

**UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW JERSEY**

---

RICHARD H. BLUM, M.D.	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	NO. 2:20-cv-05423
v.	:	
	:	
POSITIVE PHYSICIANS	:	
INSURANCE COMPANY; JOHN	:	
DOES 1-5, and JANE DOES 1-5,	:	
FICTITIOUS NAMES WHOSE	:	
PRESENT IDENTITIES ARE	:	
UNKNOWN,	:	
	:	
Defendants.	:	

---

**ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANT POSITIVE  
PHYSICIANS INSURANCE COMPANY**

Defendant, Positive Physicians Insurance Company (hereinafter “PPIC,”) by and through its attorneys, Bennett, Bricklin & Saltzburg LLC, hereby answers Plaintiff’s Complaint as follows:

**THE PARTIES**

1. Admitted upon information and belief.
2. Admitted.
3. Denied. This paragraph refers to unidentified agents, employees and servants of Answering Defendant. Therefore, after reasonable investigation, Answering Defendant has insufficient information to form a belief as to the truth of the allegations of this paragraph of the Complaint and, accordingly, said allegations are denied and strict proof thereof is demanded at the time of trial.

**COUNT I  
(DECLARATORY JUDGMENT: BREACH OF CONTRACT)**

4. Admitted only in that the applicable policy is a writing that speaks for itself.
5. Admitted only in that the applicable policy is a writing that speaks for itself.
6. Admitted.
7. Denied.
8. Denied.
9. Admitted in part and denied in part. It is only admitted that this paragraph of the Complaint generally discusses one basis for the disclaimer of coverage. It is denied that the disclaimer of coverage for the Markham Lawsuit was wrongful.
10. Denied.
11. Denied.
12. Denied. After reasonable investigation, Answering Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of this paragraph of the Complaint and, accordingly, said allegations are denied and strict proof thereof is demanded at the time of trial.
13. Denied.
14. Denied.
15. Denied. After reasonable investigation, Answering Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of this paragraph of the Complaint and, accordingly, said allegations are denied and strict proof thereof is demanded at the time of trial.

16. Neither admitted nor denied. This paragraph is a conclusion of law to which no response is required.

17. Neither admitted nor denied. This paragraph is a conclusion of law to which no response is required.

**WHEREFORE**, Answering Defendant demands judgment in its favor together with costs of defense and such other relief as this Honorable Court deems just and equitable.

**COUNT II**  
**(DECLARATORY JUDGMENT: RELIANCE/PROMISSORY ESTOPPEL)**

18. Answering Defendant hereby incorporates its responses to the preceding paragraphs as though set forth more fully at length herein.

19. Admitted.

20. Admitted.

21. Denied. After reasonable investigation, Answering Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of this paragraph of the Complaint and, accordingly, said allegations are denied and strict proof thereof is demanded at the time of trial.

22. Denied. After reasonable investigation, Answering Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of this paragraph of the Complaint and, accordingly, said allegations are denied and strict proof thereof is demanded at the time of trial.

23. It is only admitted that PPIC disclaimed coverage and initially instructed Attorney McGann to withdraw as counsel. By way of further response, PPIC did so only after learning that Plaintiff reported the incident that is the subject of the Markham Lawsuit to his previous insurer.

24. Denied. After reasonable investigation, Answering Defendant is without

sufficient knowledge or information to form a belief as to the truth of the allegations of this paragraph of the Complaint and, accordingly, said allegations are denied and strict proof thereof is demanded at the time of trial.

25. Denied as a legal conclusion to which no response is required.

26. Denied as a legal conclusion to which no response is required.

27. Denied as a legal conclusion to which no response is required.

**WHEREFORE**, Answering Defendant demands judgment in its favor together with costs of defense and such other relief as this Honorable Court deems just and equitable.

### **AFFIRMATIVE DEFENSES**

1. When Plaintiff prepared the application for retroactive coverage, he was aware of the Markham delivery and had actual knowledge that it was an incident, occurrence or circumstance that could result in a claim against him.

2. By failing to disclose the Markham delivery, Plaintiff made a knowing and intentional misrepresentation of facts material to Defendant's consideration of the Application for coverage and therefore the Defendant is entitled to rescind the Policy *ab initio*.

3. Plaintiff reported the Markham incident to his prior insurer and therefore, Exclusion "J" applies and Defendant has no duty to defend or indemnify Plaintiff.

4. Plaintiff knew of and should reasonably have expected that the Markham incident would result in a claim and therefore, Exclusion "J" applies and Defendant has no duty to defend or indemnify Plaintiff.

### **JURY DEMAND - JURY OF 12**

Defendant Positive Physicians Insurance Company hereby demands a jury trial as to all issues so triable.

**BENNETT, BRICKLIN & SALTZBURG LLC**



BY: \_\_\_\_\_

Michael Dolich  
6000 Sagemore Drive, Suite 6103  
Marlton, NJ 08053  
856-673-3462 [dolich@bbs-law.com](mailto:dolich@bbs-law.com)  
*Attorneys for Defendant, Positive  
Physicians Insurance Compan.*

Date: 5/8/20





**IN THE UNITED STATES DISTRICT FOR THE  
DISTRICT OF NEW JERSEY**

RICHARD H. BLUM, M.D.	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	NO. 2:20-cv-05423
v.	:	
	:	
POSITIVE PHYSICIANS	:	
INSURANCE COMPANY; JOHN	:	
DOES 1-5, and JANE DOES 1-5,	:	
FICTITIOUS NAMES WHOSE	:	
PRESENT IDENTITIES ARE	:	
UNKNOWN,	:	
	:	
Defendants.	:	

**CERTIFICATE OF SERVICE**

I, Michael Dolich, hereby certify that a true and correct copy of the answer with affirmative defenses on behalf of Positive Physicians Insurance Company has been made available for viewing by all interested counsel on ECF on this date.

**BENNETT, BRICKLIN & SALTZBURG LLC**



BY: \_\_\_\_\_

Michael Dolich  
6000 Sagemore Drive, Suite 6103  
Marlton, NJ 08053  
856-673-3462  
[dolich@bbs-law.com](mailto:dolich@bbs-law.com)

Date: 5/8/20

*Attorneys for Defendant, Positive Physicians  
Insurance Company*