

## INDIANA COMMERCIAL COURT

STATE OF INDIANA            )  
   ) SS: ALLEN COUNTY SUPERIOR COURT  
 COUNTY OF ALLEN            ) CAUSE NO.: 02D02-2105-PL-\_\_\_\_\_

PARKVIEW HEALTH SYSTEM, INC. and    )  
 ORTHOPEDIC HOSPITAL AT PARKVIEW    )  
 NORTH LLC,                                )

Plaintiffs,                                )

vs.    )

ZURICH AMERICAN INSURANCE COMPANY )  
 and AMERICAN GUARANTEE AND        )  
 LIABILITY INSURANCE COMPANY,        )

Defendants.                                )

**DEMAND FOR JURY TRIAL**

**COMPLAINT FOR BREACH OF CONTRACT,  
 DECLARATORY JUDGMENT AND BAD FAITH**

Plaintiffs Parkview Health System, Inc. (“PHS”) and Orthopedic Hospital at Parkview North, LLC (“OHPN”) (together, PHS and OHPN are the “Parkview Parties”), by counsel, for their Complaint against Defendants Zurich American Insurance Company (“Zurich American”), and American Guarantee and Liability Insurance Company (“American Guarantee”) (together, Zurich American and American Guarantee are “Zurich”), allege and state as follows:

**INTRODUCTION**

1. This is an action for breach of contract, declaratory judgment, and bad faith against Zurich arising out of certain policies of insurance sold to the Parkview Parties by Zurich.

2. PHS is a non-profit, community-based health system serving patients in Indiana and Ohio. Its services include an extensive network of primary care and specialty physicians and

ten hospitals, including its flagship location, Parkview Regional Medical Center. PHS employs more than 13,000 community members and serves approximately 470,000 patients annually.

3. OHPN is a specialty orthopedic hospital in Indiana that is devoted solely to orthopedic surgery and post-surgery patient care.

4. As discussed in more detail below, the Parkview Parties—wisely, because they are a multi-specialty, multi-location, full-service health care provider—purchased specialized insurance coverages to respond to losses and damages arising from communicable diseases. The Parkview Parties paid close to **\$1,000,000.00** in annual premiums to purchase these policies with aggregate limits exceeding **\$1,250,000,000.00**.

5. Throughout the past year, the Parkview Parties, the surrounding community, and the world have weathered a public health crisis that eclipses any in recent time. Since early 2020 the world has been confronted with a global pandemic (the “Pandemic”) arising from the SARS-CoV-2 virus (the “Coronavirus”) and the disease it causes, Coronavirus Disease 2019 (“COVID-19”). Like other states, Indiana’s businesses and communities, including the Parkview Parties, have been severely impacted by the Pandemic in numerous ways. As of May 4, 2021, Indiana has documented 725,353 positive cases of COVID-19 and 12,960 deaths.<sup>1</sup>

6. The effect of the Pandemic on health care providers and the communities they serve, including the Parkview Parties, has been challenging at best and, at times, devastating. Like health care providers around the world, Parkview’s operations, facilities, businesses, doctors, employees and patients have been dramatically impacted by the Pandemic and related federal, state, and local guidance and orders.

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<sup>1</sup> State of Indiana, *Indiana COVID-19 Data Report* (last accessed on May 6, 2021), available at <https://www.coronavirus.in.gov/2393.htm>.

7. It is in this grim context that the present insurance coverage dispute arose to help shoulder the burden of potential losses the Parkview Parties had purchased certain policies of insurance from Zurich. They paid all premiums owed and complied with conditions precedent to coverage. They provided prompt notice to Zurich of their Pandemic-related claims in April 2020. Since then, Zurich has *admitted* that certain portions of the policies purchased by the Parkview Parties do provide coverage for Pandemic-related claims just like the ones at issue here.

8. Despite all of this, Zurich has denied the claims of the Parkview Parties and has refused to honor its obligations under the policies of insurance it sold, even while acknowledging elsewhere, under identical policy terms, that coverage is available for the very same type of Pandemic-related claims.

9. As discussed more below, the insurance policies Zurich and American Guarantee sold to the Parkview Parties contain many different coverages that respond to their Pandemic-related losses and damages. By way of example, without limitation, both of the policies Zurich and American Guarantee sold the Parkview Parties contain "Communicable Disease" coverages. The American Guarantee Policy contains "Interruption by Communicable Disease" coverage. The Zurich American Policy contains "Communicable Disease Suspension of Operations—Business Income" coverage.

10. Zurich has already admitted to another of its policyholders that the "Interruption by Communicable Disease" responds to Pandemic-related losses and damages. In *Life Time, Inc. et al v. Zurich American Insurance Company*, Case No. 27-CV-20-10599, pending in the Fourth Judicial District of Minnesota, Life Time Fitness is suing Zurich for coverage under the Zurich "Edge" policy. The Zurich "Edge" policy at issue in the Life Time litigation is nearly identical to

the "Edge" policy that American Guarantee sold to PHS. Most notably, both contain the same "Interruption by Communicable Disease" coverage.

11. Below is Rhetorical Paragraph 51 from Life Time's Complaint wherein it reproduces an email it received from Zurich admitting there is coverage for Pandemic-related losses and damages under the "Interruption by Communicable Disease" coverage:

51. On June 25, 2020, after Life Time requested a more fulsome written coverage position, Zurich communicated the following regarding its view of the amount of coverage for "Interruption By Communicable Disease" under the 2020 Zurich Policy:

- 1.) Coverage-I explained we are extending coverage under the Communicable Disease Provision up to \$1,000,000.
- 2.) You inquired above including all locations "losses" under one Occurrence-As pointed out under Section 7.45 Occurrence-All loss(es) or damage that is attributable directly or indirectly to one cause or a series of similar or related causes. All such loss(es) or damage will be treated as one **Occurrence**. However, if **Occurrence** is specifically defined anywhere in this Policy, that definition will apply to the applicable coverage provided. *Hence, all locations will be treated as one Occurrence.*
- 3.) The Policy excludes virus a "Contaminant" exclusion under section 3.03.01.01.
- 4.) Contamination Definition is amended in the LA Endorsement to not include Virus. Please note Lifetime does not have any locations within Louisiana so this modification would not be applicable.
- 5.) Life Time is (not subject) to the full limit of the policy \$350,000,000 as the main policy as mentioned above excludes virus as a covered cause of loss. *Virus is Endorsed in the policy by the "Interruption of Communicable Disease" Coverage Provision. As such, the coverage cause of loss is "Communicable Disease" again subject to a \$1,000,000 limit.*

(Zurich's April 25, 2020 E-mail to Life Time (formatted as in original with emphasis added).)

*Life Time, Inc. et al v. Zurich American Insurance Company*, Case No. 27-CV-20-10599, Complaint, at p. 12, ¶ 51.

12. Zurich's decision to deny coverage to the Parkview Parties is entirely unfounded, does not comport with Zurich's own view of the coverages within the policies, and violates the duty of good faith it owes to the Parkview Parties.

13. The Parkview Parties are entitled to recover damages for breach of contract; they are entitled to a declaratory judgment in their favor; and they are entitled to damages arising from Zurich's bad faith in its dealings with the Parkview Parties.

#### **PARTIES, JURISDICTION, AND VENUE**

14. Plaintiff PHS is an Indiana nonprofit corporation with its principal place of business at 10501 Corporate Drive, Fort Wayne, Indiana.

