

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
BUSINESS LITIGATION SECTION

pH Beauty Holdings III, Inc.,

Plaintiff,

-v-

Certain Underwriters at Lloyd's,  
London Subscribing to Policy  
Number BC-BS-2018-98896-0130, and  
HDI Global Specialty SE,

Defendants.

Civil Action No.

21-1586

SUFFOLK SUPERIOR COURT  
CIVIL CLERK'S OFFICE  
2021 JUL 13 PM 12:18  
MICHAEL JOSEPH DONOVAN  
CLERK / MAGISTRATE

**COMPLAINT AND JURY DEMAND**

Plaintiff pH Beauty Holdings III, Inc. ("pH Beauty") files this Complaint against Certain Underwriters at Lloyd's, London Subscribing to Policy Number BC-BS-2018-98896-0130 and HDI Global Specialty SE ("Insurers").

**PRELIMINARY STATEMENT**

1. This action involves representations and warranties insurance covering pH Beauty's purchase of a company commonly known as "Paris Presents." As part of that transaction, pH Beauty also purchased a Buyer's Representations and Warranties Insurance Policy ("Policy," attached as Exhibit 1) from the Insurers, which insured pH Beauty against certain breaches of the Purchase Agreement.

2. According to its financial records, Paris Presents looked like a high-performing company and pH Beauty agreed to purchase the company for \$575,000,000, a multiple of 13.66 times its reported earnings.
3. Unfortunately, those records presented a picture that was far from reality. After the purchase, pH Beauty learned that the Sellers breached the Purchase Agreement in multiple ways by failing to account for millions of dollars in promotional expenses incurred to generate those earnings.
4. These breaches resulted in Paris Presents artificially overstating its profits, which in turn led to an inflated purchase price – both as to the actual price and the multiple it reflected.
5. Following discovery of the breach, pH Beauty provided prompt notice to the Insurers in accordance with the Policy.
6. In response, the Insurers commenced an adjustment process. After more than a year of prolonged investigation, the Insurers agreed that a breach occurred and a covered loss exists. But, without any reasonable justification, they refused to pay the full value of pH Beauty's losses.
7. After pH Beauty suffered a breach from the Sellers, the Insurers subjected pH Beauty to yet another breach when they refused to provide full coverage for the loss. This was particularly egregious because the Policy was itself purchased to protect against breaches.
8. pH Beauty was forced to bring this action to fully recover what it is owed.

#### **JURISDICTION AND VENUE**

9. This Court has subject matter jurisdiction over this action under M.G.L. c. 212 § 4, which provides this Court with general subject matter jurisdiction over all civil actions.
10. This Court has personal jurisdiction over the Insurers under M.G.L. c. 223A, § 3(f).

11. Venue is proper in this Court under M.G.L. c. 223 § 8(2), as pH Beauty's principal place of business is at 255 State Street, Boston, Suffolk County, Massachusetts.
12. The Policy's choice of law clause states that the "Policy shall be interpreted under the laws of the State of Delaware." Policy at 18. However, Massachusetts law governs the handling of claims under the Policy.

### **PARTIES**

13. pH Beauty is a Delaware corporation with its principal place of business at 255 State Street, Boston, Suffolk County, Massachusetts.
14. The Insurers are:
  - (a) Argo Syndicate 1200 at Lloyd's, a Bermuda unincorporated association located at 90 Pitts Bay Road, Pembroke, HM 08, Bermuda, with a business address as a member of Lloyd's at One Lime Street, London EC3M7HA, liable for a 40% share of the Policy's Limits of Liability;
  - (b) Arch Syndicate 1955, formerly known as Barbican Syndicate 1955 at Lloyd's, a UK company with a business address as a member of Lloyd's at One Lime Street, London EC3M7HA, liable for a 20% share of the Policy's Limits of Liability;
  - (c) Hamilton Syndicate 3334 at Lloyd's, a UK company with a business address as a member of Lloyd's at One Lime Street, London EC3M7HA, liable for a 10% share of the Policy's Limits of Liability;
  - (d) Chaucer Syndicate 1084 at Lloyd's, a UK company with a business address as a member of Lloyd's at One Lime Street, London EC3M7HA, liable for a 10% share of the Policy's Limits of Liability; and
  - (e) HDI Global Specialty SE, f/k/a International Insurance Company of Hanover SE a German corporation located at Podbielskistrasse 396, 30659 Hannover, Germany, liable for a 20% share of the Policy's Limits of Liability.

