

CATHERINE M. BROWN, ESQ.

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MEMBER NJ BAR

October 22, 2020

VIA eCOURTS

Hon. Stuart A. Minkowitz, A.J.S.C.
Superior Court of New Jersey, Law Division
Morris County Courthouse
Washington and Court Sts.
Morristown, NJ 07963-0910

**Re: JWC Fitness, LLC v. Governor Philip D. Murphy
SSX-L-388-20**

Dear Judge Minkowitz:

We represent the Plaintiff, JWC Fitness, LLC (“Plaintiff”) in this action. Please accept this letter brief in lieu of a more formal reply in support of Plaintiff’s motion for reconsideration of the court’s September 30, 2020 Order dismissing this action and suggesting the Plaintiff refile its complaint in the Appellate Division (the “Dismissal Order”). As the motion is opposed, Plaintiff restates her request for oral argument initially made in the Notice of Motion. For the reasons set forth below, and in Plaintiff’s moving brief, the reconsideration motion should be granted.

ARGUMENT

**RECONSIDERATION SHOULD BE GRANTED BECAUSE THE
DISMISSAL ORDER VIOLATED THE APPLICABLE LAW AND RULES.**

The reconsideration motion arises from the court’s deviation from regular process when it dismissed this action. First, the court prejudged an intricate forum-allocation issue without

offering counsel a prior opportunity to be heard – the Bar’s especial contribution to securing the sound administration of justice. Second, having determined the case should be elsewhere, the court failed to comply with *Rule* 1:13-4(a), which required transferring the case instead of dismissing it.

1. The Dismissal Order is based on a ‘palpably incorrect’ conclusion that Plaintiff could not file this action in the Law Division.

The court incorrectly concluded the action ought not be filed initially in the Law Division. Contrary to the explanation set forth in the Dismissal Order, the applicable precedent offers *no support* for the proposition that the Plaintiff must file this action in the Appellate Division *ab initio* or, as important, that the Appellate Division *will unquestionably accept the filing*. At most, the closest pertinent precedent suggests that a decision *by the trial court* to transfer the action to the Appellate Division will almost certainly be ratified by the Appellate Division as the receiving forum.

There are two cases that, like the instant case, raised legal challenges arising from the Disaster Control Act. They are *Worthington v. Fauver*, 88 N.J. 182 (1982) and *County of Gloucester v. State*, 132 N.J. 141 (1993). Both of those cases were filed in the Law Division initially as *Rule* 4:69 prerogative writs actions by local public entities against a State official.

Worthington was filed against the Corrections Commissioner because he failed to comply with a statutory mandate to timely transfer newly-sentenced State prisoners out of the local jail to the State prison system. That would seem to be a clear case for a filing under *Rule* 2:2-3(a)(2), as it involved administrative inaction by a State official. *Id.* However, the State *did not* move for a *Rule* 2:2-3(a)(2) transfer. It answered the pleading. It asserted an affirmative defense that the Commissioner’s inaction was justified by a newly-promulgated Executive Order that declared an emergency within the ambit of the Disaster Control Act and overrode the statutory mandate. It

wasn't until several weeks later that the trial court, on its own initiative, transferred the action to the Appellate Division. But even then, the trial court did not base its decision on *Rule 2:2-3(a)(2)*. It based it on the relaxation rule, *Rule 1:1-2*. The Supreme Court, which recounted this procedural history, expressly said: "the trial judge's actions were appropriate under the circumstances." *Worthington, supra*, 88 N.J. at 191-192.

In *County of Gloucester, supra*, 132 N.J. 141, the State's response to the *Rule 4:69* filing in the Law Division arising from the same Executive Order was to formally move to transfer pursuant to *Rule 2:2-3(a)(2)*. The motion was granted and the case was transferred pursuant to *Rule 1:13-4(a)*. *Id.* at 143.

When these two cases are viewed from the standpoint of the result, the Appellate Division is *an* appropriate forum, but *only* after due deliberation by a trial court in accordance with the *Rules*. When these two cases are viewed from the standpoint of the initial filing, however, they offer no support for the proposition that a plaintiff must bypass the regular procedure that newly-filed civil actions originate in the Law Division. *See Rule 4:2*. These cases further reveal that the scheme of the *Rules* is that forum-allocation questions should be funneled through the trial court pursuant to *Rule 1:13-4(a)*. This is more orderly than leaving it to a plaintiff to make a judgment call when the proper forum allocation is anything but clear-cut.

Such is the case here. Although *Rule 2:2-3(a)(2)* requires that certain challenges to final administrative determinations be appealed directly to the Appellate Division, it contains no bright line rule—or even any guidance—regarding cases that implicate a Governor's executive orders. It certainly contains no requirement that such cases originate in the Appellate Division. To wit, the *Rule* allows for an appeal as of right:

to review final decisions or actions of any state administrative agency or officer, and to review the validity of any rule promulgated by such agency or officer....
Id.

Assuming *arguendo* the Governor is an administrative officer within the meaning of the *Rule* no matter the circumstance, original appellate jurisdiction arises only if the validity of “any rule promulgated” by the Governor is questioned. That is not the case here.

Plaintiff seeks a declaration that Governor Murphy, having exercised the powers over private property conferred upon him by the Disaster Control Act, must also follow the procedures set forth in the Act for the compensation of property owners affected by his exercise of power over their property. *See* Complaint. Stated another way, when Governor Murphy invoked the Disaster Control Act to order non-essential businesses to close or to reduce operations (*see* Ex. Order 104, superseded by Ex. Order 107), the state became legally obliged under *N.J.S.A. App. A: 9-51* to implement a statutory process to compensate affected businesses.