15. Plaintiff OHPN is an Indiana limited liability company with its principal place of business at 10501 Corporate Drive, Fort Wayne, Indiana. The members of OHPN are PHS and Northeast Orthopaedic Hospital Investors, LLC ("NOHI"). One of the members of NOHI is a natural person and is domiciled in and has his principal residence in Illinois.

16. Defendant Zurich American is an insurance company incorporated in New York with its principal place of business in Illinois. Zurich American does business in Indiana as evidenced by its sale of a policy of insurance to PHS and issuance of multiple "Indiana Changes" endorsements with such policy of insurance.

17. Defendant American Guarantee is an insurance company incorporated in New York and with its principal place of business in Illinois. It is a wholly-owned subsidiary of Zurich American. American Guarantee does business in Indiana as evidenced by its sale of a policy of insurance to OHPN and issuance of "Amendatory Endorsement – Indiana" with such policy of insurance.

18. This Court has jurisdiction over Zurich under Trial Rule 4.4(A)(1) and (6) because Zurich contracted to insure risks located within the State of Indiana.

19. This Court has personal jurisdiction with respect to Zurich American because it transacts business in Indiana. Zurich American does business in Allen County, Indiana.

20. This Court has personal jurisdiction with respect to American Guarantee because it transacts business in Indiana. American Guarantee does business in Allen County, Indiana. The American Guarantee policy at issue in this action also states that “[a]ny disputes arising hereunder will be exclusively subject to the jurisdiction of a court of competent jurisdiction within the USA.”

21. Allen County Commercial Court is a preferred venue for this action because Plaintiffs reside in and are located in Allen County.

### **FACTS COMMON TO ALL COUNTS**

#### **THE INSURANCE POLICIES**

##### **The American Guarantee Policy**

22. American Guarantee issued Edge-Healthcare Policy No. ZMD3140406-00 to PHS, effective January 1, 2020 at 12:01 AM; Ends January 1, 2021 at 12:01 AM (the “American Guarantee Policy”). A true and accurate copy of the American Guarantee Policy is attached hereto as **Exhibit A**.

23. PHS is the First Named Insured Under the American Guarantee Policy. Ex. A, p. 1.

24. Also considered an Insured under the American Guarantee Policy is any subsidiary of PHS and PHS’s “interest in any partnership, joint venture or other legal entity in which [PHS] has management control or ownership as now constituted or hereafter is acquired.” *Id.* Such entities are also entitled to coverage under the American Guarantee Policy.

25. The total premium PHS paid for the American Guarantee Policy is \$940,000.00. Ex. A, p. 1. The aggregate limit of coverage under the American Guarantee Policy is \$1,250,000,000.00. *Id.*

26. Section 1.01, the Insuring Agreement, provides as follows:

This Policy Insures against direct physical loss of or damage caused by a **Covered Cause of Loss** to Covered Property, at an Insured Location described in Section II-2.01, all subject to the terms, conditions and exclusions stated in this Policy.

*Id.* at 2.

27. Section 7.11 defines Covered Cause of Loss as: “All risks of direct physical loss of or damage from any cause unless excluded.” *Id.* at 50.

28. Section 2.01 provides that the American Guarantee Policy “insures an Insured Location unless otherwise provided.” *Id.* at 3.

29. Section 2.03.08 provides as follows:

Time and Distance Limitations: In addition to the Limits of Liability shown elsewhere in this Policy, the following limitations apply:

Located within 1 mile(s) of the Insured Location.	<b>ATTRACTION PROPERTY</b>	
90 day period for property within 2 mile(s) but not to exceed a \$25,000,000 limit.	CIVIL OR MILITARY AUTHORITY	
60 day(s)	The actual Time Element loss sustained by the Insured arising out of the <b>Delay in Completion</b>	✓
36 months	GROSS EARNINGS	
365 day(s)	EXTENDED PERIOD OF LIABILITY	✓
365 day(s)	<b>ORDINARY PAYROLL</b>	✓
90 day period	IMPOUNDED WATER	
60 day period for property within 2 mile(s) but not to exceed a \$10,000,000 limit.	INGRESS/EGRESS	
Not to exceed a \$500,000 limit.	INTERNATIONAL INTERDEPENDENCY	
30 day period but not to exceed a \$5,000,000 limit.	INTERRUPTION BY COMMUNICABLE DISEASE	✓
180 day period but not to exceed a \$25,000,000 limit per <b>Location</b> .	NEWLY ACQUIRED	✓
48 hours for Gross Earnings: not to exceed a \$1,000,000 limit per <b>Location</b> .	PROTECTION AND PRESERVATION OF PROPERTY	
12 months but not to exceed a \$1,000,000 limit.	RESEARCH AND DEVELOPMENT	
30 day period but not to exceed a \$250,000 limit.	RESTORATION OF EMERGENCY GENERATORS	✓

*Id.* at 5.

30. Section 2.04 provides as follows:

**QUALIFYING PERIOD**

For the Coverages listed below the following Qualifying Period applies:

OFF PREMISES SERVICE INTERRUPTION PROPERTY DAMAGE & TIME ELEMENT COVERAGE applies separately at each location.	24 Hours	✓
COMPUTER SYSTEMS DAMAGE COVERAGE	48 Hours	✓
TENANTS PROHIBITED ACCESS COVERAGE applies separately at each location.	48 Hours	✓
NEW CONSTRUCTION AND ADDITIONS: <b>Delay in Completion</b> applies separately at each location.	30 Days	✓
INTERRUPTION BY COMMUNICABLE DISEASE applies separately at each location.	24 Hours	✓
CRISIS EVENT	48 Hours	

*Id.* at 6.

31. Section 4.01 provides, *inter alia*, as follows:

**LOSS INSURED**

The Company will pay for the actual Time Element loss the Insured sustains, as provided in the Time Element Coverages, during the Period of Liability. The Time Element loss must result from the necessary **Suspension** of the Insured's business activities at an Insured Location. The **Suspension** must be due to direct physical loss of or damage to Property (of the type insurable under this Policy other than **Finished Stock**) caused by a **Covered Cause of Loss** at the **Location**, or as provided in Off Premises Storage for Property Under Construction Coverages.

The Company will also pay for the actual Time Element loss sustained by the Insured, during the Period of Liability at other Insured Locations. The Time Element loss must result from the necessary **Suspension** of the Insured's business activities at the other Insured Locations. Such other Location must depend on the continuation of business activities at the **Location** that sustained direct physical loss or damage caused by a **Covered Cause of Loss**.

*Id.* at 15.

32. A Covered Cause of Loss is defined as “[a]ll risks of direct physical loss of or damage from any cause unless excluded.” *Id.* at 86.



33. Section 4.02.01 provides coverage for Gross Earnings loss, which is “the actual loss sustained by the Insured during the Period of Liability.” *Id.* at 16.

34. Section 4.02.03 provides as follows:

**EXTRA EXPENSE**

The Company will pay for the reasonable and necessary Extra Expenses incurred by the Insured, including the cost to remove and return patients, during the Period of Liability, to resume and continue as nearly as practicable the Insured's normal business activities that otherwise would be necessarily suspended, due to direct physical loss of or damage caused by a **Covered Cause of Loss** to Property of the type insurable under this policy at a **Location**.

