proceeding in this case.

58. “[I]f a state parallel proceeding does not exist, then ‘as part of exercising sound and reasoned discretion, district courts declining jurisdiction should be rigorous in ensuring themselves that the lack of pending parallel state proceedings is outweighed by opposing factors.’” Id., *quoting* Reifer, 751 F.3d at 144.

59. In an insurance declaratory judgment case, the Third Circuit in Kelly found that the district court had abused its discretion in remanding the case, because “[t]he lack of pending parallel state proceedings [there] was not outweighed by opposing factors.” Id. at 288.

60. Kelly’s analysis of the Reifer factors shows that jurisdiction should also be retained here.

61. First, a declaratory judgment would resolve the uncertainty that prompted filing of the action. Id. “Declaratory relief by the District Court would unquestionably clarify and settle the dispute regarding [the insurer’s] obligations under the insurance policy.” Id.

62. “Second, none of the parties will be inconvenienced by having this matter adjudicated in the federal forum. The District Court considering the Declaratory Action sits in the same city as the court in which the [insured] originally filed suit.” Id.

63. “Third, the parties do not aver that any public interest is at stake other than the usual interest in the fair adjudication of legal disputes, an interest which the District Court is well-equipped to address.” Id.

64. On this point, the Kelly court noted that a generalized concern with having a state court decide issues under state common law is not sufficient to abstain from deciding those issues. Absent “an unsettled question of state law or important policy issue implicated by the coverage claims,” “there is little reason for a federal court to be reluctant about deciding this case.” Id. at 288, n.13.

65. In this case, an insured seeks insurance coverage for lost business income arising out of governmental “stay at home” orders resulting from a virus, under an insurance policy that among other things states, “[w]e will not pay for loss or damage caused by or resulting from any virus.” While the current COVID-19 pandemic and resulting shutdown orders may be unprecedented (and MCMIC in no way disputes their serious consequences), the claim involves application of clear policy language to a set of facts involving a private enterprise, which does not involve any novel issues of law or any public interest. See id., *quoting Reifer, supra* (“Federal and state courts are equally capable of applying settled state law to a difficult set of facts.”); Sayles v. Allstate Ins. Co., 219 A.3d 1110, 1130 (Pa. 2019) (“Insurance contracts, while highly regulated,

are still contracts. They remain arrangements between private parties.”); Grode v. Mut. Fire, Marine & Inland Ins. Co., 8 F.3d 953, 959 (3d Cir. 1993) (“Although the state regulates insolvent insurance companies, simple contract actions that happen to involve such companies are not matters of important regulatory concern or actions interfering with important state policies.”); Plavin v. Grp. Health Inc., 323 F. Supp. 3d 684, 696 (M.D. Pa. 2018) (“It is essentially a ‘private’ contract dispute over policy coverage and the processing of a claim which is unique to these parties, not conduct which affects the consuming public at large.”), *quoting* New York Univ. v. Continental Ins. Co., 87 N.Y.2d 308, 321, 639 N.Y.S.2d 283 (1995).

66. Resolution of this dispute will involve the specific terms of MCMIC’s Policy and the specific facts of Plaintiff’s alleged shutdown. It will not affect the resolution of disputes involving other insureds with different facts and different insurers with different policy language.

67. As to the fourth factor, “[t]he state and federal courts are equally able to grant effective relief.” Kelly, 868 F.3d at 289.

68. Fifth and sixth, there is no pending parallel state court case, and therefore no concern with duplicative litigation.

69. Seventh, there is no concern with procedural fencing – “[T]here has been no concern expressed that removal of the Declaratory Action was driven by an improper motive.” Id.

70. The eighth factor is inapplicable here, as it relates to declaratory judgment actions relating to liability insurance, where the issue is coverage for a pending tort action against the insured and, typically, whether the insurer has a duty to defend. Id. at 283. This case involves first-party property insurance for the insured’s own loss, and there is no related pending state court action and no issue of a “duty to defend.”

71. As in Kelly, “[t]hese factors [do] not outweigh the lack of a parallel state proceeding in this case. As a result, ‘considerations of practicality and wise judicial administration,’ Wilton, 515 U.S. at 288, counsel against abstention ...” 868 F.3d at 289.

### **AMOUNT IN CONTROVERSY**

72. Insofar as it concerns the scope of the claim and damages sought, Plaintiff seeks coverage under the Policy for losses, damages, and expenses caused by the COVID-19 pandemic and sustained by Cobra from at least the March 19, 2020 issuance of Pennsylvania Governor Tom Wolf’s Order closing the physical locations of non-life sustaining business, through the present, and into the future, such that it appears that Plaintiff seeks an amount in excess of \$75,000. (See e.g., Ex. 1, at ¶¶ 20-22, 24-29, 30, 33, 34, 37, 38, 44, 47, 65, 67, 68, 69, 70, 75, 76.)