As to this contention, pleaded in Count I, the Complaint seeks the following relief:

Plaintiff demands a declaratory judgment be entered in its favor and against Defendant that Plaintiff’s compliance with Ex. Orders 104 and 107 and such pertinent executive orders issued thereafter pursuant to the Defendant’s authority under the Act entitle Plaintiff to compensation as set forth in *N.J.S.A. App. A:9-34* and *N.J.S.A. App. A:9-51*, and that Defendant is accordingly obligated to implement the compensation procedures set forth in the Act.” [Complaint, Count I at p. 5].

If the court granted Plaintiff the entirety of the requested relief would Executive Order 107 be null and void? No; the Order would be unaffected. If relief was granted, the Governor would have to implement the compensation provisions of *N.J.S.A. App. A: 9-51*. The Executive Order would remain in full force and effect. Therefore, since the validity of any executive order is not at issue here, *Rule 2:2-3(a)(2)* does not apply to this case.

Thus, the court misapprehended the nature of Plaintiff’s case when it characterized the Complaint as a “challenge[] [to] the implementation of defendant’s Executive Order 107” and

dismissed the action on the grounds that “challenges to executive orders exceed the subject matter jurisdiction of this court”. Dismissal Order. As noted *supra*, however, Plaintiff’s Complaint does not present a challenge to the validity of Governor Murphy’s Executive Orders and, therefore, does not fall within the ambit of *Rule 2:2-3(a)(2)*. Moreover, neither *Rule 2:2-3(a)(2)* nor case law categorically state the Law Division is always an improper forum for an action involving an Executive Order. *See*, Plaintiff’s reconsideration motion brief at 3, citing Gann, cmt. 3.4.2 to *Rule 2:2-3(a)(2)*.

In his brief opposing Plaintiff’s motion for reconsideration, the Attorney General cites a string of recent cases arising from the Governor’s Covid-19 orders in which “the trial court found that the Appellate Division has exclusive jurisdiction over such cases ***and transferred the matters*** to the Appellate Division.” (Def. Opp. Br. at 11-12, citing cases) (emphasis added). In each of those cases, however, the trial court’s order issued only after the filing of a transfer motion by the Attorney General, consistent with the regular procedural practice of funneling forum-allocation questions through the trial court. *See, e.g.*, attached Notice of Motion and subsequent transfer Order filed in *Italian Kitchen, Inc., et al. v. State of New Jersey, et al.*, Docket No. SLM-L-86-20). But the Attorney General never claimed in those cases, as he does here, that the Appellate Division is the *exclusive* forum. In each case he moved either for a transfer to the Appellate Division pursuant to *Rule 2:2-3(a)(2)* and *Rule 1:13-4(a)*, or for a transfer to the Chancery Division, General Equity Part in Mercer County pursuant to *Rule 4:3-2(a)* and *Rule 4:3-3*. Clearly, the Attorney General does not take the position that Appellate Division jurisdiction is exclusive in Covid-related cases brought against the Governor.

The Attorney General also never sought dismissal in those cases, as it does here. In each of those cases the Attorney General moved for a transfer. In one of those cases the motion was

resolved by consent of the parties. *Isenberg v. Murphy*, Dkt. No. MER-C-50-20. If, as the Attorney General claims here, (Def. Opp. Br. at 11-12), Plaintiff's case is like those other cases, he does not explain why he contends here for the different result of dismissal.

2. The court is empowered to *transfer* the action to a different *forum*, but not to dismiss it altogether.

Rule 1:13-4(a) empowers the court to consider a forum allocation issue "on its own initiative". Should the forum be incorrect, the *Rule* furnishes the court only one course of action:

order the action . . . transferred to the proper court . . . in the State. The action shall then be proceeded upon as if it had been originally commenced in that court or agency. *Id.*

Thus, even if the court views the Appellate Division as the proper original forum for this action, the appropriate response is *transfer* not *dismissal*.

The Dismissal Order violates this procedure, without explanation. It made no reference to *Rule* 1:13-4(a) whatsoever. And the Attorney General, while contending that the case is properly dismissed, never mentions *Rule* 1:13-4(a) in his brief or otherwise explains why the *Rule* should be ignored here.

In sum, no reasoned justification has been offered by either the court or the defendant why this case is an exception to the regular procedural mandate of *Rule* 1:13-4(a). The reconsideration motion must be granted to rectify the court's deviation from the *Rule*. If the court continues to believe the Law Division is the incorrect forum, its course of action per *Rule* 1:13-4(a) is to grant the reconsideration Motion, reinstate Plaintiff's Complaint, and transfer the action to the Appellate Division.

* * *

Plaintiff is a law-abiding, taxpaying citizen of this State. She ran a business successfully for 10 years and supported her family of three young children with those earnings. (Pallay Aff. of

9/23/20 at par. 21-22). She complied fully with the Governor's Executive Orders notwithstanding the personal economic cost to her and her family. She won Congressional recognition for Covid-related activities that benefitted her community. (Pallay Aff. of 9/23/20 at par. 15).

Mrs. Pallay has made the difficult decision to close her business at the end of this month. (Pallay 2d Supp. Aff. of 10/22/20 at par. 4). She is presently in an eviction proceeding. (Pallay Supp. Aff. of 9/29/20). She has creditors and she has expenses she cannot afford to pay. (Pallay 2d Supp. Aff. of 10/22/20 at par. 7-10).