## **FACTUAL BACKGROUND**

### **A. The Purpose of Representations and Warranties Policies**

15. Buyers purchase representations and warranties policies to cover losses incurred in the event that a party to the underlying transaction breaches a representation or warranty in connection with that transaction.
16. Buyers do not anticipate the breach of a representation or warranty, but when a breach does happen it often results in the buyer learning after closing that the company it bought is worth less than what it paid. In this case, pH Beauty learned that the company it bought was worth significantly less than what it paid.

### **B. The Policy**

17. The Insurers issued Policy No. BC-BS-2018-98896-0130 to pH Beauty, effective beginning August 2, 2018.
18. In the Policy, the Insurers promised to reimburse pH Beauty for losses incurred due to breaches of representations and warranties known as Insured Representations, with the Policy stating:

#### **II. INSURING AGREEMENT**

The **Insurer** shall pay to, or on behalf of, the **Insured** any **Loss** covered by the **Policy** in connection with a **Claim Notice** that is reported to the **Insurer** by the **Insured** in accordance with the terms of this **Policy**. Any such payment made hereunder shall be remitted to the **Named Insured** on behalf of itself or any other **Insured**.

Ex. 1, Policy at 7.

19. Loss is defined as:

S. **Loss** means any and all losses, liabilities, demands, judgments, claims, actions, causes of action, costs, damages, penalties, fines or expenses, whether or not arising out of third party claims (including interest, penalties, reasonable legal, consulting and other professional fees and expenses and all amounts paid in the investigation, defense or settlement of any of the foregoing), and any **Claim Expenses** related thereto, arising from a **Breach** of an **Insured Representation** or from a **Third-Party Claim**, provided that **Loss** shall not include:

- i. civil or criminal fines or penalties, except to the extent that such fines and penalties are insurable by the law of the **Most Favorable Jurisdiction**, and except for **Claims Expenses** related thereto; or
- ii. punitive or exemplary damages, except to the extent insurable under the law of the **Most Favorable Jurisdiction**, and except for **Claims Expenses** related thereto.

**Loss** shall be determined without regard to any: (i) **Limitation Provision**; or (ii) **Materiality Qualifier**.

Ex. 1, Policy at 5-6.

20. Breach is defined as:

D. **Breach** means (i) any breach of, or inaccuracy in, any **Insured Representation** or (ii) any **Pre-Closing Tax Loss**. **Breach** shall be determined without regard to any (i) **Limitation Provision** or (ii) **Materiality Qualifier**.

Ex. 1, Policy at 4.

21. The Policy's aggregate limit is \$30,000,000 and covers "loss" that exceeds the applicable Retention, which is \$4,200,000 in this case.

22. pH Beauty's "loss" exceeds the sum of the Policy's limits and applicable Retention, and pH Beauty's sole recourse for the Seller's breaches is the Policy it purchased from the Insurers.

**C. pH Beauty's Purchase of Paris Presents**

23. Paris Presents is a marketer of cosmetic and bath accessories. When pH Beauty learned Paris Presents was being offered for sale, it engaged experts to perform financial and accounting due diligence services related to the potential transaction.
24. This included reviewing the audited financials for the two fiscal years ending on December 31, 2016 and 2017. It also involved reviewing the unaudited income statement for the twelve-month period ending June 30, 2018 and the balance sheet at June 30, 2018, which served as the base for the transaction's purchase price.
25. In large part based on the impressive growth and profitability performance for the six-month period ending June 30, 2018, pH Beauty agreed to pay a premium for Paris Presents. This drove pH Beauty to increase its purchase price, going from an initial offer of \$550,000,000 up to a closing price of \$575,000,000, which reflected a 13.66x multiple of Paris Presents' earnings over that period.
26. On August 2, 2018, pH Beauty signed the Purchase Agreement, and the deal closed on September 28, 2018.