The Company will reduce the amount payable as Extra Expense by the fair market value remaining at the end of the Period of Liability for property obtained in connection with the above.

Extra Expenses mean that amount spent to continue the Insured's business activities over and above the expenses the Insured would have normally incurred had there been no direct physical loss of or damage caused by a **Covered Cause of Loss** to Property of the type insurable under this policy at a **Location**. Extra Expense does not include any Gross Earnings loss, the cost of permanent repair or replacement of property that has suffered direct physical loss or damage, or expenses otherwise payable elsewhere in the Policy.

*Id.* at 17.

35. Section 4.02.04 provides leasehold interest coverage as follows:

The Company will pay for the actual Leasehold Interest loss incurred by the Insured (as lessee) resulting from direct physical loss of or damage caused by a **Covered Cause of Loss** to a building (or structure) which is leased and not owned by the Insured ... [.]

*Id.*

36. Section 5.02 provides, *inter alia*, special coverages as follows:

**CIVIL OR MILITARY AUTHORITY**

The Company will pay for the actual Time Element loss sustained

by the Insured, as provided by this Policy, resulting from the necessary **Suspension** of the Insured's business activities at an Insured Location if the **Suspension** is caused by order of civil or military authority that prohibits access to the **Location**. That order must result from a civil authority's response to direct physical loss of or damage caused by a Covered Cause of Loss to property not owned, occupied, leased or rented by the Insured or insured under this Policy and located within the distance of the Insured's Location as stated in the Declarations. The Company will pay for the actual Time Element loss sustained, subject to the deductible provisions that would have applied had the physical loss or damage occurred at the Insured Location, during the time the order remains in effect, but not to exceed the number of consecutive days following such order as stated in the Declarations up to the limit applying to this Coverage.

*Id.* at 21-2.

#### DECONTAMINATION COSTS

If Covered Property is **Contaminated** from direct physical loss of or damage caused by a **Covered Cause of Loss** to Covered Property and there is in force at the time of the loss any law or ordinance regulating **Contamination** due to the actual not suspected presence of **Contaminant(s)**, then this Policy covers, as a direct result of enforcement of such law or ordinance, the increased cost of decontamination and/or removal of such **Contaminated** Covered Property in a manner to satisfy such law or ordinance. This Coverage applies only to that part of Covered Property so **Contaminated** due to the actual not suspected presence of **Contaminant(s)** as a result of direct physical loss or damage. The Company is not liable for the costs required for removing **Contaminated** uninsured property nor the **Contaminant** therein or thereon, whether or not the **Contamination** results from a **Covered Cause of Loss**.

*Id.* at 24.

#### INGRESS/EGRESS

The Company will pay for the actual Time Element loss sustained by the Insured, as provided by this Policy, resulting from the necessary **Suspension** of the Insured's business activities at an Insured Location if ingress or egress to that Insured Location by the Insured's suppliers, customers or employees is prevented by physical obstruction due to direct physical loss of or damage caused by a **Covered Cause of Loss** to property not owned, occupied,

leased or rented by the Insured or insured under this Policy and located within the distance of the Insured Location as stated in the Declarations. The Company will pay for the actual Time Element loss sustained, subject to the deductible provisions that would have applied had the physical loss or damage occurred at the Insured Location, during the time ingress or egress remains prevented by physical obstruction but not to exceed the number of consecutive days as stated in the Declarations following such obstruction up to the limit applying to this Coverage.

*Id.* at 26.

#### **TENANTS PROHIBITED ACCESS**

The Company will pay for the actual Gross Earnings loss sustained, as provided by this Policy, resulting from the necessary **Suspension** of the Insured's business activities at an Insured Location if access to that **Location** by the Insured's suppliers, customers or employees is physically obstructed due to the owner, landlord or a legal representative of the building owner or landlord, prohibiting access to the Insured Location. This Coverage will only apply when the period of time that access is prohibited exceeds the time shown as **Qualifying Period** in the **Qualifying Period** clause of the Declarations section. If the **Qualifying Period** is exceeded, then this Policy will pay for the amount of loss in excess of the Policy Deductible, but not more than the limit applying to this Coverage.

The following additional exclusion applies:

This Policy excludes loss directly or indirectly caused by or resulting from prohibited access to the Insured Location, when such prohibited access is caused directly or indirectly by the failure of the Insured to comply with the terms and conditions of any contracts the Insured has for the use of such **Location** regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss.

*Id.* at 31.

#### **INTERRUPTION BY COMMUNICABLE DISEASE**

The Company will pay for the actual Gross Earnings loss sustained by the Insured, as provided by this Policy, resulting from the necessary **Suspension** of the Insured's business activities at an Insured Location if the **Suspension** is caused by an order of an authorized governmental agency enforcing any law or ordinance regulating communicable disease and that such portions of the

location are declared uninhabitable due to the threat of the spread of communicable disease, prohibiting access to those portions of the **Location**.

This Policy also covers the reasonable and necessary costs incurred for the cleanup, removal and disposal of the actual not suspected presence of substance(s) causing the spread of such communicable disease and to restore the locations in a manner so as to satisfy such authorized governmental agency.

This Coverage will only apply when the period of time that access is prohibited exceeds the time shown as **Qualifying Period** in the **Qualifying Period** clause of the Declarations section. If the **Qualifying Period** is exceeded, then this Policy will pay for the amount of loss in excess of the Policy Deductible, but not to exceed the number of consecutive days following such order as stated in the Declarations up to the limit applying to this Coverage.

This Coverage will not apply to loss or damage that is payable under any other provision in this Policy.

*Id.* at 34.

#### **PROTECTION OF PATIENTS**

This Policy insures reasonable and necessary costs incurred for actions to temporarily remove and return patients at the Insured Location; provided such actions are necessary due to impending, physical loss or damage due to a **Covered Cause of Loss** to Covered Property when the cost is in excess of the amount stated in the Declarations. No deductible applies to this Coverage.

This coverage will not apply if direct physical loss or damage by a **Covered Cause of Loss** to Covered Property occurs at the Insured Location.

*Id.* at 35.

37. PHS paid all premiums owed and performed all conditions precedent for coverage under the American Guarantee Policy.

38. PHS timely provided notice to Zurich on April 1, 2020 of its loss, giving rise to Claim No. 5630048244 (the “PHS Claim”).

39. On or about January 12, 2021, Zurich issued its denial of the PHS Claim.

### ***The Zurich American Policy***

40. Zurich American issued Property Portfolio Protection Policy No. CPP 4472506 00 to Orthopedic Hospital at Parkview North LLC, effective October 1, 2019 to October 1, 2020 (the “Zurich American Policy”). A true and accurate copy of the Zurich American Policy is attached hereto as **Exhibit B**.

41. The total premium OHPN paid for the Zurich American Policy is **\$39,339.00**. Ex. B, p. 1.

42. There is no aggregate limit of coverage under the Zurich American Policy. Rather, there are separate sub-limits for different locations, with sub-limits for each location ranging from **\$5,000,000.00** down to **\$93,000.00**. *See id.* at 14-31.

43. Ten (10) designated locations of OHPN in Fort Wayne and Angola, Indiana are insured locations. *Id.* at 4.

44. The Zurich American Policy provides the following coverage grant:

We will pay for direct physical loss of or damage to **“real property”** and **“personal property”** at a **“premises”** directly caused by a **“covered cause of loss”**. We will not pay more in any one occurrence than the applicable Limit of Insurance shown on the Declarations for such loss of or damage to Covered Property at that **“premises”**.

