

1 in San Francisco, a city for which CCH had been providing low income senior housing to
2 thousands of needy residents for decades.

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4 74. At the time, CCH had already advanced around \$325,000 in actual expenses on
5 the Laguna Honda Development, and stood to lose that and millions more in developer revenue if
6 MOH became displeased with CCH. The pressure to resolve the underlying EBA litigation or
7 lose Laguna Honda was made perfectly clear to CCH, who in turn alerted Philadelphia to the
8 potential cost of its own inaction, bad faith and inertia.

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10 75. In December 2017 CCH was confronted by a two-horned dilemma. Black
11 community activist Reverend Amos Brown had summoned the parties in the Underlying
12 Litigation to participate in settlement discussions *before* the Judge rendered his Phase I
13 Judgment. Reverend Brown, aware that the MOH was unhappy with the ongoing Underlying
14 Litigation, pressured CCH to make a substantial concession to EBA – CCH was told to walk
15 away from \$1,400,000 in documented expenses that CCH had advanced on EBA’s behalf for the
16 redevelopment of the EBA property – or risk losing the Laguna Honda Project and permanently
17 displeasing MOH. That dilemma was exacerbated by the fact that Plaintiffs had also paid more
18 than \$1,200,000 in legal defense costs. CCH simply could not afford to absorb more than
19 \$2,600,000 in unanticipated costs and hope to survive. CCH also could not afford to lose Laguna
20 Honda and jeopardize its relationship with MOH. It was essential to CCH that Philadelphia
21 honor its duties under the Policy and finally pay the attorneys’ fees that it had promised.

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23 76. To make matters worse, during these negotiations the MOH made it clear that, if
24 the Underlying Litigation were not resolved before the Judge entered a politically undesirable
25 Judgment on Phase I, CCH would lose the Laguna Honda Project outright. Philadelphia was
26 fully informed of the exigent risks to CCH’s business survival. All CCH needed was for
27 Philadelphia to honor its Policy and to pay the attorneys’ fees that it had already promised, and
28 that had been expended and reported to Philadelphia on a monthly basis without reimbursement

1 *since 2015*. But Philadelphia failed to respond. This silence exacerbated Plaintiffs' ongoing
2 concerns that Philadelphia would invoke its Broker's Exclusion to deny coverage outright.

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4 **Philadelphia's San Francisco-Based Law Firm**
5 **Closes Its Doors After 85 Years Of Insurance Defense**

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7 77. In an unfortunate turn of events, at the same time Plaintiffs needed Philadelphia
8 the most, its counsel was enduring the dissolution of its law firm. After 85 years, the Sedgwick
9 firm closed its doors. Although Plaintiffs do not know at this point whether that closure delayed
10 Philadelphia's response during this crucial time period, both Mr. O'Leary and Ms. Forrester
11 moved to the law firm Clyde & Co. before responding to CCH's pleas for a commitment from
12 Philadelphia. The only notice that Plaintiffs had of these developments was counsel's new
13 letterhead.

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15 78. Meanwhile, failing to understand how CCH's insurance company could simply
16 ignore a time critical settlement proposal, Reverend Brown grew increasingly impatient with
17 CCH's failure to agree, and reported his displeasure to the MOH.

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19 **After Philadelphia Fails To Respond In Time, It Conditions Any Payment For Attorneys'**
20 **Fees On CCH First Executing A Full Release From All Liability**
21 **For Philadelphia's Bad Faith Claims Handling**

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23 79. Although fully informed of the imminent risks to CCH's business, Philadelphia's
24 failure to respond to CCH's December 2017 pleas for a legal defense reimbursement left
25 Plaintiffs scrambling to justify their delay.

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27 80. On January 16, 2018, *before* Philadelphia committed to fulfill its insurance
28 obligations, the Judge in the Underlying Litigation entered his tentative decision into the public

1 record on the San Francisco Superior Court website and the damage to CCH was done. MOH
2 had insisted on an informal resolution before the ruling, but Philadelphia's delay had precluded
3 that. Emboldened by the tone of the ruling, EBA then demanded that CCH also pay EBA's
4 attorneys' fees as a condition of settlement.
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6 81. As promised, the MOH confirmed that because CCH had failed to accept
7 Reverend Brown's settlement proposal before the decision was entered in the Underlying
8 Litigation, CCH had lost the Laguna Honda Development project.
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10 82. When Philadelphia's counsel did finally respond, recognizing CCH's financial
11 desperation – although CCH had previously retained coverage counsel expressly to reject any
12 Philadelphia release agreement – Philadelphia again expressly conditioned *any* Philadelphia
13 contribution under the Policy on Plaintiffs' Full Section 1542 Release from liability for
14 Philadelphia's claims handling. Not only was this demand improper under California law, but
15 Philadelphia knew that CCH had previously rejected any release during the Sisk settlement
16 negotiations. Philadelphia's renewed release demand left CCH with no alternative but to retain-
17 again- coverage counsel to protect its interests from its own insurance company, adding
18 additional legal costs that Plaintiffs could ill afford.
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20 83. When again challenged by counsel for CCH, Philadelphia's attorneys reluctantly
21 withdrew the company's second demand for a Full Release, but refused to reimburse Plaintiffs
22 for all of their documented legal defense costs, claiming that Philadelphia would not pay for
23 communications with Philadelphia's attorneys, despite the fact that Philadelphia's own bad faith
24 claims handling and inaction had necessitated those communications.
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26 84. To date Philadelphia has made only partial payment of its insurance obligations
27 under the Policy, and has left a long road of false representations, broken promises, detrimental
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1 inaction and millions of dollars in consequential damages. But despite Philadelphia's best
2 efforts, it will not have the benefit of a coerced release agreement to hide behind.

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4 85. Heffernan's bad faith underwriting and Philadelphia's sustained and ongoing bad
5 faith claims handling compelled CCH to forego \$1,400,000 on the EBA project, and to lose
6 millions more in unreimbursed costs and revenue for the Laguna Honda Development project, in
7 addition to permanently jeopardizing CCH's ability to do future business in San Francisco
8 because CCH failed to accept Reverend Brown's settlement proposal.

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10 86. For each of these reasons, Plaintiffs seek to hold Philadelphia and Heffernan
11 accountable for the substantial economic and emotional harm that they have caused.

12
13 **FIRST CAUSE OF ACTION**
14 **FRAUD**
15 **(Against Philadelphia and Heffernan, and Does 1-10)**

16 87. Plaintiffs incorporate paragraphs 1 through 86, above, as if set forth in full here.

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18 88. Both Philadelphia and Heffernan made material misrepresentations to, and
19 concealed material facts from, Plaintiffs including but not limited to:

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21 i. Expressly representing that they would provide a Professional Liability
22 Insurance Policy to insure Plaintiffs' Real Estate Broker's business;
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24 ii. Expressly representing that the Policy in question, provided contractual
25 coverage for CCH's property management business;
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