73. Accordingly, there is a reasonable and good faith reason to believe and assert that the claim exceeds the \$75,000 jurisdictional threshold. (See Ex. 1, at Ex. A, Order (no dispute as to the amount in controversy on the same allegations.)<sup>3</sup>)

74. Where Plaintiff seeks such sums, the amount in controversy exceeds the jurisdictional requirement of \$75,000.

### **STATEMENT OF DIVERSITY & SUPPLEMENTAL JURISDICTION**

75. For the foregoing reasons, where Plaintiff and MCMIC are citizens of different states, Pennsylvania and Ohio, respectively, and because the amount in controversy exceeds \$75,000, the United States District Court for the Western District of Pennsylvania has original, non-discretionary jurisdiction over this matter. See 28 U.S.C. § 1332; Rarick, 852 F.3d at 227.

---

<sup>3</sup> The Complaint filed in Dianoia’s v. MMIC, 2:20-cv-00706-NBF, being effectively identical and subject to judicial notice as a public record.



76. Section 1332 confers original jurisdiction over all civil matters where the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and the claim is between citizens of different states.

77. Since complete diversity exists and the requisite \$75,000 amount in controversy for an individual plaintiff is satisfied under 28 U.S.C. § 1332(a), this Court has supplemental jurisdiction over the putative class members under 28 U.S.C. § 1367. See Exxon Mobil Corp. v. Allapattah Services, Inc., 545 U.S. 546, 549 (2005) (where a named plaintiff in a class action satisfies the amount in controversy requirement, 28 U.S.C. § 1367 authorizes supplemental jurisdiction over the claims of the putative class members); Papurello v. State Farm Fire and Casualty Co., 144 F. Supp. 3d 746, 752 (W.D. Pa. 2015) (“Section 1367 authorizes supplemental jurisdiction over putative class members’ claims if ‘at least one named plaintiff’ satisfies § 1332(a)(1)’s \$75,000 amount in controversy requirement and complete diversity is present.”)

## **II. THE COURT’S JURISDICTION PURSUANT TO CAFA**

78. In addition to the Court’s original, diversity jurisdiction over this matter, and in the alternative, MCMIC submits that the Court has jurisdiction over this matter pursuant to CAFA.

79. This case purports to be a “class action” within the meaning of CAFA because it was brought under a state statute or rule, namely, 231 Pa. Code Part I, Ch 1700, Rule 1701, *et seq.*, which authorizes an action to be brought by one or more representative persons as a class action if the underlying requirements are met. See 28 U.S.C. § 1332(d)(1)(A)-(B); Ex. 1 ¶¶ 36-63.

80. MCMIC does not concede that the proposed class would qualify as a class as defined or that the putative class could be certified based on numerous factors, including but not limited to the fact that (1) the claims of class members will depend on the individual facts and circumstances and individual policy language, which may vary from policy to policy; and (2) the

determination of any entitlement to coverage for business interruption losses will be subject to highly detailed review, examination and calculation based on historical financial accounting records, among other things, and individual accounting and/or expert review, making each claim too individualized for class treatment. But since the Complaint alleges a “class action,” it is subject to CAFA.

81. CAFA was enacted to expand federal jurisdiction over class actions. See Walsh v. Defs., Inc., 894 F.3d 583, 586 (3d Cir. 2018), *citing* Standard Fire Ins. Co. v. Knowles, 568 U.S. 588, 595 (2013); see also Kaufman v. Allstate New Jersey Ins. Co., 561 F.3d 144, 148-49 (3d Cir. 2009) (CAFA was intended to broaden federal court jurisdiction over class actions).

82. Removal is proper under CAFA where, as here, (i) there are one hundred (100) or more purported class members, (ii) there is minimal diversity of citizenship, and (iii) the aggregate amount in controversy for the entire proposed class exceeds \$5 million, exclusive of costs and interests. See 28 U.S.C. § 1332(d)(2); Judon v. Travelers Prop. Cas. Co. of Am., 773 F.3d 495, 500 (3d Cir. 2014).