Mrs. Pallay's circumstances are parlous, dynamic and worsening. While the wheels of justice grind exceeding fine in even the best of circumstances, it is respectfully submitted the Justice system owes her the courtesy of having her *bona fide* complaint handled fully in accord with regular process due and with dispatch.

CONCLUSION

For all the foregoing reasons, the reconsideration Motion should be granted. Plaintiff's Complaint and Motion for Summary Disposition and Declaratory Relief should be reinstated and granted. Should the court decide to transfer the action to the Appellate Division, that action should be taken pursuant to *Rule* 1:13-4(a).

Respectfully submitted,

s/Catherine M. Brown
Catherine M. Brown

s/Robert W. Ferguson
Robert W. Ferguson

Attorneys for Plaintiff

cc: via eCourts: Kevin Jespersen, AAG
Amy Stevens, DAG

ATTACHMENT 1

GURBIR S. GREWAL
ATTORNEY GENERAL OF
THE STATE OF NEW JERSEY
Division of Law
25 Market Street
P.O. Box 112
Trenton, NJ 08625-0112
(609) 376-3232

By: Kevin R. Jespersen (019151981)
Assistant Attorney General
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Christopher Weber (012122013)
Deputy Attorney General
christopher.weber@law.njoag.gov
Emily Bisnauth (060562013)
Deputy Attorney General
emily.bisnauth@law.njoag.gov
Erin Hodge (272052018)
Deputy Attorney General
erin.hodge@law.njoag.gov

ITALIAN KITCHEN, INC.; A & R
VENTURES, INC.; and OZZ LAND, LLC;

Plaintiffs,

vs.

STATE OF NEW JERSEY and PHILIP D.
MURPHY, in his official capacity
as the Governor of the State of
New Jersey,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CIVIL PART
SALEM COUNTY VICINAGE

DOCKET NO.: SLM-L-00086-20

CIVIL ACTION

**NOTICE OF MOTION TO PROCEED
ON SHORT NOTICE AND TRANSFER
JURISDICTION TO THE APPELLATE
DIVISION, OR IN THE
ALTERNATIVE, TO TRANSFER
VENUE TO THE MERCER COUNTY
VICINAGE**

To: Hon. Benjamin C. Telsey, A.J.S.C.
Superior Court of New Jersey
Gloucester County Justice Complex
70 Hunter Street
Woodbury, New Jersey 08096

Joseph DiNocola, Esq.
DiNicola & DiNicola, LLC
381 South Golfwood Ave.
Carneys Point, New Jersey 08069

PLEASE TAKE NOTICE that as soon as counsel may be heard, defendants in the above-captioned matter will move before the Honorable Benjamin C. Telsey, A.J.S.C., of the Superior Court of New Jersey - Law Division, Civil Part, Cumberland/Gloucester/Salem County Vicinage, for an order to proceed on short notice pursuant to Rule 1:1-2 and Rule 1:6-3(a), and transferring jurisdiction in this matter to the Superior Court of New Jersey - Appellate Division, pursuant to Rule 2:2-3(a)(2) and Rule 1:13-4(a), or, in the alternative, transferring venue in this matter to the Superior Court of New Jersey - Chancery Division, General Equity Part, Mercer County Vicinage, pursuant to Rule 4:3-2(a) and Rule 4:3-3;

PLEASE TAKE FURTHER NOTICE that in support of defendants' motion, reliance will be placed upon the brief annexed hereto;

PLEASE TAKE FURTHER NOTICE that a proposed order, granting defendants' motion to proceed on short notice, and either transferring the matter to the Appellate Division or the Mercer County Vicinage, is attached hereto;

PLEASE TAKE FURTHER NOTICE that this matter has not yet been assigned a discovery end date; and

PLEASE TAKE FURTHER NOTICE that oral argument is requested.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: /s/Christopher Weber
Christopher Weber
Deputy Attorney General

Dated: May 22, 2020

ATTACHMENT 2

GURBIR S. GREWAL
ATTORNEY GENERAL OF
THE STATE OF NEW JERSEY
Division of Law
25 Market Street
P.O. Box 112
Trenton, NJ 08625-0112
(609) 376-3232

By: Kevin R. Jespersen (019151981)
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kevin.jespersen@law.njoag.gov
Christopher Weber (012122013)
Deputy Attorney General
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Emily Bisnauth (060562013)
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Erin Hodge (272052018)
Deputy Attorney General
erin.hodge@law.njoag.gov

ITALIAN KITCHEN, INC.; A & R
VENTURES, INC.; and OZZ LAND, LLC;

Plaintiffs,

vs.

STATE OF NEW JERSEY and PHILIP D.
MURPHY, in his official capacity
as the Governor of the State of
New Jersey,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CIVIL PART
SALEM COUNTY VICINAGE

DOCKET NO.: SLM-L-00086-20

CIVIL ACTION

**ORDER GRANTING DEFENDANTS'
MOTION**

THIS MATTER, having been opened to the Court by Gurbir S. Grewal, Attorney General of the State of New Jersey (Kevin R. Jespersen, appearing), attorney for defendants, by way of motion to be heard on short notice, and to transfer jurisdiction in this matter to the Superior Court of New Jersey - Appellate Division,

or alternatively to transfer venue in this matter to the Superior Court of New Jersey - Chancery Division, General Equity Part, Mercer County Vicinage; and upon notice to Joseph M. DiNicola, Esq., attorney for plaintiffs; and the court having read and considered the papers submitted in support of defendants' motion and any opposition thereto, as well as any oral argument; and for good cause shown;

IT IS on this 8 day of ~~May~~ ^{June}, 2020;

ORDERED that defendants' motion to be heard on short notice be and hereby is **GRANTED**; it is

FURTHER ORDERED that defendants' motion to transfer jurisdiction in this matter to the Superior Court of New Jersey - Appellate Division, be and hereby is **GRANTED**, and jurisdiction in this matter shall immediately be transferred to the Appellate Division; alternatively it is

FURTHER ORDERED that defendants' motion to transfer venue in this matter to the Superior Court of New Jersey - Chancery Division, General Equity Part, Mercer County Vicinage, be and hereby is **GRANTED**, and venue in this matter shall be immediately transferred to the Mercer County Vicinage; and it is

FURTHER ORDERED that a copy of this order shall be served upon all parties within seven (7) days of the entry hereof.