**D. The Representations and Warranties in the Purchase Agreement Were Breached**

27. The Purchase Agreement contained several representations and warranties, beginning with the representation and warranty that Paris Presents' financial statements "fairly presented, in all material respects, the consolidated financial condition and results of operations and cash flows."

28. The Purchase Agreement also contains a representation and warranty that Paris Presents “and its Subsidiaries have no liabilities or obligations other than (i) liabilities or obligations that were incurred since December 31, 2017, in the Ordinary Course of Business that are not, individually or in the aggregate, material to [Paris Presents] and its Subsidiaries, taken as a whole.”
29. The Purchase Agreement also contained a representation and warranty that the Financial Statements were “prepared in accordance with GAAP, consistently applied, and fairly presented, in all material respects, the consolidated financial condition and results of operations and cash flows . . . .”
30. The Purchase Agreement contained a representation and warranty that “the books and records of the Company are and have been properly prepared and maintained in all material respects in form and substance adequate for preparing audited financial statements in accordance with GAAP, and fairly and accurately reflect in all material respects of all the assets and liabilities” of Paris Presents.
31. Finally, the Purchase Agreement contained a representation and warranty that Paris Presents had established and maintained “systems of internal accounting controls which provide reasonable assurances that (i) all transactions are executed in accordance with management’s general or specific authorizations [and] (ii) all transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain proper accountability for items.”
32. Each of these representations and warranties are “Insured Representations” under the Policy, and each of them were false when made.

33. As a consumer brand, Paris Presents conducts periodic promotional efforts, such as offering “buy one, get one free” or a discounted price on a single item. When customers redeem these offers, the retailers who sell the products inform Paris Presents, which then reimburses those amounts to the retailers.
34. There is an accounting process to address the inherent time lag between when a retailer sells products using a promotion and when the retailer either deducts the cost of the promotion from other amounts owed to Paris Presents or presents an invoice for the cost of the promotion. Prior to 2018, Paris Presents evaluated its Trade & Promotional Allowance Reserve liability on a quarterly basis to measure the outstanding liabilities and set aside funds to reimburse retailers for trade and promotional allowances.
35. In the first quarter of 2018, Paris Presents changed its accounting methodology for the Trade & Promotional Allowance Reserve liability to a two-step process: first, on a monthly basis, it accrued trade allowance reserves based on a pre-determined percentage of sales for each retailer that engaged in promotional activities; second, on a quarterly basis, it examined the actual trade commitments and obligations for each customer to ensure that an accurate liability accrual had been recorded on the balance sheet and the resulting impact was appropriately reflected in the income statement for that period and, if necessary, adjusted the percentage of sales used for future monthly accruals to ensure accuracy.
36. The Trade & Promotional Allowance Reserve liability balance sheet account is reduced each time a retail customer takes a deduction from its payment or presents an invoice for an agreed promotion. At the end of each month and quarter, the accrual is examined and adjusted to the most current estimate of the required trade liability. An increase in the



liability would require an additional expense to be recorded on the Income Statement. A decrease in the liability would do the opposite.