**A. The Putative Class Satisfies Minimal Diversity.**

83. CAFA requires only “minimal diversity,” meaning that “any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).

84. As set forth above, (i) MCMIC is a citizen of Ohio, (ii) Plaintiff, which is, itself, a member of the class, is a citizen of Pennsylvania (where it maintains its principal place of business and is organized,<sup>4</sup> see Ex. 5), and (iii) the putative class consists of Pennsylvania entities impacted by the Orders entered by Pennsylvania Governor Wolf and the Pennsylvania Department of

---

<sup>4</sup> Distinct from the Court’s original diversity jurisdiction, under CAFA: “For purposes of this subsection and section 1453, an unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized. 28 USC 1332(d)(10).

Health, such that, the class contains citizens of Pennsylvania, and there is minimal diversity under CAFA. (Ex. 1, at ¶¶ 36, 38, 40, 48.)

85. Where the minimal diversity requirement under CAFA has been satisfied, this case is removable to this Court.

**B. The Putative Class Contains One Hundred or More Members.**

86. Plaintiff contends that “the members of the class are so numerous that joinder of them is impracticable.” (Ex. 1, at ¶ 41.)

87. Plaintiff purports to “bring[ ] this action individually and on behalf of a class of similarly situated persons.” (Ex. 1, at ¶¶ 5, 36.)

88. Plaintiff contends that the class consists of all “persons and organization to whom [MCMIC] ha[s] issued policies of insurance” that have been impacted by the COVID-19 pandemic and/or the Orders by Governor Wolf and the Pennsylvania Department of Health that suspended and/or limited the operations of all “non-life sustaining businesses” in the Commonwealth. (Ex. 1, at ¶¶ 20-23, 25, 28, 32, 33, 34, 37, 38, 47, 66, 68, 70, 74, 76.)

89. MCMIC’s records reflect that there are in excess of 1,000 policies that provide business interruption coverage that were in effect – in Pennsylvania – during the relevant time period.

90. Where Plaintiff contends that the class consist of all non-life sustaining businesses in Pennsylvania impacted by COVID-19 and/or the Orders, to whom MCMIC issued policies of insurance (Ex. 1, at ¶ 32), there is good reason to believe and to assert that the putative class consists of more than one hundred (100) policyholders – a number that represents less than ten percent (10%) of the policies issued by MCMIC in Pennsylvania that provide for business interruption coverage during the relevant time period.

91. In addition, to the extent that the named Plaintiff seeks to define the class to include MCMIC policyholders in Pennsylvania allegedly impacted by COVID-19 and/or the Orders without regard to whether such policyholders have made or will make a claim, the number of such policyholders is no doubt a significant percentage of the total number of policyholders to whom MCMIC has issued a policy in Pennsylvania covering the relevant time period. (Ex. 1, at ¶ 32.)

92. Accordingly, MCMIC reasonably and in good faith asserts that there are more than one hundred (100) members in the putative class.

93. Where the requirement relative to the number of class members under CAFA has been satisfied, this case is removable to this Court

**C. The Amount in Controversy Exceeds \$5 Million.**

94. While MCMIC disputes that (i) Plaintiff has stated any viable claims and (ii) Plaintiff and the putative class members are entitled to any relief, the allegations of the Complaint and the nature of Plaintiff's claims are such that MCMIC, reasonably and good faith, asserts that that the amount in controversy exceeds CAFA's jurisdictional threshold of \$5 million, exclusive of interest and costs. See 28 U.S.C. § 1332(d)(2) and (6).

95. CAFA provides that "the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs." 28 U.S.C. § 1332(d)(6). Where, as here, "the plaintiff's complaint does not state the amount in controversy, the defendant's notice of removal may do so." Dart Cherokee Basin Operating Co. v. Owens, 574 U.S. 81, 83 (2014).

96. To establish the amount in controversy sufficient to remove a class action case to federal court, a defendant need not submit proof to establish the amount in dispute, but rather "may

simply allege or assert that the jurisdictional threshold has been met.” Id. at 89. Here, the jurisdictional threshold has been met.

97. CAFA’s amount in controversy requirement is satisfied where the defendant’s notice of removal includes a plausible allegation that the stakes exceed \$5 million. See Winkworth v. Spectrum Brands, Inc., 2019 WL 5310121, at \*2 (W.D. Pa. Oct. 21, 2019), *quoting* Dart Cherokee Basin Operating Co., 574 U.S. at 89.

98. When removing a suit, the defendant may present an estimate of the amount in controversy based on a “reasonable reading of the value of the rights being litigated.” Judon v. Travelers Prop. Cas. Co. of Am., 773 F.3d 495, 507 (3d Cir. 2014), *quoting* Werwinski v. Ford Motor Co., 286 F.3d 661, 666 (3d Cir. 2002).