Benjamin C. Telsey

HON. BENJAMIN C. TELSEY, A.J.S.C.

Opposed _____

Unopposed _____

Catherine M. Brown, Esq. (Att’y No. 029191982)
27 Lake Road
Denville, NJ 07834
(973) 984-9300
cmb.certcivatty@gmail.com

STERN KILCULLEN & RUFOLO, LLC
Robert W. Ferguson, Esq. (Att’y No. 020632009)
325 Columbia Turnpike, Suite 110
Florham Park, NJ 07932
(973) 535-2607
rferguson@sgklaw.com

Attorneys for Plaintiff

JWC Fitness, LLC,

Plaintiff,

v.

GOVERNOR PHILIP DUNTON
MURPHY, in his official capacity,

Defendant.

SUPERIOR COURT OF NEW JERSEY
Law Division, Civil Part
Sussex County
Docket No.: SSX-L-000388-20

Civil Action

**SECOND SUPPLEMENTAL
AFFIDAVIT OF DARLENE PALLAY**

DARLENE PALLAY, of full age, deposes and says the following:

1. I own JWC Fitness, LLC, the Plaintiff in this Complaint.
2. On September 23, 2020, I signed an affidavit that was filed in this lawsuit.

Thereafter, I supplemented the Affidavit on September 29, 2020 to add new facts.

3. This second supplemental affidavit is submitted to add facts occurring since September 29, 2020.

4. I have made the difficult decision to close my business on October 31, 2020. The reason is that I can not make sufficient revenue to offset existing and upcoming business expenses, as is more fully explained below.

5. In addition to my efforts to earn revenue described in my Affidavit submitted on September 23, 2020, I opened my business indoors on Oct. 12, 2020. Before that, from September 1, 2020 until reopening indoors, I held classes outdoors. The capacity for outdoor classes was twice that permitted indoors (outdoor capacity: 18; indoor capacity: 9). I charged the same price for outdoor and indoor classes (\$10.00). The number of scheduled indoor classes was 10 per week. The number of classes that could be held outdoors was weather-dependent; class could not be held in the rain. I held 21 outdoor classes between September 1 and October 11, 2020.

6. Outdoor class attendance was usually from 3-5 members. Due to the ongoing operating restrictions on group fitness facilities, indoor attendance capacity was restricted to 9. Indoor class size averaged approximately 4 or 5 members. One class had 9 members.

7. As for outstanding expenses, in addition to utility expenses, franchise royalty payments and rental payments going forward if I remain open indoors, I have the following expenses for which payment is now due. There is the \$16,986.55 my landlord contends in the pending eviction Complaint is due as back-rent. I have also received the following bills:

- State of NJ, Renewal Notice and Filing Fee Form for Alternate Business Name due October 26, 2020 \$ 75.00
- Club KO Franchise, LLC: Statement for deferred royalty payments from March 1 to September 30, due Oct. 15, 2020 932.01
- Liberty Mutual Ins. Workers Compensation Premium Renewal Quote 890.00

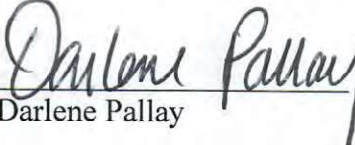
8. Attached is a true and correct copy of:

- State of NJ, Renewal Notice and Filing Fee Form for Alternate Business Name Ex. 1
- Club KO Franchise, LLC: Statement for deferred royalty payments from March 1 to September 30, due Oct. 15, 2020 Ex. 2
- Liberty Mutual Ins. Workers Compensation Premium Renewal Quote Ex. 3

9. My current general liability insurance policy for on-site Health Club coverage expires on November 30, 2020. The premium for a one-year term renewal is \$1,500.00 and I must apply to renew before then. A true and correct copy of the coverage rates and limits is attached as Exhibit 4.

10. Given the imbalance between revenue and expenses, I cannot afford to operate indoors and must close the business.

11. I submit this second supplemental affidavit to update facts material to the Complaint and related motion papers. The foregoing statements are based upon my personal knowledge and are true.


Darlene Pallay

Sworn and subscribed to
before me this 22
day of October, 2020

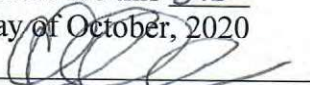

Catherine M. Brown, Esq.
An Attorney at Law of
the State of New Jersey

EXHIBIT 1



STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
DIVISION OF REVENUE AND ENTERPRISE SERVICES

PO Box 308
Trenton NJ 08646-0308
(609) 292-9292
www.nj.gov/njbgs
07/08/2020

Certified Mailing List

Renewal Notice and Filing Form for Alternate Business Name

Business ID: [REDACTED]

[REDACTED]
JWC FITNESS, LLC
DARLENE PALLAY
1 WOODLAND ROAD
FRANKLIN NJ 07416

Dear Business Representative:

Alternate Business Names can now be filed online within 90 days of their expiration. Our files indicate an Alternate Business Name registered to the above-referenced business entity is due to expire on **10/26/2020**.