*Id.* at 66.

45. The Zurich American Policy provides, *inter alia*, the following additional coverages:

#### **EXPEDITING EXPENSE**

In the event of covered loss of or damage to **“real property”** or **“personal property”** at a **“premises”** or **“reported unscheduled premises”** directly caused by a **“covered cause of loss”**, we will pay reasonable and necessary additional expenses you incur for temporary repair of damage to such **“real property”** or **“personal property”** and the additional expenses you incur for expediting the

permanent repair or replacement of such damaged property. This Additional Coverage does not include expenses recoverable elsewhere in this Commercial Property Coverage Part. The most we will pay under this Additional Coverage at any one **"premises"** or **"reported unscheduled premises"** is the Limit of Insurance shown on the Declarations for Expediting Expense.

*Id.* at 78.

## **MICROORGANISMS**

We will pay the following when **"microorganisms"** are the result of a **"covered cause of loss"**, other than fire or lightning:

- a.** Direct physical loss of or damage to Covered Property caused by **"microorganisms"**, including the cost of removal of the **"microorganisms"**;
- b.** The reasonable cost to tear out and replace any part of the covered building or other property needed to gain access to the **"microorganisms"**; and
- c.** The reasonable cost of testing performed after removal, repair, replacement, or restoration of the damaged property is completed, provided there is a reason to believe that the **"microorganisms"** are still present.

The most we will pay under this Additional Coverage in any one policy year is the Annual Aggregate Limit of Insurance shown on the Declarations for Microorganisms. Regardless of the number of claims, this Limit is the most we will pay for the total of all loss, damage, or cost, even if the **"microorganisms"** continue to be present, active, or recur.

The Limit for this Additional Coverage is included in, and not in addition to, any other applicable Limits of Insurance.

*Id.* at 80.

## **PRESERVATION OF PROPERTY**

If Covered Property is removed from a **"premises"** or **"reported unscheduled premises"** to preserve it from actual or imminent physical loss or damage caused by a **"covered cause of loss"**:

We will pay for:

- a.** Any direct physical loss of or damage to Covered Property while it is being moved to or while stored at another location for up to the number of days shown on the Declarations for Preservation of Property; and
- b.** The reasonable cost to remove Covered Property from the **"premises"** or **"reported unscheduled premises"**.

The Limit for this Additional Coverage is included in, and not in addition to, the applicable Limit of Insurance shown on the Declarations for that Covered Property.

*Id.* at 82.

### PROFESSIONAL FEES

We will reimburse you for the reasonable expenses you incur for professional services for auditors, accountants, architects, or engineers which are necessary to prepare a statement of loss or exhibits required in connection with any loss covered under this Commercial Property Coverage Part. This Additional Coverage does not apply to fees and costs of:

- a. Your employees; or
- b. Attorneys, public adjusters, loss appraisers, or loss consultants.

The most we will pay under this Additional Coverage in any one occurrence is the Limit of Insurance shown on the Declarations for Professional Fees.

*Id.*

### UNREPORTED PREMISES

We will pay for direct physical loss of or damage to **"real property"** and **"personal property"**, other than **"salespersons samples"** or property in transit, at an **"unreported premises"** directly caused by a **"covered cause of loss"**.

The most we will pay under this Additional Coverage at any one **"unreported premises"** is the Limit of Insurance shown on the Declarations for Unreported Premises.

*Id.* at 84.

46. The Zurich American Policy provides Business Income Coverage as follows:

We will pay for the actual loss of **"business income"** you sustain due to the necessary **"suspension"** of your **"operations"** during the **"period of restoration"**. The **"suspension"** must be caused by direct physical loss of or damage to property at a **"premises"** at which a Limit of Insurance is shown on the Declarations for Business Income. The loss or damage must be directly caused by a **"covered cause of loss"**. We will not pay more than the applicable

Limit of Insurance shown on the Declarations for Business Income at that "**premises**".

*Id.* at 117.

47. The Zurich American Policy provides, *inter alia*, additional Business Income Coverage as follows:

#### **CIVIL AUTHORITY**

We will pay for the actual loss of "**business income**" you sustain for up to the number of days shown on the Declarations for Civil Authority resulting from the necessary "**suspension**", or delay in the start, of your "**operations**" if the "**suspension**" or delay is caused by order of civil authority that prohibits access to the "**premises**" or "**reported unscheduled premises**". That order must result from a civil authority's response to direct physical loss of or damage to property located within one mile from the "**premises**" or "**reported unscheduled premises**" which sustains a "**business income**" loss. The loss or damage must be directly caused by a "**covered cause of loss**".

The most we will pay under this Additional Coverage is the Limit of Insurance shown on the Declarations for Business Income at the "**premises**" or "**reported unscheduled premises**" where access was prohibited.

The Limit for this Additional Coverage is included in, and not in addition to, the applicable Limit of Insurance.

*Id.* at 117.

#### **CONTRACTUAL PENALTIES**

We will pay contractual penalties you are legally liable to pay under the provisions of a written contract due to late or non-completion of orders. Those penalties must be the result of direct physical loss of or damage to property at a "**premises**" or "**reported unscheduled premises**" at which a Limit of Insurance is shown on the Declarations for Business Income. The loss or damage must be directly caused by a "**covered cause of loss**".

The most we will pay under this Additional Coverage in any one occurrence is the Limit of Insurance shown on the Declarations for Contractual Penalties.



*Id.*

#### **EXTENDED PERIOD OF INDEMNITY**

If the necessary "**suspension**" of your "**operations**" produces a "**business income**" loss payable under this Coverage Form, and you resume "**operations**" with reasonable speed, we will pay for the actual loss of "**business income**" you sustain during the "**extended period of indemnity**".

The most we will pay under this Additional Coverage is the Limit of Insurance shown on the Declarations for Business Income at the "**premises**" or "**reported unscheduled premises**" where the direct physical loss or damage occurred.

The Limit for this Additional Coverage is included in, and not in addition to, the applicable Limit of Insurance.

*Id.* at 118.

#### **INGRESS/EGRESS**

We will pay for the actual loss of "**business income**" you sustain for up to the number of days shown on the Declarations for Ingress/Egress following the necessary "**suspension**" of your "**operations**", when ingress or egress by your suppliers, customers, or employees to the "**premises**" or "**reported unscheduled premises**" is physically obstructed due to direct physical loss or damage. The actual loss of "**business income**" you sustain must be caused by direct physical loss or damage to property not owned, occupied, leased, or rented by you, or insured under this Commercial Property Coverage Part. That property must be located within one mile from the "**premises**" or "**reported unscheduled premises**" which sustains a "**business income**" loss. The obstruction cannot be the result of an order of civil authority that prohibits access to that "**premises**" or "**reported unscheduled premises**". The loss or damage must be directly caused by a "**covered cause of loss**".

The most we will pay under this Additional Coverage is the Limit of Insurance shown on the Declarations for Business Income at the "**premises**" or "**reported unscheduled premises**" where ingress or egress was obstructed.

The Limit for this Additional Coverage is included in, and not in addition to, the applicable Limit of Insurance.