99. The amount in controversy is satisfied on the possible recovery if Plaintiff and the class were to win on all of its claims; whether they are likely to recover anything based on the merits of the case is irrelevant to the amount in controversy analysis. See Jumara v. State Farm Ins. Co., 55 F.3d 873, 877 (3d Cir. 1995) (noting that indeterminacy of the amount to be recovered does not defeat diversity jurisdiction, and it is immaterial what the plaintiff might eventually recover); Clean Air Council v. Dragon Int’l Grp., 2006 WL 2136246, at \*4 (M.D. Pa. July 28, 2006), *citing* Meritcare Inc. v. St. Paul Mercury Ins. Co., 166 F.3d 214, 217 (3d Cir. 1999), *overruled on other grounds by* Exxon Mobil Corp. v. Allapattah Servs., 545 U.S. 546 (2005) (“[O]nly if it appears to a legal certainty that Plaintiff cannot recover the minimum [jurisdictional] amount should [the court] remand.”); see also Sabrina Roppo v. Travelers Commercial Ins. Co., 869 F.3d 568, 579 (7th Cir. 2017), *citing* Blomberg v. Serv. Corp. Int’l, 639 F.3d 761, 763 (7th Cir. 2011)) (“The party seeking removal does not need to establish what damages the plaintiff will recover, but only how much is in controversy between the parties.”).

100. Because Plaintiff and the putative class do not plead specific monetary damages, the Court must consider the amount in controversy presented by Plaintiff's claims. The Third Circuit measures the amount in controversy in declaratory and injunctive actions by reference to "the value of the rights which the plaintiff seeks to protect." Columbia Gas Transmission Corp. v. Tarbuck, 62 F.3d 538, 539 (3d Cir. 1995); see also Cty. of Washington, Pa. v. U.S. Bank Nat. Ass'n, 2012 WL 3860474, at \*19 (W.D. Pa. Aug. 17, 2012) ("With regard to actions seeking declaratory relief, the amount in controversy is the value of the right or the viability of the legal claim to be declared, such as a right to indemnification . . .").

101. Here, Plaintiff alleges that "Plaintiff, Cobra, is a member of the class that it seeks to represent." (Ex. A, at ¶ 48.)

102. Plaintiff further alleges that "[t]he claims of Plaintiff, Cobra, are typical of the claims of other members of the class which it purports to represent." (Ex. A, at ¶ 49.)

103. As set forth above, where Plaintiff's claim exceeds the \$75,000 diversity threshold, and where such claim is allegedly representative of a class of one hundred (100) or more policyholders, the claims, in the aggregate would exceed \$7.5 million.

104. Accordingly, MCMIC reasonably and in good faith asserts that the claims of the putative class members, in the aggregate, exceed the sum or value of \$5 million.

105. As such, where the jurisdictional threshold under CAFA has been satisfied, this case is removable to this Court.

#### **STATEMENT OF JURISDICTION PURSUANT TO CAFA**

106. In addition, and independent of the Court's original, diversity jurisdiction, removal is proper under CAFA, because (a) there are one hundred (100) or more purported class members,

(b) there is minimal diversity of citizenship, and (c) the aggregate amount in controversy for the entire proposed class exceeds \$5 million, exclusive of costs and interests.

107. The exceptions under CAFA do not apply because MCMIC is a foreign entity, not a resident or citizen of Pennsylvania. See 28 U.S.C. § 1332(d)(4)(A)(i)(II) (local controversy exception requires at least one defendant to be a citizen of the State in which the action was filed); § 1332(d)(4)(B) (home state controversy exception has the same requirement); 28 U.S.C. § 1332(d)(3) (discretionary exception also requires primary defendants to be citizens of the State in which the action was filed).

WHEREFORE, Defendant, Motorists Commercial Mutual Insurance Company, removes this civil action to the United States District Court for the Western District of Pennsylvania, pursuant to 28 U.S.C. § 1441 and 28 U.S.C. § 1332(d).

Respectfully submitted,

BURNS WHITE LLC

By: /s/ Matthew A. Meyers  
Matthew A. Meyers (PA I.D. 202838)  
E-mail: mameyers@burnswhite.com  
Robert E. Dapper, Jr. (PA I.D. 46378)  
E-mail: redapper@burnswhite.com  
Taylor M. Wantz (PA I.D. 327312)  
E-mail: tmwantz@burnswhite.com  
Burns White Center  
48 26<sup>th</sup> Street  
Pittsburgh, PA 15222  
(412) 995-3281 – Direct  
(412) 995-3300 – Fax  
*Attorneys for Defendant, Motorists  
Commercial Mutual Insurance Company*

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that on July 6, 2020, the within **NOTICE OF REMOVAL** was filed electronically and will be served upon all counsel as follows:

JAMES C. HAGGERTY, Esquire  
HAGGERTY, GOLDBERG, SCHLEIFER &  
KUPERSMITH, P.C.  
1835 Market Street, Suite 2700  
Philadelphia, PA 19103

SCOTT B. COOPER, Esquire  
SCHMIDT KRAMER, P.C.  
209 State Street  
Harrisburg, PA 17101

JOHN P. GOODRICH, Esquire  
JACK GOODRICH & ASSOCIATES  
429 Fourth Avenue, Suite 900  
Pittsburgh, PA 15219

JONATHAN SHUB, Esquire  
KOHN SWIFT  
1600 Market Street, Suite 2500  
Philadelphia, PA 19103

*Attorneys for Plaintiff*

/s/ Matthew A. Meyers  
Matthew A. Meyers



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

KING COBRA GROUP, LLC d/b/a  
COBRA LOUNGE INDIVIDUALLY AND  
ON BEHALF OF A CLASS OF SIMILARLY      No.:  
SITUATED PERSONS  
4305 Main Street  
Pittsburgh, PA 15224,

Plaintiff,

vs.

MOTORISTS COMMERCIAL MUTUAL  
INSURANCE COMPANY  
471 East Broad Street  
Columbus, OH 43215-3861,

Defendant.

**CLASS ACTION COMPLAINT**

**Parties**

1.      Plaintiff, King Cobra Group, LLC d/b/a Cobra Lounge, (hereinafter “Cobra”) is a corporation organized and existing under the Commonwealth of Pennsylvania, with its principal place of business located at 4305 Main Street, Pittsburgh, Allegheny County, Pennsylvania 15224; as such, Plaintiff is a citizen of the Commonwealth of Pennsylvania and the County of Allegheny.

2.      Plaintiff owns and operates Cobra Lounge, a restaurant and bar in the Bloomfield neighborhood of Pittsburgh.

3.      Defendant, Motorists Commercial Mutual Insurance Company (hereinafter “Motorists”) is commercial mutual property and casualty insurance company with a principal place of business at 471 East Broad Street, Columbus, Ohio, 43215-3861, and, being duly authorized, regularly and routinely conducts business in the Commonwealth of Pennsylvania.

4. Defendant, Motorists, regularly and routinely conducts business in Allegheny County, Pennsylvania.

5. The present action seeks declaratory and injunctive relief on behalf of the individual plaintiff, Cobra, and on behalf of a class of similarly situated persons, under identical insurance policies issued by Defendant, Motorists, in the Commonwealth of Pennsylvania. Federal diversity jurisdiction was declined by Judge Nora Barry Fischer in a similar case which was remanded *sua sponte* by the court. DiAnoia's Eatery, LLC v. Motorists Mutual Insurance Company, No. 20-706 (W.D. Pa. May 19, 2020). See Exhibit "A."

#### **Insurance Coverage**

6. At all times material hereto, there existed, in full force and effect, a Business Owners policy (No. 5000069778) ("Motorists Policy") issued by Defendant, Motorists, to Plaintiff, Cobra, providing, *inter alia*, property, business, personal property, business income, extra expense, continuation, civil authority and additional coverages applicable to the losses, damages, and expenses claimed in this action. A true and correct copy of the Motorists Policy is attached hereto and marked as Exhibit "B."

7. The Motorists Policy provides, *inter alia*, Business Income, Extra Expense, Civil Authority and other coverages applicable to the losses, damages, and expenses caused by the COVID-19 pandemic and the related governmental orders.

8. The Motorists Policy was in effect and provided coverage for the period September 16, 2019 to September 16, 2020.

9. The Motorists Policy is an "All Risks" policy which provides coverage for losses, damages, and expenses to the insured premises unless specifically excluded.

10. The Motorists Policy does not exclude the losses, damages, and expenses caused by the COVID-19 Pandemic.

11. The Motorists Policy provides coverage for the losses, damages, and expenses incurred by Plaintiff, Cobra, as a result of the COVID-19 Pandemic and the actions of the government in response thereto.

12. Plaintiff, Cobra's, claims arise out of a Pandemic.

### **COVID-19 Pandemic**

13. The Center for Disease Control and the World Health Organization has for years warned of the possibility of an airborne virus which could cause a worldwide pandemic.

14. Coronavirus COVID-19 is a highly contagious airborne virus which has rapidly spread and continues to spread across the United States.

15. COVID-19 has been declared a pandemic by the World Health Organization.

16. The COVID-19 virus remains stable and transmittable in aerosols and various surfaces for prolonged periods of time, up to two to three days on some surfaces.