The Alternate Business Name is CKO FRANKLIN

To renew this name, file online at www.nj.gov/njbgs. Look for the heading "I want to" and select "File Alternate Name Renewal".

To log in, you will need the following three items:

NJ 10-digit ID Number: ([REDACTED])

Type of Entity: (LLC)

Formation/Authorization Date: (10/2010)

Once you complete your online filing, you will be able to display and print an Alternate Name Renewal Certificate for your records.

Pursuant to State law, if you fail to renew by **10/26/2020**, you will be subject to a \$50.00 penalty, and \$50 per year thereafter for each year in which you use the un-registered name.

Contact us at 609-292-9292 if you have any questions or require assistance.

Sincerely,

EXHIBIT 2

Statement

Club KO Franchise LLC
 900 Madison Street, Suite 2
 Hoboken, NJ 07030

Date
9/30/2020

To:
JWC Fitness LLC CKO Kickboxing 1 Woodland Road Franklin, NJ 07416

		Amount Due	Amount Enc.		
		\$932.01			
Date	Transaction	Amount	Balance		
02/29/2020	Balance forward		856.00		
03/04/2020	INV #9546a.	17.73	873.73		
	--- Postage & Freight \$17.73				
03/10/2020	PMT	-30.00	843.73		
03/10/2020	PMT	-826.00	17.73		
03/15/2020	INV #9640a.	318.78	336.51		
	--- Royalty Fee \$318.78				
03/25/2020	INV #9566a.	5.94	342.45		
	--- Royalty Fee \$5.94				
03/31/2020	INV #9711a.	192.61	535.06		
	--- Royalty Fee \$192.61				
04/10/2020	PMT	-17.73	517.33		
04/10/2020	PMT	-324.72	192.61		
04/30/2020	INV #9788a.	233.35	425.96		
	--- Royalty Fee \$233.35				
06/30/2020	INV #9910a.	302.75	728.71		
	--- Royalty Fee \$302.75				
07/01/2020	INV #10028a.	0.60	729.31		
	--- Royalty Fee \$0.60				
07/16/2020	INV #10029a.	1.02	730.33		
	--- Royalty Fee \$1.02				
07/31/2020	INV #10002a.	145.18	875.51		
	--- Royalty Fee \$145.18				
08/14/2020	PMT	-25.00	850.51		
08/31/2020	INV #10108a.	80.43	930.94		
	--- Royalty Fee \$80.43				
08/31/2020	INV #10134a.	1.07	932.01		
	--- Royalty Fee \$1.07				
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
0.00	81.50	146.20	303.35	400.96	\$932.01

EXHIBIT 3



LM INSURANCE CORPORATION
Workers Compensation Assigned Risk
P.O. Box 66400
London KY 40742-6400
Telephone: (800) 653-7893
Fax: (603) 427-1885
Email: IMS@LibertyMutual.com

September 10, 2020

JWC FITNESS LLC DBA CKO FRANKLIN
1 WOODLAND RD
FRANKLIN NJ 07416

RE: Workers Compensation Renewal Quote
Quote Number: 01544440-01

Dear JWC FITNESS LLC DBA CKO FRANKLIN ,

We value your business and would like to continue your coverage. That's why we are writing to inform you that your current workers compensation policy is about to expire. We are required by law to notify the applicable bureau in your state that your coverage will terminate on November 24, 2020.

Your policy WC [REDACTED] is set to expire on November 24, 2020 at 12:01 a.m. Your quote of \$890 is based on the latest available rates, classifications, payrolls and any applicable modifiers, and may be subject to change. You can renew your policy now by sending a deposit of \$890 along with the bottom portion of this letter in the enclosed envelope. *Note: You may now qualify for different payment plans than you have in the past. Please review this packet in its entirety to decide the option that best fits your needs (subject to premium qualification).*

A renewal policy will not be issued and all coverage will cease on the expiration date noted above if the deposit premium is not postmarked or electronically submitted to Liberty Mutual Insurance at the address below before November 23, 2020. If you send your premium postmarked (not metered) on the proposed renewal policy effective date or within 60 days following the proposed renewal policy effective date, this will result in a policy issued with a lapse of coverage.

To Allow For Timely Processing of Your Payment, Carefully Detach and Return Original with Payment in the Enclosed Envelope

Current Payment Plan: \$890.00
Premium and Surcharges: \$890

Account Number: [REDACTED]

OR

Payment Due Date: 11/23/2020

Other amount based on new Payment Plan
(Subject to Premium Qualification)

New Payment Plan: _____

Please Forward Remittance Only To:
**See reverse for overnight mailing address

Payment Amount: \$ _____

JWC FITNESS LLC DBA CKO FRANKLIN
1 WOODLAND RD
FRANKLIN NJ 07416

LIBERTY MUTUAL INSURANCE
PO BOX 1449
NEW YORK NY 10116-1449

7030035280400000009999999900000000144900000000000000000000089000008

EXHIBIT 4



K&K Insurance Group, Inc.
1712 Magnavox Way, P.O. Box 2338
Fort Wayne, IN 46801-2338
800-506-4856; Fax 260-459-5590
CA # 0334819

September 18, 2020

Nadia Hatzinas
SB One Insurance Agency, Inc
PO Box 4
Augusta, NJ 07822

RE: Insured Name: JWC Fitness, LLC DBA: CKO Franklin
Program: Health Clubs - Basic Services
Policy Number(s): [REDACTED]
Insured #: [REDACTED]
Expiring Coverage Period: 11/30/2019 to 11/30/2020

K&K Insurance Group was pleased to be able to provide insurance coverage for the above referenced account this past coverage period. Enclosed you will find a new brochure and enrollment form to complete and return to reapply for coverage. Please review this information carefully as coverage terms, conditions, premiums/rates and program eligibility can change from one coverage period to the next.