Id. at 118

### **MICROORGANISMS**

We will pay for the actual loss of **"business income"** you sustain due to the:

- a. Necessary **"suspension"** of your **"operations"** from direct physical loss of or damage to Covered Property caused by **"microorganisms"** when the **"microorganisms"** are the result of a **"covered cause of loss"**; or
- b. Prolonged **"period of restoration"** due to the remediation of **"microorganisms"** from a covered loss.

The most we will pay under this Additional Coverage in any one policy year is the Annual Aggregate Limit of Insurance shown on the Declarations for Microorganisms--Business Income. Regardless of the number of claims, this Limit of Insurance is the most we will pay for the total of all loss, even if the **"microorganisms"** continue to be present, active, or recur.

Id. at 118-19.

### **REPORTED UNSCHEDULED PREMISES**

We will pay for the actual loss of **"business income"** you sustain due to the necessary **"suspension"** of your **"operations"** during the **"period of restoration"**. The **"suspension"** must be caused by direct physical loss of or damage to property at a **"reported unscheduled premises"**. The loss or damage must be directly caused by a **"covered cause of loss"**.

The most we will pay under this Additional Coverage at any one **"reported unscheduled premises"** is the Limit of Insurance shown on the Declarations for Reported Unscheduled Premises--Business Income.

Id. at 119.

### **SCHEDULED PROPERTY**

We will pay for the actual loss of **"business income"** you sustain due to the necessary **"suspension"** of your

**"operations"** during the **"period of restoration"**. The **"suspension"** must be caused by direct physical loss of or damage to **"scheduled property"**. The loss or damage must be directly caused by a **"covered cause of loss"** within the Coverage Territory.

The most we will pay under this Additional Coverage in any one occurrence is 25% of the applicable Limit of Insurance shown on the SCHEDULED PROPERTY COVERAGE FORM.

*Id.*

#### UNREPORTED PREMISES

We will pay for the actual loss of **"business income"** you sustain due to the necessary **"suspension"** of your **"operations"** during the **"period of restoration"**. The **"suspension"** must be caused by direct physical loss of or damage to your property, or property of your landlord, at an **"unreported premises"**. The loss or damage must be directly caused by a **"covered cause of loss"**.

The most we will pay under this Additional Coverage at any one **"unreported premises"** is the Limit of Insurance shown on the Declarations for Unreported Premises--Business Income.

*Id.* at 120.

48. The Zurich American Policy provides Extra Expense Coverage as follows:

We will pay for the actual and necessary **"extra expense"** you incur due to direct physical loss of or damage to property at a **"premises"** at which a Limit of Insurance is shown for Extra Expense on the Declarations. The loss or damage must be directly caused by a **"covered cause of loss"**. We will not pay more than the applicable Limit of Insurance shown on the Declarations for Extra Expense at that **"premises"**.

*Id.* At 126.

49. The Zurich American Policy provides, *inter alia*, additional Extra Expense Coverages as follows:

## CIVIL AUTHORITY

We will pay for the actual and necessary **"extra expense"** you incur for up to the number of days shown on the Declarations for Civil Authority when an order of civil authority prohibits access to the **"premises"** or **"reported unscheduled premises"**. That order must result from a civil authority's response to direct physical loss of or damage to property located within one mile from the **"premises"** or **"reported unscheduled premises"** where the **"extra expense"** was incurred. The loss or damage must be directly caused by a **"covered cause of loss"**.

The most we will pay under this Additional Coverage is the Limit of Insurance shown on the Declarations for Extra Expense at the **"premises"** or **"reported unscheduled premises"** where access was prohibited.

The Limit for this Additional Coverage is included in, and not in addition to, the applicable Limit of Insurance.

*Id.* at 126.

## INGRESS/EGRESS

We will pay for the actual and necessary **"extra expense"** you incur for up to the number of days shown on the Declarations for Ingress/Egress, when ingress or egress by your suppliers, customers, or employees to the **"premises"** or **"reported unscheduled premises"** is physically obstructed due to direct physical loss or damage. The actual and necessary **"extra expense"** you incur must be caused by direct physical loss of or damage to property not owned, occupied, leased, or rented by you, or insured under this Commercial Property Coverage Part. That property must be located within one mile from the **"premises"** or **"reported unscheduled premises"** where the **"extra expense"** was incurred. The obstruction cannot be the result of an order of civil authority that prohibits access to that **"premises"** or **"reported unscheduled premises"**. The loss or damage must be directly caused by a **"covered cause of loss"**.

The most we will pay under the Additional Coverage is the Limit of Insurance shown on the Declarations for Extra Expense at the **"premises"** or **"reported unscheduled premises"** where ingress or egress was obstructed.

The Limit for this Additional Coverage is included in, and not in addition to, the applicable Limit of Insurance.

*Id.*

#### **REPORTED UNSCHEDULED PREMISES**

We will pay for the actual and necessary "**extra expense**" you incur due to direct physical loss of or damage to property at a "**reported unscheduled premises**". The loss or damage must be directly caused by a "**covered cause of loss**".

The most we will pay under this Additional Coverage at any one "**reported unscheduled premises**" is the Limit of Insurance shown on the Declarations for Reported Unscheduled Premises--Extra Expense.

*Id.* at 127.

#### **UNREPORTED PREMISES**

We will pay for the actual and necessary "**extra expense**" you incur due to direct physical loss of or damage to your property at an "**unreported premises**". The loss or damage must be directly caused by a "**covered cause of loss**".

The most we will pay under this Additional Coverage at any one "**unreported premises**" is the Limit of Insurance shown on the Declarations for Unreported Premises--Extra Expense.

*Id.*

50. The Zurich American Policy provides Dependent Premises Business Income

Coverage – Unscheduled Locations as follows:

The following is added to Section A., Coverage, in the BUSINESS INCOME COVERAGE FORM (EXCLUDING EXTRA EXPENSE) and Section A., Coverages, in the BUSINESS INCOME COVERAGE FORM INCLUDING RESEARCH AND DEVELOPMENT CONTINUING EXPENSES (EXCLUDING EXTRA EXPENSE)--TECHNOLOGY:

We will also pay for the actual loss of "**business income**" you sustain due to the necessary "**suspension**" of your "**operations**" during the "**period of restoration**". The "**suspension**" must be caused by direct physical loss of or damage to property, including property in the open (or in a vehicle), at a "**dependent premises**".

The loss or damage must be directly caused by a "**covered cause of loss**".

The most we will pay in any one occurrence is the Limit of Insurance shown on the Declarations for Dependent Premises Business Income--Unscheduled Locations.

*Id.* at 132.

51. The Zurich American Policy provides the following additional Dependent Premises

Business Income Coverage – Unscheduled Locations:

With respect to a "**suspension**" of your "**operations**" caused by direct physical loss of or damage to property, including property in the open (or in a vehicle), at a "**dependent premises**", the Civil Authority and Contractual Penalties Additional Coverages in the BUSINESS INCOME COVERAGE FORM (EXCLUDING EXTRA EXPENSE) and the BUSINESS INCOME COVERAGE FORM INCLUDING RESEARCH AND DEVELOPMENT CONTINUING EXPENSES (EXCLUDING EXTRA EXPENSE)--TECHNOLOGY are replaced by the following:

#### **CIVIL AUTHORITY**

We will pay for the actual loss of "**business income**" you sustain for up to 30 days resulting from the necessary "**suspension**", or delay in the start, of your "**operations**" if the "**suspension**" or delay is caused by order of civil authority that prohibits access to a "**dependent premises**". That order must result from a civil authority's response to direct physical loss of or damage to property located within one mile from the "**dependent premises**". The loss or damage must be directly caused by a "**covered cause of loss**".