17. The COVID-19 virus is a public health crisis that has profoundly affected all aspects of society, including the ability of the public to congregate and gather.

18. The COVID-19 pandemic has been exacerbated by the fact that the virus infects and stays on the surfaces of objects and materials for prolonged periods.

19. The Center for Disease Control has issued guidance that gatherings of more than ten (10) people should not occur; such gatherings increase the danger of contracting the COVID19 virus.

20. On March 6, 2020, Governor Tom Wolf issued a Proclamation of Disaster Emergency as a result of the COVID-19 virus.

21. On March 19, 2020, Governor Tom Wolf issued an Order requiring all non-life sustaining businesses in the Commonwealth to cease operation and to close all physical locations.

20. On March 23, 2020, Governor Tom Wolf issued a Stay at Home Order for citizens of various counties including Allegheny County.

21. On March 23, 2020 the Pennsylvania Department of Health issued a similar Order noting that the “operation of non-life sustaining businesses present the opportunity for unnecessary gatherings, personal contact and interaction that will increase the risk of transmission and the risk of community spread of COVID-19.”

22. On April 1, 2020, Governor Tom Wolf extended the March 23, 2020 Stay at Home Order to the entire Commonwealth of Pennsylvania.

23. The COVID-19 virus, as evidenced by these Orders, causes damage to property, particularly in places of business, such as that of Plaintiff, Cobra, and other similarly situated persons and organizations, where the operation of the business requires inter-action, gatherings and contact in areas where there exists a heightened risk of contamination by the COVID-19 virus.

#### **Impact of COVID-19 Pandemic**

24. As a result of the impact of the COVID-19 pandemic and the referenced Orders of the Governor, Plaintiff, Cobra, has sustained partial loss of use of its premises, was forced stop all seated and eat-in food service as of March 19, 2020 and takeout and delivery service as of March 28, 2020, has seen a total cessation of its business, and has been forced to furlough employees, thereby incurring losses, damages, and expenses.

25. As a result of the impact of the COVID-19 pandemic and the referenced Orders of the Governor, many similarly situated businesses have been ordered to close, thereby incurring losses, damages, and expenses similar to Plaintiff.

26. The business of Plaintiff, Cobra, like many businesses, operates in “closed environment” where many persons, including employees and customers, cycle in and out thereby creating a risk of contamination to the insured premises.

27. As a result of the COVID-19 pandemic, the business of Plaintiff, Cobra, like other similarly situated businesses, is susceptible to person to person, person to property, and property to person transmittal and contamination.

28. The COVID-19 pandemic has directly and adversely affected the business operations of Plaintiff, Cobra, and other similarly situated businesses, by causing damage and the risk of further harm to the property and its occupants.

29. Plaintiff, Cobra, and other similarly situated persons, have suffered Business Income, Civil Authority and other related losses, damages, and expenses which are covered by policies of insurance issued by Defendant, Motorists.

#### **Claim for Recovery**

30. Plaintiff, Cobra, has made claim upon Defendant, Motorists, for recovery of losses, damages, and expenses caused by the COVID-19 pandemic and the referenced Orders.

31. Plaintiff, Cobra, is entitled to a declaration that it is covered under the Motorists Policy for, *inter alia*, business income, extra expense, contamination, civil authority and other coverages under the Motorists Policy.

32. All similarly situated persons and organizations to whom Defendant, Motorists, have issued policies of insurance are entitled to a declaration that he or she is covered for business

income, extra expense, contamination, civil authority and other coverage under the policies issued by Defendant, Motorists.

33. Plaintiff, Cobra, and all similarly situated persons, are entitled to a declaration that the policies of insurance issued by Defendant, Motorists, provide coverage for the losses, damages, and expenses caused by the COVID-19 pandemic and referenced Orders.

34. Plaintiff, Cobra, and all similarly situated persons are entitled to an Order enjoining Defendant, Motorists, from denying coverage to insureds for business income, extra expense, contamination, civil authority and other coverages for losses, damages, and expenses caused by the COVID-19 pandemic and referenced Orders.

**Class Action Allegations**

36. Plaintiff, Cobra, brings this action individually and on behalf of a class of similarly situated persons as a class action pursuant to the Pennsylvania Rules of Civil Procedure.

37. Defendant, Motorists, has wrongfully denied and/or failed to acknowledge the coverage to persons or organizations who have sustained covered losses, damages, and expenses caused by the COVID-19 pandemic and the referenced Orders.