Prompt return of the enrollment form and any other necessary forms, along with the appropriate payment, will allow us to review the enrollment form. Customer service is our primary concern; however, it may take several days to process your request.

Failure to return the enclosed materials prior to the expiration date will result in the termination of coverage. If the materials are received after the expiration date, a lapse in coverage may occur between the expiration of the current coverage and the start of the new coverage period.

We appreciate your business and we look forward to working with you during the upcoming coverage term. Should you have any questions, please do not hesitate to contact us at the number provided on the enrollment form and reference the insured number above.

Sincerely,

K&K Insurance Group, Inc.
Mass Merchandising, RPG Programs
Office Hours: Mon-Fri, 8:00am-5:00pm EST



HEALTH CLUB-BASIC SERVICES

Insurance Program and Enrollment Form

This brochure is valid for effective dates from 7/1/20 through 12/31/20

PROGRAM DESCRIPTION & ELIGIBILITY

This program has been specifically designed for U.S.-based owners and operators of membership-based health and fitness clubs and/or tennis/racquet clubs offering programs and services for members and guests that may include: circuit training, personal training, aerobics, yoga, pilates, free weights, resistance machines, cardio machines, a variety of exercise group classes, strength training, non-contact martial arts, basketball/volleyball, racquet sports, whirlpool/hot tubs, saunas/steam rooms, massage, nursery/babysitting, nutritional weight control, tanning, pro shops, snack/juice bars and 24-hour key card access facilities.

To be eligible for this program, the facility's annual sales must be \$2,000,000 or less (excluding revenue for initiation sign-up fees).

Coverage provided includes important liability protection for the fitness facility, including its employees for liability claims arising out of the operations of the fitness facility at a designated location. Note: Coverage does not extend to your independent contractor/instructors unless the optional coverage available with this program is purchased.

Optional coverages available under this program include professional liability for independent contractors and equipment and contents (inland marine) coverage that includes coverage for facility business personal property, improvement and betterments and sign coverage.

Coverage is provided by a carrier rated A+ (Superior) by A.M. Best Company.

INELIGIBLE OPERATIONS/SERVICES

Operations not eligible for this program include, but are not limited to the following:

- Annual sales greater than \$2,000,000
- Beauty/hair salon services
- Blood analysis
- Dance facilities*
- Drop-off child care services
- Facilities outside of the U.S.
- Full-size trampolines
- Gymnastics and/or cheer facilities or classes*
- Ice/inline/roller skating (including skating treadmills)
- Martial arts facilities*
- Medical, therapy or health care services
- Physical therapy, physicals or stress testing
- Rock climbing walls
- Sports medicine, rehabilitation and/or therapy services
- Sports skills instruction facilities, academies, schools, programs (except for tennis/racquet)
- Swimming pools/lap pools

*For information regarding insurance programs for dance, gymnastics, cheer or martial arts schools/studios, please contact us.

LIABILITY EXCLUSIONS/LIMITATIONS

The following represent only some of the exclusions contained in this policy.

- Abuse, molestation, harassment or sexual conduct (unless requested & approved by K&K)
- Acupuncture
- All operations listed as ineligible
- Amusement devices (eg: rides, slides, inflatables, bungees, climbing walls, dunk tanks)
- Asbestos
- The sport of boxing (contact/sparring)
- Communicable disease
- Cryogenic chambers/therapy
- Cycling (other than stationary)
- Employment-related practices
- Events, competitions, tournaments, camps/clinics conducted or sponsored by, or on behalf of the insured, unless reported and approved by us
- Fireworks
- Fungi or bacteria
- Instruction/activity held on or in open water (e.g.: lakes, ponds, ocean)
- Medical expense for athletic/recreation participants
- Nuclear energy liability
- Sales or distribution of herbal and/or medicinal products
- Exclusion – Designated Professional Services
 - Professional services performed by a physician, nurse or chiropractor
 - Psychiatric treatment
 - Electrolysis hair removal
 - Ear piercing
 - Prescription or dispensing of medication or drugs or stimulants of any kind
 - Performance of medical diagnostic or testing services which involve or service a prerequisite to examination of bodily fluids or tissue
- Limitation of coverage for tanning equipment – Coverage does not apply to bodily injury to the eyes caused by rays emitted by tanning equipment; bodily injury in whole or part, by customer regulation or tanning equipment timing controls; bodily injury caused by exposure to any carcinogen
- Medical expense for children in nursery/babysitting environment
- Transportation of participants/members
- The sport of wrestling

EASY WAYS TO ENROLL FOR COVERAGE

Submit this enrollment form, with payment, to K&K.