The most we will pay under this Additional Coverage is the Limit of Insurance shown on the Declarations for Dependent Premises Business Income--Unscheduled Locations.

The Limit for this Additional Coverage is included in, and not in addition to, that Limit of Insurance.

*Id.* at 117.

## CONTRACTUAL PENALTIES

We will pay contractual penalties you are legally liable to pay under the provisions of a written contract due to late or non-completion of orders. Those penalties must be the result of direct physical loss of or damage to property at a **"dependent premises"**. The loss or damage must be directly caused by a **"covered cause of loss"**.

*Id.* At 132.

## OPTIONAL COVERAGE

If a Blanket Business Income and Extra Expense Limit of Insurance is shown on the Declarations, the following Optional Coverage is added to Section A., Coverage, in the EXTRA EXPENSE COVERAGE FORM:

We will pay for the actual and necessary **"extra expense"** you incur due to direct physical loss of or damage to property, including property in the open (or in a vehicle), at a **"dependent premises"**. The loss or damage must be directly caused by a **"covered cause of loss"**. The most we will pay in any one occurrence is the Limit of Insurance shown on the Declarations for Dependent Premises Business Income--Unscheduled Locations. This Limit is included in, and not in addition to, any other applicable Limit of Insurance. If a Blanket Business Income and Extra Expense Limit of Insurance applies, the Civil Authority Additional Coverage in the EXTRA EXPENSE COVERAGE FORM applies to the actual and necessary **"extra expense"** you incur for up to 30 days after an order of civil authority prohibits access to that **"dependent premises"**. That order must result from a civil authority's response to direct physical loss of or damage to property located within one mile from the **"dependent premises"**. The loss or damage must be directly caused by a **"covered cause of loss"**.

The most we will pay under this Additional Coverage is the Limit of Insurance shown on the Declarations for Dependent Premises Business Income--Unscheduled Locations. The Limit for this Additional Coverage is included in, and not in addition to, any other applicable Limit of Insurance.

*Id.* at 133.

## LOSS DETERMINATION

With respect to a "**suspension**" of "**operations**" caused by direct physical loss of or damage to a "**dependent premises**", the Resumption of Operations Loss Determination in the BUSINESS INCOME COVERAGE FORM (EXCLUDING EXTRA EXPENSE) and the BUSINESS INCOME COVERAGE FORM INCLUDING RESEARCH AND DEVELOPMENT CONTINUING EXPENSES (EXCLUDING EXTRA EXPENSE)--TECHNOLOGY is replaced by the following:

### Resumption of Operations

We will reduce the amount of "**business income**" loss payment to the extent you could resume your "**operations**", in whole or in part, by using:

- a. Sources of materials or services; or
- b. Outlets for your products or services, available to you.

*Id.*

52. The Zurich American Policy provides Healthcare Industry Coverage as follows:

### DECONTAMINATION EXPENSE

If loss or damage to Covered Property from "**pollutants**" is the result of a "**covered cause of loss**", and there is an ordinance or law in effect at the time the covered loss or damage occurs that requires you to clean up, remove, decontaminate, or restore Covered Property, we will pay the reasonable expenses you incur to clean up, remove, decontaminate, or restore Covered Property to comply with such ordinance or law.

This Additional Coverage does not apply to expenses to comply with any ordinance or law that you were required to comply with before the loss or damage occurred.

The most we will pay under this Additional Coverage at any one "**premises**" or "**reported unscheduled premises**" is the Limit of Insurance shown on the Declarations for Decontamination Expense.

*Id.* at 150.

### PATIENT EVACUATION

If your patients are temporarily evacuated from a "**premises**" or "**reported unscheduled premises**" to protect them from imminent injury due to a "**covered cause of loss**", we will pay the reasonable



and necessary expenses you incur for the patients' temporary evacuation from and subsequent return to such **"premises"** or **"reported unscheduled premises"**.

The most we pay under this Additional Coverage at any one **"premises"** or **"reported unscheduled premises"** is the Limit of Insurance shown on the Declarations for Patient Evacuation.

*Id.* at 151.

#### **COMMUNICABLE DISEASE SUSPENSION OF OPERATIONS--BUSINESS INCOME**

If the BUSINESS INCOME COVERAGE FORM (EXCLUDING EXTRA EXPENSE) or BUSINESS INCOME COVERAGE FORM INCLUDING RESEARCH AND DEVELOPMENT CONTINUING EXPENSES (EXCLUDING EXTRA EXPENSE)--TECHNOLOGY is included in this Commercial Property Coverage Part, the coverage provided at a **"premises"** or **"reported unscheduled premises"** will also cover the actual loss of **"business income"** you sustain due to an order of an authorized public health official or governmental authority that prevents access to that **"premises"** or **"reported unscheduled premises"**, or a portion of that **"premises"** or **"reported unscheduled premises"**, because of the discovery or suspicion of a communicable disease or threat of the spread of a communicable disease at that **"premises"** or **"reported unscheduled premises"**.

Coverage provided applies only to the actual loss of **"business income"** you sustain, which begins 24 hours after you receive notice of closing by the authorized public health official or governmental authority, until the public health official or governmental authority authorizes you to reopen, or 90 days, whichever is earlier.

The most we will pay under this Additional Coverage at any one **"premises"** or **"reported unscheduled premises"** is the Limit of Insurance shown on the Declarations for Communicable Disease Suspension of Operations--Business Income.

This Limit for this Additional Coverage is included in, and not in addition to, any other applicable Limits of Insurance.

*Id.* at 152.

53. The declaration page of the Zurich American Policy provides, *inter alia*, limits of “\$100,000 per premises” for “Communicable Disease Suspension of Operations--Business Income” coverage:

✓ COMMUNICABLE DISEASE SUSPENSION OF OPERATIONS--BUSINESS INCOME \$ 100,000 PER PREMISES ✓

*Id.* at 25.

54. OHPN paid all premiums owed and performed all conditions precedent for coverage under the Zurich American Policy.

55. OHPN timely provided notice to Zurich on April 1, 2020 of its loss, giving rise to Claim No. 5630048247 (the “OHPN Claim”).

56. On or about January 12, 2021, Zurich issued its denial of the OHPN Claim.

**INDIANA’S PANDEMIC-RELATED  
PUBLIC HEALTH ORDERS**

57. Throughout the Pandemic, various state, county, and local authorities within the State of Indiana have issued a number of Pandemic-related public health orders. Such Pandemic-related public health orders included, among other items, restrictions on travel, capacity, operations, medical procedures, staffing, hours of operation, travel, hygiene measures, and other restrictions or requirements which substantially impacted the operations of organizations which were subject to such Pandemic-related public health orders.

58. The Parkview Parties, in addition to and as part of the direct physical impact, losses and damages caused by COVID-19 including the documented presence of COVID-19 in its locations and facilities and threatening and infecting its employees and patients, have been subject to a number of Pandemic-related public health orders issued by the State of Indiana and applicable

counties and local jurisdictions. Such Pandemic-related public health orders significantly disrupted the business operations of the Parkview Parties and resulted in substantial financial impacts.