38. Plaintiff, Cobra, seeks to represent a class of Pennsylvania citizens who have sustained covered losses, damages, and expenses caused by the COVID-19 pandemic and the referenced Orders where: (a) Defendant, Motorists, issued a policy of insurance providing, *inter alia*, business income, extra expense, contamination, civil authority and other applicable coverages to each class member; (b) the putative class member has suffered covered losses, damages, and expenses under those policies by reason of the COVID-19 pandemic and referenced Orders; and (c) Defendant, Motorists, have disclaimed coverage and/or refused to acknowledge coverage under the policy in question for the loss.

39. Plaintiff, Cobra, reserves the right to amend the definition and/or identify subclasses upon completion of class certification.

40. The putative class is limited to citizens of the Commonwealth of Pennsylvania in numbers sufficient to allow class certification.

41. The members of the class are so numerous that joinder of them is impracticable.

42. Identification of the members of the class can be ascertained in and through discovery of the files and/or computer data base of Defendant, Motorists.

43. A class action is the only practicable means available for the members of the class to pursue the appropriate remedies and receive the necessary underinsured motorist benefits under the policies of insurance in question.

44. A class action is the only practicable means available to prevent the Defendant, Motorists, from engaging in the continuous and systematic denial and disclaimer of coverage for losses, damages, and expenses caused by the COVID-19 pandemic and referenced Orders.

45. The questions of law and fact are common to the members of the class which Plaintiff, Cobra, seeks to represent.

46. The questions of law and fact common to the members of the class predominate over questions that may affect only individual members.

47. The common questions of law and fact which control this litigation predominate over any individual issues include, but are not limited to:

- (a) Each member of the class suffered losses, damages, and expenses as a result of the COVID-19 pandemic and referenced Orders;
- (b) Each member of the class is an insured under a policy of insurance issued by Defendant, Motorists, which provided business income, extra expense, contamination, civil authority and other coverages applicable to the loss;





- (c) Each class member is eligible to recover under the policy issued by Defendant, Motorists, for the losses, damages, and expenses caused by the COVID-19 pandemic and the referenced Orders;
- (d) Defendant, Motorists, has denied or refused to acknowledge coverage for the loss;
- (e) The denial or refusal to acknowledge coverage is illegal and a breach of the terms and provisions of the policy at issue; and
- (f) Each member of the class is entitled to a declaration that he or she is entitled to recover under the policy of insurance issued by Defendant, Motorists, for the losses, damages, and expenses caused by the COVID-19 pandemic and referenced Orders.

48. Plaintiff, Cobra, is a member of the class that it seeks to represent.

49. The claims of Plaintiff, Cobra, are typical of the claims of other members of the class which it purports to represent.

50. Plaintiff, Cobra, is well qualified to act as class representative.

51. Plaintiff, Cobra, will fairly and adequately protect the interests of the members of the class.

52. Plaintiff, Cobra, has no interest that is adverse or antagonistic to the interests of the members of the class.

53. Plaintiff, Cobra, is committed to prosecuting the class action.

54. Plaintiff, Cobra, has retained competent counsel who are experienced in litigation of this nature.

55. A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

56. Joinder of all class matters is impracticable and the likelihood of individual class members prosecuting separate claims is remote due to the fact that the members of the class do not know that they are entitled to as a result of the COVID-19 pandemic and referenced Orders.



57. The expense and burden of individual litigation makes it unlikely that a substantial member of the class members will individually seek redress for the wrongs done to them.

58. It is desirable for all concerned to concentrate the litigation in this particular forum for adjudication.

59. Plaintiff, Cobra, anticipates no difficulty in the management of this action as a class action.

60. The class action brought by Plaintiff, Cobra, is a convenient and proper forum in which to litigate the claim.

61. The prosecution of separate actions by individual class members would create the risk of bearing inconsistent determinations that could confront Defendant, Motorists, with incompatible standards of conduct and which could prejudice non-parties to any adjudication or substantially impede their ability to protect their own interests because of the overriding common questions of law and fact involved in the matter.

62. Prosecution of these claims as a class action will result in an orderly and expeditious administration of the claims and will foster economies of time, effort and expense.

63. Prosecution of these claims as a class action will contribute to uniformity of decisions concerning the practices of Defendant, Motorists.

**COUNT I**  
**(Declaratory Relief – Individual and Class Claims)**

64. Plaintiff, Cobra, hereby incorporates by reference the foregoing Paragraphs 1 through 63 of this Complaint as though same were fully set forth herein.

65. Plaintiff, Cobra, is entitled to coverage under the Motorists Policy for the losses, damages, and expenses caused by the COVID-19 pandemic and referenced Orders.