37. During the transaction, Paris Presents had fourteen individuals in its accounting department, including the Chief Financial Officer and Controller. The group was responsible for monthly, quarterly, and year-end closing activity as well as financial reporting and consolidations.
38. An employee named Shilpesh Patel ("Patel") was a member of the Paris Presents accounting team and the person responsible for examining the adequacy of the Trade & Promotional Allowance Reserve liability and adjusting the accrual accordingly.
39. Mr. Patel left the company in April 2018, but his replacement did not arrive until October 2018 and no one performed his job functions during that time. As a result, the Trade & Promotional Allowance Reserve liability was unexamined at June 30, 2018 resulting in an under-accrual of the liability and an overstatement of profitability at that date.
40. This was an internal control failure that resulted in a misstatement of the Trade & Promotional Allowance Reserve liability, which was not recorded in accordance with Paris Presents' accounting policy and with GAAP, defined by the Purchase Agreement as "the generally accepted accounting principles in the United States, as in effect from time to time."
41. The errors in the June 30, 2018 financial statements were discovered months after the transaction closed when determining the "purchase price adjustment" in accordance with the Purchase Agreement.
42. Following that closing purchase price adjustment, the June 30, 2018 financial statement issue was investigated in greater detail, and led to the discovery that the accounting process

for the Trade & Promotional Allowance Reserve accrual adjustment had not been performed since Patel's departure, resulting in a significant under-accrual of the Trade & Promotional Allowance Reserve liability at June 30, 2018.

43. GAAP provides that a change in accounting estimate should be accounted for in the period of change if the change affects that period only or in the period of change and future periods if the change affects both.
44. Paris Presents represented and warranted that its accounting policies complied with GAAP. As a result, had this error been discovered while the transaction was in progress, Paris Presents would have made the adjusting accounting entries to the financial statements to properly reflect the Trade & Promotional Allowance Reserve liability and the income statement impact in the 2018 financial statements, in accordance with GAAP.
45. But this was not done. As a result, the 2018 earnings did not include \$2,402,913 in necessary Trade & Promotional Allowance Reserve liability. Because the 2018 earnings were used as the basis for the purchase price, the \$2,402,913 error was also amplified 13.66 times, causing pH Beauty to overpay for Paris Presents by \$32,823,792.
46. Profitability is an important factor in determining a company's relative value, and more profitable companies typically yield higher relative multiples than less profitable ones.
47. Growth rate is also a key determinant of relative value, as faster growing businesses typically yield higher relative multiples than slower growing businesses.
48. In simpler terms, Paris Presents' financial statements substantially overstated both its profitability and its earnings growth trajectory, which led pH Beauty to increase its initial offer from \$550,000,000 to a closing price of \$575,000,000. This was a premium that is now known to have been unjustifiably high.

49. Had pH Beauty known Paris Presents' true earnings growth rate and profitability during the transaction, it would have paid a materially lower multiple and a much lower price.
50. Paris Presents' failure to properly account for a fundamental aspect of how its business generates sales indicates a lower overall quality of earnings. Had this been known, it would have further served to reduce the purchase price.
51. Because the numbers in this transaction are so large, even small reductions in the multiple would increase pH Beauty's loss to more than \$34,200,000, which would exceed the Policy's \$30,000,000 limit and the \$4,200,000 Retention. Even a tiny .04% decrease of the multiple from 13.66 to 13.62 leads to additional loss of approximately \$1,466,000, increasing pH Beauty's total losses to more than \$34,200,000.
52. pH Beauty has also incurred, and continues to incur, substantial Claim Expenses.

**E. The Insurers Breached the Policy**

53. Paris Presents' failure to properly record the Trade & Promotional Allowance Reserve liability in accordance with its own accounting policy and GAAP were covered Breaches of the Purchase Agreement under the Policy.
54. By refusing to reimburse pH Beauty for its full losses incurred as a result of the Sellers' breaches, Insurers themselves breached the Policy.
55. The entire purpose of the Policy is to compensate pH Beauty in the event that the Sellers breached the Insured Representations.
56. The Purchase Agreement had a "No Survival" clause, so pH Beauty's only source to obtain compensation for the Seller's breaches is the Policy, which is exactly why pH Beauty purchased the Policy.