59. Executive Order No. 20-02,<sup>2</sup> issued on March 6, 2020, declared a Pandemic-related public health disaster emergency, designated the Indiana State Department of Health (“ISDH”) as the lead agency to coordinate emergency response activities, and ordered ISDH to follow protocols established by the U.S. Centers for Disease Control and Prevention (“CDC”).

60. Executive Order No. 20-04,<sup>3</sup> issued on March 16, 2020, ordered hospitals and ambulatory surgery centers to cancel or postpone elective and non-urgent surgical procedures immediately.

61. Executive Order No. 20-08,<sup>4</sup> issued on March 23, 2020, commonly known as the “Stay at Home Order,” restricted the ability of the general public to leave their homes and residences except as specifically outlined in the order.

62. Executive Order No. 20-13,<sup>5</sup> issued on March 30, 2020, stated:

[T]he Centers for Medicare and Medicaid Services issued guidance to limit non-essential elective surgery and medical and surgical procedures, including all dental procedures, to assist in the management of vital health care resources (including PPE) during this public health emergency and to limit potential exposure of health care providers, patients and staff to COVID-19[.]

...

To preserve PPE for health care providers who are battling the COVID-19 pandemic, beginning April 1, 2020, all health care providers, whether medical, dental or other, and health care

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<sup>2</sup> State of Indiana, *Executive Order 20-02* (March 6, 2020), available at <https://www.in.gov/gov/files/20-02ExecutiveOrderDeclarationofPublicHealthEmergencyforCOVID-19FINAL.pdf>.

<sup>3</sup> State of Indiana, *Executive Order 20-04* (March 16, 2020), available at <https://www.in.gov/gov/files/ExecutiveOrder20-04FurtherOrdersforPublicHealthEmergency.pdf>.

<sup>4</sup> State of Indiana, *Executive Order 20-08* (March 23, 2020), available at [https://www.in.gov/gov/files/Executive\\_Order\\_20-08\\_Stay\\_at\\_Home.pdf](https://www.in.gov/gov/files/Executive_Order_20-08_Stay_at_Home.pdf).

<sup>5</sup> State of Indiana, *Executive Order 20-13* (March 30, 2020), available at <https://www.in.gov/gov/files/Executive%20Order%2020-13%20Medical%20Surge.pdf>.

facilities, whether hospitals, ambulatory surgical centers, dental facilities, plastic surgery centers, dermatology offices and abortion clinics, are directed to cancel or postpone elective and non-urgent surgical or invasive procedures. (§ 4(a).)

### **THE IMPACT, LOSSES AND DAMAGES OF THE PARKVIEW PARTIES**

63. As a multi-specialty, multi-location, full-service health care provider, the impact on the Parkview Parties of the Pandemic, the Coronavirus and the above-referenced Pandemic-related public health orders can hardly be understated.

64. The impact on and the losses and damages sustained by the different locations, facilities, personnel and businesses of the Parkview Parties has been substantial, multi-faceted and ongoing.

65. The Parkview Parties have sustained direct physical loss and damages resulting from the Pandemic, the Coronavirus and the above-referenced Pandemic-related public health orders.

66. Some of the Parkview Parties' locations and facilities were fully closed and non-operational.

67. Some of the Parkview Parties' locations and facilities were partially closed and non-operational.

68. Patients and the general public were prohibited from traveling to Parkview facilities.

69. The Parkview Parties were prohibited from performing elective and non-urgent medical procedures for a sustained period during the Pandemic.

70. The presence of the Coronavirus and COVID-19-positive patients and employees in Parkview's facilities and locations was continuous.

71. Thousands of Parkview patients have tested positive for and been treated for COVID-19.

72. Hundreds if not thousands of Parkview employees have tested positive for COVID-19.

73. The Parkview Parties expended significant resources addressing the Pandemic and the Coronavirus, including costs to clean, disinfect, sanitize and sterilize its facilities and equipment and to protect its staff, employees, nurses, physicians and patients.

74. The Parkview Parties sustained lost revenues, lost profits and reduced earnings as a result of the Pandemic and the Coronavirus, including without limitation their compliance with the above-referenced Pandemic-related public health orders.

75. The Parkview Parties incurred significant losses and damages dealing with the Pandemic and the Coronavirus, including without limitation their compliance with the above-referenced Pandemic-related public health orders. These damages and losses are covered under the American Guarantee Policy and Zurich American Policy.

**Life Time Fitness v. Zurich – Admission of Coverage**

76. Zurich has already admitted that coverage for the precise types of Pandemic-related losses and damages suffered by the Parkview Parties is available under policy terms which are identical to the “Interruption by Communicable Diseases” coverage granted in the American Guarantee Policy.

77. Specifically, Zurich American is a defendant in the litigation titled *Life Time, Inc. et al v. Zurich American Insurance Company*, Case No. 27-CV-20-10599, pending in the Fourth Judicial District of Minnesota.

78. Rhetorical Paragraph 51 in Life Time's complaint reproduces an email that Zurich sent to Life Time on June 25, 2020 containing the following coverage determination with respect to "Interruption by Communicable Disease" coverage with policy language that is identical to the language set forth in Section 5.02.35 of the American Guarantee Policy:

51. On June 25, 2020, after Life Time requested a more fulsome written coverage position, Zurich communicated the following regarding its view of the amount of coverage for "Interruption By Communicable Disease" under the 2020 Zurich Policy:

- 1.) Coverage-I explained we are extending coverage under the Communicable Disease Provision up to \$1,000,000.
- 2.) You inquired above including all locations "losses" under one Occurrence-As pointed out under Section 7.45 Occurrence-All loss(es) or damage that is attributable directly or indirectly to one cause or a series of similar or related causes. All such loss(es) or damage will be treated as one **Occurrence**. However, if **Occurrence** is specifically defined anywhere in this Policy, that definition will apply to the applicable coverage provided. *Hence, all locations will be treated as one Occurrence.*
- 3.) The Policy excludes virus a "Contaminant" exclusion under section 3.03.01.01.
- 4.) Contamination Definition is amended in the LA Endorsement to not include Virus. Please note Lifetime does not have any locations within Louisiana so this modification would not be applicable.
- 5.) Life Time is (not subject) to the full limit of the policy \$350,000,000 as the main policy as mentioned above excludes virus as a covered cause of loss. *Virus is Endorsed in the policy by the "Interruption of Communicable Disease" Coverage Provision. As such, the coverage cause of loss is "Communicable Disease" again subject to a \$1,000,000 limit.*

(Zurich's April 25, 2020 E-mail to Life Time (formatted as in original with emphasis added).)

(*Life Time, Inc. et al v. Zurich American Insurance Company*, Case No. 27-CV-20-10599, Complaint, at p. 12, ¶ 51.)

79. Zurich admits that it sent the June 25, 2020 email. (*Defendant Zurich American Insurance Company's Answer to [Life Time Plaintiffs'] Complaint and Affirmative and Other Defenses*, p.12, ¶ 51).