FAX 1-260-459-5590



MAIL Regular: K&K Insurance, Fitness RPG Programs
P.O. Box 2338
Fort Wayne, IN 46801-2338
Overnight: K&K Insurance, Fitness RPG Programs
1712 Magnavox Way
Fort Wayne, IN 46804



QUESTIONS Call 1-800-506-4856



FOR SERVICE REQUESTS ONLY
E-MAIL info@fitnessinsurance-kk.com

COVERAGES AND LIMITS

* Higher liability limit options available. Please contact us.*

Coverages	On-site Health Club Coverage		On-site and Off-site Health Club Coverage	
	Option 1	Option 2	Option 1	Option 2
Commercial General Liability (CGL) Each Occurrence	\$ 1,000,000	\$ 2,000,000	\$ 1,000,000	\$ 2,000,000
General Aggregate (other than Products-completed Operations)	\$ 5,000,000 per owned location	\$ 5,000,000 per owned location	\$ 5,000,000 per owned location	\$ 5,000,000 per owned location
Products-completed Operations Aggregate	\$ 1,000,000	\$ 2,000,000	\$ 1,000,000	\$ 2,000,000
Personal and Advertising Injury	\$ 1,000,000	\$ 2,000,000	\$ 1,000,000	\$ 2,000,000
Legal Liability to Participants	\$ 1,000,000	\$ 2,000,000	\$ 1,000,000	\$ 2,000,000
Damage to Premises Rented to You (Fire Legal Liability)	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000
Medical Expense (other than athletic/recreation participation, and children in a nursery/babysitting environment)	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000
Hired Auto and Employers' Nonownership Liability (not provided while in Hawaii)	\$ 1,000,000	\$ 2,000,000	\$ 1,000,000	\$ 2,000,000
Professional Liability	\$ 1,000,000	\$ 2,000,000	\$ 1,000,000	\$ 2,000,000
Rates (per \$1,000 of annual sales)				
Health Club - staffed with defined hours	\$ 6.20	\$ 9.30	\$ 6.85	\$ 10.28
CrossFit Affiliate Facilities - staffed with defined hours	\$ 8.25	\$ 12.38	\$ 9.10	\$ 13.65
24-hour Key card/pad/code Health Club	\$ 12.40	\$ 18.60	\$ 13.65	\$ 20.48
Minimum Premiums	\$1,500.00	\$2,500.00	\$1,650.00	\$2,750.00

Coverage provided under this program includes:

Commercial General Liability with Broadening Endorsement – coverage which protects the insured against liability claims for bodily injury and property damage arising out of premises, operations, products and completed operations and personal and advertising injury.

Additional coverages added with broadening endorsements are: Emergency Real Estate Consultant

Fee - \$25,000; Key Individual Replacement Cost - \$50,000; Temporary Meeting Space - \$25,000; Workplace Violence

Counseling - \$25,000; Identity Theft Exposure (for directors and officers - \$25,000); Lease Cancellation Moving

Expense - \$2,500; Terrorism Travel Reimbursement (for directors and officers) - \$25,000

Damage to Premises Rented to You – This coverage is solely for the premises, and the contents of such premises, rented to you if the damage is caused by fire, lightning, explosion, smoke and leaks from sprinklers. Damage that is caused by something other than fire, lightning, explosion, smoke and leaks from sprinklers only applies to the premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days.

Professional Liability – provides protection against wrongful acts (breach of duty, neglect, error, omission misstatement or a misleading statement in the discharge of fitness activities) that occur under the operations of the insured.

Legal Liability to Participants – coverage which offers protection against bodily injury liability claims brought by persons participating in fitness/exercise activities under the direction of the insured

Hired Auto and Employers' Nonownership Liability (not provided while in Hawaii) – coverage which protects the insured against liability claims arising out of the maintenance or use of motor vehicles hired or borrowed by the insured on a short-term basis, as well as coverage for those autos your organization does not own, lease, hire, rent or borrow that are used in conjunction with your operations. Coverage does not extend to those vehicles that are rented, hired or borrowed on a long-term basis.

OPTIONAL COVERAGES

Liquor Liability Coverage - Not available in Alabama, Iowa, Michigan or Vermont

Liquor liability coverage pays those sums that the insured becomes legally obligated to pay as damages because of bodily injury or property damage imposed on the insured by reason of the selling, serving or furnishing of any alcoholic beverage.

Coverage Conditions:

1. Coverage is not available on a stand-alone basis. You must have CGL coverage for your facility with this Program.
2. If approved, coverage will be effective the day after we receive the proper completed enrollment with premium and will expire on the expiration date of your Health Club Insurance Program. Coverage is 100% fully earned at inception.
3. Limits are \$1,000,000 each occurrence with a \$1,000,000 aggregate.
4. Please contact our office for supplemental application and pricing.

OPTIONAL COVERAGES (continued)

Liability for Independent Contractors (non-employees)

This coverage option allows you to purchase liability for those independent contractor (non-employees) instructors or trainers while conducting instruction activities on behalf of your fitness facility operations. Coverage will apply only to your reported location.

Coverage Conditions:

1. You must have commercial general liability coverage for your facility with the Health Club-Basic Services RPG Insurance Program and coverage must follow the same limit option purchased for your location.
2. Coverage will be effective the day after we receive the request with premium and will expire on the expiration date of your Health Club-Basic Services RPG Insurance Program.
3. A U.S.-based instructor age 18 or older conducting private or group instruction on your behalf for any of the following are eligible for this coverage.
 - Acro dance
 - Cardio kickboxing
 - Fitness bootcamp
 - Spinning
 - Acrobatic/partner yoga
 - Children's fitness programs
 - GYROTONIC®
 - Tai chi
 - Aerobics
 - Dance
 - Hoop fitness
 - Yoga
 - Aerial/anti-gravity/suspended yoga (certified instructors only)
 - Exercise
 - Personal training
 - ZUMBA®
 - Tumbling (floor only, no gymnastic apparatus)
4. Ineligible instructors or those offering the following operations that are not eligible for this coverage are:
 - Certified athletic trainers
 - Instruction of sport skills activities
 - Coaching of organized competitive athletic teams
 - Instructors' employment as an exempt or non-exempt employee of a school, university or college
 - Instructors under the age of 18
5. This coverage is 100% fully earned at inception.