57. On December 16, 2019, pH Beauty notified the Insurers of the loss, including the fact that §§ 3.7, 3.20 and 3.23 of the Purchase Agreement were breached
58. The Insurers hired a consulting firm, Alvarez & Marsal (“A&M”), to advise them on accounting issues. During the claim process, the Insurers made many requests for information, some of which were duplicative or unnecessary. Despite the frustration this caused, pH Beauty complied with the requests.
59. After almost a year of lengthy investigation and analysis, the Insurers acknowledged that the Sellers breached Insured Representations under the Policy.
60. Although the Insurers acknowledged a covered Loss due to the breach, they offered to pay only a small fraction of what they owe pH Beauty under the Policy.
61. Further, the Insurers’ reasons for refusing to reimburse pH Beauty are unreasonable.
62. In a letter dated November 24, 2020 (“Loss Letter”), the Insurers informed pH Beauty that they were only willing to recognize a loss of \$3,649,755, and \$373,408 of Claim Expenses, net of the \$4,200,000 Retention. The Loss Letter is attached as Exhibit 2.
63. To justify this \$26,350,245 departure from pH Beauty’s loss calculation, the Insurers did not calculate the loss according to GAAP. *See* Ex. 2, Loss Letter at 3.
64. Even though GAAP instructs that changes in accounting estimates should be accounted for only in the period of change and any applicable future periods, Insurers wrongfully tried to offset \$1,229,606 of the \$2,402,913 in Reserve Accrual liabilities by applying those amounts in periods prior to the period of change. *See* Ex. 2, Loss Letter at 7.
65. This adjustment was problematic in at least two aspects. First, the Insurers never fully substantiated how they derived the \$1,412,128 amount which they claim related to a prior period. Second, that adjustment would directly contradict GAAP, which does not

contemplate making accounting adjustments in periods prior to the period of change. In other words, for a loss resulting from a failure to follow GAAP, pH Beauty calculated its loss according to GAAP. The Insurers did not.

66. Additionally, the Insurers claimed that pH Beauty's loss must also be offset by \$1,510,946 "as a reasonable amount the Insured was compensated in the Net Working Capital Adjustment related to the claimed Seller's understatement of the Trade Allowance Reserve." as part of the purchase price adjustment process. *See* Ex. 2, Loss Letter at 8.
67. The Insurers have no basis to reduce pH Beauty's loss through their Working Capital offset theory.
68. In an effort to support their theory, the Insurers disregarded key Policy wording and came up with a speculative "calculation" based on what the parties to the transaction originally set forth when they began their negotiation and the aggregated result of that negotiation.
69. During the transaction, the parties estimated the amounts of various items at closing, such as how much cash would be on hand, how much debt would be owed, and the level of Working Capital, which included Trade & Promotional Allowance Reserve liability.
70. After closing, the parties exchanged their positions on overages and shortages concerning those amounts, with pH Beauty asking for a total of \$9,971,736 and the Sellers offering a total of \$1,357,419. As to Working Capital, pH Beauty asked for an adjustment of \$8,835,627 and the Sellers offered an adjustment of \$1,487,154.
71. After that initial exchange of positions, the parties then negotiated the purchase price adjustment. This culminated in a phone call that ended with the parties agreeing to a lump sum \$5,000,000 resolution, which included a Working Capital adjustment of \$5,999,782.

There was no agreement on any specific component of Working Capital, so there was no allocation of any amount to any specific item.

72. Despite knowing that, the Insurers still claimed that an offset was “required by Section III.D of the Policy.” See Ex. 2, Loss Letter at 8. But their quotation of the Policy omitted key language, and important meaning was lost along the way. Here is what the Insurers said, compared to what the Policy says, with the omitted language in ***bold and italics***:

Excerpted Policy Wording in Insurers’ Letter	Actual Policy Wording
<p>“[T]he Policy . . . excludes ‘that portion of Loss . . . arises out of amounts accounted for or included in the calculation of the aggregate purchase price adjustment set forth in Section 1.5 of the Purchase Agreement.’”</p> <p>Ex. 2, Loss Letter, at 8, n.6.</p>	<p>III. EXCLUSIONS</p> <p>The Insurer has no obligation to make payment for that portion of Loss <b><i>that the Insurer is able to prove:</i></b></p> <p>....</p> <p>D. arises out of amounts accounted for or included in the calculation of the aggregate purchase price adjustment set forth in Section 1.5 of the Purchase Agreement <b><i>(with the intent of this provision to merely be to avoid “double counting” and not to limit any right to recover for Loss that arises out of or results from any Breach in excess of the amount of such Loss that adjusts the purchase price pursuant to such adjustment);</i></b></p> <p>Ex. 1, Policy, at 8 (bold and italics added).</p>