80. In a joint Rule 26(f) Report to the Court in the *Life Time* matter, Zurich characterized its coverage obligations under its “Interruption by Communicable Disease” coverage provision as follows:

By endorsement, the 2020 Zurich Policy provides “Interruption By Communicable Disease” coverage. Section 2.03 “Policy Limits of Liability” of the 2020 Zurich Policy provides a table of the various coverage parts in the 2020 Zurich Policy and the corresponding limits of liability applicable to each coverage part. The table in Section 2.03.07 identifies a \$1,000,000 limit of liability for the Interruption By Communicable Disease coverage. Section 2.03.07 says, in part, “The following are the Limits of Liability in an Occurrence unless otherwise shown.”

Thus, pursuant to Section 2.03.07, Interruption By Communicable Disease coverage is limited to \$1,000,000 per “occurrence,” which is subject to the applicable \$100,000 per-occurrence deductible. The Policy defines “occurrence” as “all loss(es) or damage that is attributable directly or indirectly to one cause or a series of similar or related causes. All such loss(es) or damage will be treated as one Occurrence.” All of the alleged losses incurred by Plaintiffs result from a single “occurrence,” as defined by the 2020 Zurich Policy.

Nowhere in the 2020 Zurich Policy, including in the Interruption By Communicable Disease endorsement, does it say that Interruption By Communicable Disease Coverage provides \$1,000,000 of coverage per Insured Location.

Under Interruption By Communicable Disease coverage, Zurich agrees to pay for the “actual Gross Earnings loss sustained by the Insured” resulting from the insured’s necessary suspension of business activities caused by a governmental order to enforce a law or ordinance regulating communicable disease. The governmental order must result in a declaration that all or a portion of the location is declared uninhabitable as a result of the threat of the spread of communicable disease, such that access to the location or portions of the location is prohibited. To be implicated, the period of time that access is prohibited must exceed 48 hours.

**Zurich does not dispute that Interruption By Communicable Disease coverage potentially applies to Plaintiffs’ alleged losses, subject to the applicable deductible. Zurich’s position, however, is that coverage is limited to \$1,000,000 and it is Plaintiffs’ burden to establish the amount of its loss that comes within the terms and conditions of the Interruption by Communicable Disease coverage.**

Rule 26(f) Report (emphasis added).

81. Despite admitting its Pandemic-related coverage obligation under “Interruption by Communicable Disease” within the context of the *Life Time* case, Zurich issued an unfounded denial of coverage for the PHS Claim, which includes an identical policy provision.

### **CAUSES OF ACTION**

#### **COUNT I – BREACH OF CONTRACT**

82. The Parkview Parties incorporate all prior Paragraphs as if fully set forth herein.

83. The American Guarantee Policy constitutes a valid contract between PHS and American Guarantee.

84. The Zurich American Policy constitutes a valid contract between OHPN and Zurich American.

85. Zurich has breached its obligations to PHS and OHPN under the American Guarantee and Zurich American Policies.

86. The Parkview Parties have been damaged as a result of Zurich’s breach of its obligations under the American Guarantee and Zurich American Policies.

#### **COUNT II – DECLARATORY JUDGMENT PURSUANT TO 28 U.S.C. § 2201**

87. The Parkview Parties incorporate all prior Paragraphs as if fully set forth herein.

88. An actual controversy exists with respect to the scope of the Parkview Parties’ rights and Zurich’s obligations under the American Guarantee and Zurich American Policies.

89. The American Guarantee and Zurich American Policies provide coverage for losses and damages incurred by the Parkview Parties in connection with the Pandemic, including without limitation compliance with the above-referenced Pandemic-related public health orders.

90. The Parkview Parties will suffer harm if Zurich is permitted to continue to avoid its obligations under the American Guarantee and Zurich American Policies.



91. A declaratory judgment is necessary to determine the various rights and obligations of the parties to this litigation.

92. Pursuant to Indiana Code § 34-14-1-1 and Rule 57 of the Indiana Trial Rules, the Parkview Parties respectfully request a declaratory judgment stating that the Pandemic-related losses at issue in this litigation are covered by the American Guarantee and Zurich American Policies.

### **COUNT III – BAD FAITH**

93. The Parkview Parties incorporate all prior Paragraphs as if fully set forth herein.

94. Under Indiana law there is a legal duty implied in all insurance contracts (such as the American Guarantee and Zurich American Policies) that the insurer deal in good faith with its insured. *E.g., Erie Insurance Co. v. Hickman*, 622 N.E.2d 515 (Ind. 1993). Zurich owes the Parkview Parties a duty of good faith.

95. Indiana recognizes a cause of action “for tortious breach of an insurer’s duty to deal with its insured in good faith.”

96. The obligation of good faith and fair dealing with respect to the discharge of an insurer’s contractual obligation includes the obligation to refrain from (1) making an unfounded delay to pay policy proceeds, and (2) causing an unfounded refusal in making policy payment, among other actions.

97. Here, Zurich has delayed and failed to make payment in connection with the PHS and OHPN Claims, even as it admits elsewhere that coverage exists under policy language that is identical to certain policy language at issue in the PHS Claim. Zurich has denied claims knowing that it has no legitimate basis for denying coverage. This is shown by, among other things, Zurich’s

confession of coverage in connection with the Life Time claim and in the *Life Time* litigation, while at the same time denying coverage to the Parkview Parties.

98. As a result of Zurich's breach of its duty of good faith, the Parkview Parties are entitled to consequential damages arising from Zurich's bad faith actions, punitive damages to appropriately punish Zurich and deter future similar conduct, and all other just and proper relief.

#### **PRAYER FOR RELIEF**

WHEREFORE, Parkview Health System, Inc. and Orthopedic Hospital at Parkview North, LLC respectfully request that judgment be entered in their favor as follows:

A. A declaratory judgment stating that the Parkview Parties are entitled to coverage under the American Guarantee and Zurich American Policies for the losses and damages at issue in this litigation;

B. An award of damages in an amount to be established at trial for losses incurred, up to available limits of coverage for the American Guarantee and Zurich American Policies;

C. An award of consequential damages incurred as a result of Zurich's bad faith conduct;

D. An award of punitive damages to punish and deter Zurich's bad faith conduct;

E. An award of attorneys' fees and costs of suit, and such other and further relief this Court may deem just and proper.

Respectfully submitted,

/s/ Matthew D. Neumann

Scott S. Morrisson, Attorney No. 11633-49  
Shelley M. Jackson, Attorney No. 27176-29  
Matthew D. Neumann, Attorney No. 29408-49  
KRIEG DEVAULT LLP  
12800 North Meridian Street, Suite 300  
Carmel, Indiana 46032  
Telephone: (317) 636-4341  
Facsimile: (317) 636-1507  
E-Mail: [smorrisson@kdlegal.com](mailto:smorrisson@kdlegal.com)  
[mneumann@kdlegal.com](mailto:mneumann@kdlegal.com)  
[sjackson@kdlegal.com](mailto:sjackson@kdlegal.com)

*Attorneys for Plaintiffs Parkview Health System,  
Inc. and Orthopedic Hospital at Parkview North,  
LLC*

**DEMAND FOR JURY TRIAL**

Plaintiffs Parkview Health System, Inc. and Orthopedic Hospital at Parkview North, LLC,  
by counsel, hereby demand that this cause be tried by a jury.

Respectfully submitted,

/s/ Matthew D. Neumann

Matthew D. Neumann  
KRIEG DEVAULT LLP  
[mneumann@kdlegal.com](mailto:mneumann@kdlegal.com)

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