Rates (per instructor)	Option 1 \$1,000,000 CGL Limit	Option 2 \$2,000,000 CGL Limit
On-site instruction only	\$ 155.00	\$ 232.50
On-site and offsite instruction	\$ 170.00	\$ 255.00

Equipment and Contents Coverage (Inland Marine)

This provides coverage for direct loss or damage to your supplies and equipment, furnishings, improvements and betterments, signs and non-structural glass due to fire, theft, vandalism, or other covered causes (subject to actual policy terms and conditions). You must insure the full replacement cost of all of your equipment and contents to avoid a co-insurance penalty at the time of loss. Should you add additional equipment or contents to your inventory, please contact us to have your insured value amended to avoid a co-insurance penalty.

Additional coverages automatically included in the coverage form are

- Business Income with Extra Expense – Actual Loss Sustained (up to \$50,000)
- Money and Securities Coverage - \$10,000 any one occurrence
- Valuable Papers and Records Coverage - \$10,000 at premises / \$2,500 away from premises
- Account Receivable Coverage - \$10,000 at premises / \$2,500 away from premises
- Employee Dishonesty - \$5,000 any one occurrence
- Forgery or Alteration - \$10,000 for any loss
- Robbery or Safe Burglary of Other Property - \$10,000 inside premises / \$10,000 outside the premises

Coverage Conditions:

1. Coverage is not available on a stand-alone basis. You must have commercial general liability coverage for your facility with our Health Club-Basic Services RPG Insurance Program.
2. Coverage will be effective the day after we receive the proper completed enrollment with premium and will expire on the expiration date of your Health Club Insurance Program.
3. Receipt of purchase is required at the time of loss to show verification of purchase for improvements or betterments.

Rates			
Total value per location	Rate	Deductible	Minimum Premium
\$ 1 - \$ 10,000	\$.03	\$ 250	\$ 100.00
\$ 10,001 - \$100,000	\$.026	\$ 1,000	\$ 100.00
\$ 100,001 +	\$.026	\$ 2,500	\$ 100.00

OPTIONAL COVERAGES (continued)

Option 1: Abuse, Molestation, Harassment or Sexual Conduct Defense Reimbursement

This coverage reimburses you for up to \$100,000 for defense costs resulting from claims arising out of abuse or molestation, harassment or sexual conduct.

Rate	\$ 100.00 (Flat rate)
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Option 2: Sexual Abuse or Sexual Molestation Coverage

This coverage pays for sums the insured becomes legally obligated to pay as damages because of loss arising out of any actual or threatened sexual abuse or sexual molestation. This limit is part of, and not in addition to, the general liability limit section.

Rate (per \$1,000.00 Sales)
\$150.00 minimum premium applies

Facility Type	On-Site Only	On-Site and Off-Site
Health Club - staffed with defined hours	\$ 1.24	\$ 1.37
CrossFit Affiliate Facilities - staffed with defined hours	\$ 1.65	\$ 1.82
24-hour Key card/pade/key Health Club	\$ 2.48	\$ 2.73

Coverage Conditions:

1. Questions on page 12 must be completed, reviewed and approved by our Underwriting team before coverage can be granted.
2. Coverage is not available on a stand-alone basis. You must have commercial general liability coverage for your facility through our Health Club-Basic Services RPG Insurance Program.
3. Both options are 100% fully earned at inception.

FREQUENTLY ASKED QUESTIONS

1. **Does this policy provide coverage for the owner(s) of the health/fitness club and any of its employees?**
Yes, this program provides commercial general liability as well as legal liability to participants and professional liability for the insured's owned/operated location(s) and any employees of the named insured while working on their behalf.
2. **Is coverage under this policy extended to independent contractors (non-employees) working on behalf of the health/fitness club?**
Independent contractors (non-employees) are covered only if the optional coverage available with this program is purchased. If this optional coverage is not purchased, as a health club owner, you need to require that all independent contractors (non-employees) working at your location(s) obtain professional liability coverage and name your business as an additional insured to their instructor policy and submit proof of this coverage to you.
3. **Does coverage extend to off-site health/fitness club operations?**
Coverage only extends to off-site operations if that coverage option is chosen. Otherwise, coverage is limited to the premises address of the facility location(s).
4. **I have been asked by my landlord to add them as an additional insured to my policy. What does this mean and how do I do that?**
An additional insured is an entity which has an insurable interest for claims arising out of your negligence as the named insured. Such possible entities are a landlord or sponsor. By providing an entity additional insured status they now are entitled to defense and indemnity (if the policy limits have not been exhausted) under your policy with no responsibility for premium payments.
5. **Will we receive a policy after submitting the enrollment form?**
You will receive a certificate of insurance as proof of coverage. Coverage is offered exclusively through Sports, Leisure and Entertainment Risk Purchasing Group (RPG). The RPG receives a master policy from the company. Submission of this enrollment form confirms your desire to receive coverage through the RPG. Each member receives their own certificate of insurance as their evidence of coverage. The limits of insurance apply individually to each insured member organization-there are no shared limits of liability with any other members. A copy of the RPG master policy can be requested in writing to: K&K Insurance Group, Inc., 1712 Magnavox Way, Fort Wayne, IN 46804.