73. Rather than requiring an offset, the exclusion requires the Insurers to prove that an amount of the Loss was double-counted between the purchase price adjustment and the Loss itself before excluding a portion of the Loss.
74. Because the parties to the Purchase Agreement never agreed on an allocated settlement, the Insurers cannot now create an allocation on their own to avoid their obligations.
75. Even if the Insurers' assumption that some of the Working Capital adjustment related to Trade & Promotional Allowance Reserve accrual was correct, the Insurers would still be unable to prove a specific amount, and the Policy only excludes "that portion of Loss that the Insurer is able to prove . . ." was already accounted for in the aggregate purchase price adjustment. Ex. 1, Policy at 8.
76. Aside from its legal insufficiency, the Insurers' claim that pH Beauty was paid for 68% of the requested adjustment to the Net Working Capital based on the understated Trade & Promotional Allowance Reserve at September 28, 2018 is conceptually wrong.
77. In the Working Capital adjustment process based on the negotiated closing balance sheet at September 28, 2018, pH Beauty settled for 68% of what it believed it was owed, but this was an aggregate settlement and not allocated to any particular item. The allocation of the settlement to individual working capital line items (i.e., accounts receivable, accounts payable, inventory, Trade & Promotional Allowance Reserve) was never discussed.
78. The fact that the closing balance sheet dispute at September 28, 2018 was settled at an aggregate recovery rate of 68% does not justify applying that same percentage to the Trade & Promotional Allowance Reserve under accrual at June 30, 2018.

79. The population of trade credit memos underpinning the required Trade & Promotional Allowance Reserve at September 28, 2018 is completely different than that underpinning what should have been the required reserve at June 30, 2018.
80. A&M failed to justify how a payment to pH Beauty based on a September 28, 2018 balance sheet represents a double-counting of what is owed based on the insufficiency of the Trade & Promotional Allowance Reserve at June 30, 2018.
81. The Net Working Capital Estimate was calculated on Schedule 9.1(a) to the Purchase Agreement using the average of the month-end Net Working Capital for each of the twelve months ending June 30, 2018.
82. As a result, even if pH Beauty's loss could be offset by the additional \$1,510,946 that Insurers claim to have been accounted for in the Closing Statement, if calculated in the manner prescribed by the Purchase Agreement, the proper offset would be equivalent to 1/12<sup>th</sup> of A&M's figure, or \$125,912, representing the monthly average effect of the claimed June 30, 2018 Trade & Promotional Allowance Reserve under accrual.
83. Finally, Insurers' attempts to lower pH Beauty's loss based on their improper \$125,912 Working Capital offset theory are irrelevant, as an additional \$1,128,442 of trade credit liabilities were subsequently identified that were not included in the shortfall specified at the time of the Closing Statements.
84. Because these liabilities were unknown at that time, they could not have possibly been repaid during the post-closing Net Working Capital adjustment. Therefore, the full calculation of this theory would result in no reduction at all, as combining the offset of \$125,912 with the still-owed \$1,128,442 in previously unknown trade credit liabilities would result in a negative number.



85. Paris Presents' errors resulted in not only a loss of \$2,402,913 multiplied by 13.66 as a direct result of the understated liabilities and overstated earnings, but also additional loss due to the enhanced multiple that pH Beauty paid for a company that was falsely represented. This far exceeds \$34,200,000, which makes this a limits loss.
86. The fact that the Insurers have not paid the full limits of their Policy is a breach of contract.
87. pH Beauty has explained these issues to the Insurers in painstaking detail, but the Insurers have continued to drag their feet and refuse full payment even though their liability and the unreasonableness of their position has long been clear.