66. Each member of the class is entitled to coverage under the applicable policy issued by Defendant, Motorists.

67. Defendant, Motorists, has denied and/or refused to acknowledge coverage for the losses, damages, and expenses of Plaintiff, Cobra, caused by the COVID-19 pandemic and the referenced Orders.

68. Defendant, Motorists, has wrongfully denied and refused to acknowledge coverage to each member of the class for the losses, damages, and expenses caused by the COVID-19 pandemic and referenced Orders.

69. Plaintiff, Cobra, is entitled to recover for losses, damages, and expenses covered by the COVID-19 pandemic and the referenced Orders under the Motorists Policy.

70. Each member of the class is entitled to recover for losses, damages, and expenses caused by the COVID-19 pandemic and the referenced Orders under the applicable policy.

71. Defendant, Motorists, has wrongfully refused to provide coverage to Plaintiff, Cobra, under the Motorists Policy.

72. The denial and refusal to acknowledge coverage to Plaintiff, Cobra, under the Motorists Policy is a material breach of that policy.

73. The denial and refusal to acknowledge coverage to Plaintiff, Cobra, under the Motorists Policy is in direct violation of the specific terms and provisions of the Motorists Policy.

74. The denial and refusal to acknowledge coverage to each member of the class under the applicable policy is a material breach of that policy.

75. Plaintiff, Cobra, is entitled to a declaration that it is entitled to coverage for losses, damages, and expenses caused by the COVID-19 pandemic and the referenced Orders.

76. Each member of the class is entitled to a declaration that he and/or she is entitled to coverage for losses, damages, and expenses caused by the COVID-19 pandemic and the referenced Orders under the pertinent policy of insurance issued by Defendants, Chubb and ACE.

77. The controversy poses an issue for judicial determination under the Declaratory Judgment Act.

78. The controversy involves substantial rights of the parties to the action.

79. The controversy poses an issue for judicial determination which is not within the scope of authority of any arbitrator or arbitration panel pursuant to the policy of insurance in question.

80. A judgment of this court in this action will also be useful for the purpose of clarifying and settling the legal relations at issue between the parties.

81. A judgment of this court will determine, terminate and afford relief from the uncertainty and controversy giving rise to this action.

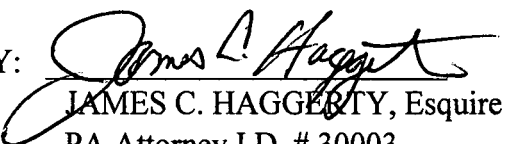
WHEREFORE, Plaintiff, King Cobra Group, LLC d/b/a Cobra Lounge, respectfully requests that the Court enter an Order:

- (a) declaring that Plaintiff, King Cobra Group, LLC d/b/a Cobra Lounge, is entitled to coverage for losses, damages, and expenses caused by the COVID-19 pandemic and the referenced Orders from Defendant, Motorists Commercial Mutual Insurance Company;
- (b) declaring that each member of the class is entitled to coverage for losses, damages, and expenses caused by the COVID-19 pandemic and the referenced Orders from Defendant, Motorists Commercial Mutual Insurance Company;
- (c) enjoining Defendant, Motorists Commercial Mutual Insurance Company, from further denying coverage to Plaintiff, King Cobra Group, LLC d/b/a Cobra Lounge., for losses caused by the COVID-19 pandemic and the governmental Orders; and
- (d) enjoining Defendant, Motorists Commercial Mutual Insurance Company, from denying or refusing to acknowledge coverage for losses caused by the COVID-19 pandemic and the governmental Orders; and


(e) such other relief as the court deems appropriate.

Respectfully Submitted:


HAGGERTY, GOLDBERG, SCHLEIFER &  
KUPERSMITH, P.C.

BY:   
JAMES C. HAGGERTY, Esquire  
PA Attorney I.D. # 30003  
1835 Market Street, Suite 2700  
Philadelphia, PA 19103  
(267) 350-6600


SCHMIT KRAMER, P.C.

BY:   
SCOTT B. COOPER, Esquire  
PA Attorney I.D. #70242  
209 State Street  
Harrisburg, PA 17101  
(717) 232-6300

JACK GOODRICH & ASSOCIATES

BY:   
JOHN P. GOODRICH, Esquire  
Attorney I.D. #49648  
429 Fourth Avenue  
Pittsburg, PA 15219  
(412) 261-4663

KOHN SWIFT

BY:   
JONATHAN SHUB, Esquire  
PA Attorney I.D. # 53965  
1600 Market Street, Suite 2500  
Philadelphia, PA 19103  
(215) 238-1700

Attorneys for Plaintiffs