**FIRST CAUSE OF ACTION**  
**(Breach of Contract)**

88. pH Beauty incorporates by reference the allegations in the paragraphs above.
89. The Policy is a valid and binding contract between pH Beauty and the Insurers.
90. pH Beauty has performed all of its material duties and responsibilities under the Policy, including paying the applicable premium.
91. The Sellers breached Insured Representations covered by the Policy, which caused pH Beauty to suffer at least \$34,200,000 in covered losses.
92. pH Beauty's recoverable losses under the Policy also include the substantial Claim Expenses it has incurred and will continue to incur.
93. Insurers have breached the Policy by failing to compensate pH Beauty for its losses arising out of the Sellers' breaches of Insured Representations up to the Policy's limit of \$30,000,000, excluding the Retention.
94. In connection with the Claim against Insurers, pH Beauty has been damaged in the amount of at least \$30,000,000 in excess of the Retention.

95. To compensate pH Beauty for breach of contract, Insurers are liable in the amount of \$30,000,000, plus pre- and post-judgment interest.

**SECOND CAUSE OF ACTION**  
**(Breach of the Duty of Good Faith and Fair Dealing)**

96. pH Beauty incorporates by reference the allegations in the paragraphs above.
97. The Policy has an implied duty of good faith and fair dealing.
98. The Insurers lacked reasonable justification in delaying and ultimately refusing payment of the Claim.
99. In fact, the Insurers' actions were intended to deprive pH Beauty of its right to receive the benefits of the Policy.
100. pH Beauty suffered substantial monetary loss as a result of Insurers' breach of the implied covenant of good faith and fair dealing.
101. Insurers are liable for pH Beauty's losses resulting from Insurers' breach of the implied covenant of good faith and fair dealing in an amount to be determined at trial.

**THIRD CAUSE OF ACTION**  
**(Violations of Mass. Gen. Laws c. 93A § 11)**

102. pH Beauty incorporates by reference the allegations in the paragraphs above.
103. pH Beauty and Insurers have a commercial relationship.
104. The acts and omissions giving rise to this dispute occurred primarily in Massachusetts.
105. Insurers committed unfair and deceptive acts and practices in violation of Massachusetts General Laws c. 93A § 11 through at least the following acts:
- (a) misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue in violation of Mass. Gen. Laws c. 176D, § 3(9)(a);
  - (b) failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed in violation of Mass. Gen. Laws c. 176D, § 3(9)(e);

- (c) failing to effectuate a prompt, fair and equitable settlement of pH Beauty's claim claims in which the Insurers' liability is reasonably clear in violation of Mass. Gen. Laws c. 176D, § 3(9)(f); and
  - (d) stringing out the claims process by continuing to assert theories that Insurers know have no basis in fact or law with the intent to force pH Beauty into an unfavorable settlement.
106. Insurers committed these unfair and deceptive acts and practices in the conduct of trade or commerce.
107. These violations were willful, knowing, and in bad faith.
108. These unfair and deceptive acts and practices occurred primarily in Massachusetts.
109. pH Beauty suffered significant monetary loss a result of Insurers' unfair and deceptive acts and practices.
110. Insurers are liable for pH Beauty's losses resulting from these unfair and deceptive acts and practices in an amount to be determined at trial.

**WHEREFORE**, pH Beauty Holdings III, Inc. requests judgment as follows:

- A. Damages in favor of pH Beauty Holdings III, Inc., in an amount to be determined at trial;
- B. Interest under G. L. c. 231, § 6C from the date of the breach;
- C. Treble (but at least double) damages under Mass. Gen. Laws c. 93A;
- D. Reasonable attorneys' fees;
- E. Costs of suit; and
- F. Granting pH Beauty Holdings III, Inc. further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs demand a trial by jury on all issues so triable under Rule 38 of the Massachusetts Rules of Civil Procedure.

DATED: July 13, 2021

Respectfully submitted,



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