

¹ The named Insureds are the owners of the properties at issue in this litigation and are listed on Exhibit 1.

I. PARTIES

Plaintiff **Boxer** is a Texas corporation with its principal place of business in Harris County, Texas. The named Insureds are limited liability companies and limited partnerships based throughout the country, many of which are based in Texas and Harris County.

Defendants are all in the business of providing insurance in the State of Texas. The insurance business conducted by Defendants includes, but is not limited to, the making and issuing of contracts of insurance with Boxer; accepting applications for insurance; receipt of premiums, commissions, and fees; as well as the delivery of contracts of insurance to residents of or persons authorized to do business in this state, including Boxer.

Defendant **Chubb** is a corporation incorporated under the laws of the State of Illinois with a principal place of business at 436 Walnut Street, Philadelphia, Pennsylvania 19106. Pursuant to Texas Insurance Code § 804.201, Chubb may be served with process by serving the Texas Commissioner of Insurance, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701 as Chubb's agent for service of process. The Commissioner will then forward citation and the petition to Chubb's home office at 436 Walnut Street, Philadelphia, Pennsylvania 19106.

Defendant **Ategrity** is incorporated under the laws of the State of Delaware with its principal place of business at 15990 N. Greenway Hayden Loop D-160, Scottsdale, Arizona 85260. Pursuant to Texas Insurance Code § 804.201, Ategrity may be served with process by serving the Texas Commissioner of Insurance, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701 as Ategrity's agent for service of process. The Commissioner will then forward citation and the petition to Ategrity's home office at 15990 N. Greenway Hayden Loop D-160, Scottsdale, Arizona 85260.

Defendant **Navigators** is incorporated under the laws of the State of New York, and its principal place of business is 400 Atlantic Street, 8th Floor, Stamford, Connecticut 06901. Pursuant to Texas Insurance Code § 804.201, Navigators may be served with process by serving the Texas Commissioner of Insurance, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701 as Navigators' agent for service of process. The Commissioner will then forward citation and the petition to Navigators' home office at 400 Atlantic Street, 8th Floor, Stamford, Connecticut 06901.

Defendant **Crum & Forster** is incorporated under the laws of the State of Delaware, and its principal place of business is 305 Madison Avenue, Morristown, New Jersey 07962. Crum & Forster may be served with process by serving the Texas Commissioner of Insurance, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701. The Commissioner will then forward citation and the petition to Crum & Forster's home office at 305 Madison Avenue, Morristown, New Jersey 07962.

Defendant **Everest** is incorporated under the laws of the State of Delaware and has its principal place of business at 477 Martinsville Road, P.O. Box 820, Liberty Corner, New Jersey 07938. Defendant Everest may be served through its agent for service of process, Sanjor Mukerjee, P.O. Box 830, Liberty Corner, New Jersey 07938.

Defendant **Lexington** is incorporated under the laws of the State of Delaware, and its principal place of business is 99 High Street, 23rd Floor, Boston, Massachusetts 02110. Defendant Lexington may be served with process by serving the Texas Commissioner of Insurance, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701. The Commissioner will then forward citation and the petition to Lexington's home office at 99 High Street, 23rd Floor, Boston, Massachusetts 02110.

Defendant **StarStone** is incorporated under the laws of the State of Delaware, and its principal place of business is 221 Dawson Road, Columbia, South Carolina 29223. Defendant StarStone may be served with process by serving the Texas Commissioner of Insurance, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701. The Commissioner will then forward citation and the petition to StarStone's home office at 221 Dawson Road, Columbia, South Carolina 29223.

Defendant **QBE** is incorporated under the laws of the State of North Dakota, and its principal place of business is One QBE Way, Sun Prairie, Wisconsin 53596. Defendant QBE may be served with process by serving the Texas Commissioner of Insurance, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701. The Commissioner will then forward citation and the petition to QBE's home office at One QBE Way, Sun Prairie, Wisconsin 53596.

Defendant **GSICA** is incorporated under the laws of the State of Arizona, and its principal place of business is 199 Water Street, Suite 2100, New York, New York 10038. Defendant GSICA may be served with process by serving the Texas Commissioner of Insurance, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701. The Commissioner will then forward citation and the petition to GSICA's home office at 199 Water Street, Suite 2100, New York, New York 10038.

Defendant **Lloyd's** is a foreign insurance syndicate with a certificate of authority to engage in the business of insurance in the State of Texas. Lloyd's may be served through the Texas Commissioner of Insurance, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701. The Commissioner will forward citation and the petition with discovery to defendant Lloyd's by and through its designated agent, Mendes and Mount, LLP, 750 7th Avenue, New York, New York 10019.

Defendant **HDI** is a foreign insurance underwriter and a syndicate of Certain Underwriters at Lloyd's, London, subscribing to Policy No. HAQS-181109. HDI may be served by serving the Texas Commissioner of Insurance, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701. The Commissioner will then forward citation and the petition to HDI's home office at 10 Fenchurch Street, London, EC3M 3BE, United Kingdom.

Defendant Sean Murphy ("Murphy") is an individual who resides in Houston, Harris County, Texas. Murphy may be served with process at his place of business which is 1900 West Loop South, Suite 1600, Houston, Texas 77027.

Defendant Gallagher may be served with process by serving its agent Murphy at 1900 West Loop South, Suite 1600, Houston, Texas 77027.

II. JURISDICTION AND VENUE

This Court has jurisdiction over this matter because the amount in controversy is within the jurisdictional limits of this Court.

Venue is appropriate in Harris County, Texas, because all or a substantial part of the events or omissions giving rise to the claim occurred in Harris County and Boxer's principal place of business is in Harris County. TEX. CIV. PRAC. & REM. CODE § 15.002.

The Court has jurisdiction to grant declaratory relief under Texas Civil Practice and Remedies Code Chapter 37 because an actual controversy exists between the parties concerning their respective rights and obligations under the insurance policy at issue. The Court also has jurisdiction to grant relief for breach of the Policy, as Chubb's inaction is a denial in fact of Boxer's claim.

III. BACKGROUND FACTS

Boxer Property Management Corporation is a real estate company that manages, leases, renovates, and administers commercial properties from acquisition through disposition. Boxer's (consisting of all the insureds) real estate portfolio includes office space, retail, and resorts and hotels across the country, including Point Hilton Tapatio Cliffs Resort in Phoenix, Elevation Hotel and Spa in Crested Butte, and La Gran Plaza in Fort Worth.

Boxer also is the owner of an Insurance Policy (the "Policy"), which covers Boxer's business and properties (the "Properties") located across the country. Defendant Chubb sold the Policy to Boxer. Additionally, Boxer is the owner of several excess insurance policies, which also cover the Properties. Defendants Ategrity, Navigators, Crum & Forster, Everest, Lexington, QBE, GSICA, StarStone, Lloyd's, and HDI (collectively, the "Excess Carriers") sold those policies to Boxer (the "Excess Policies").

Defendant Murphy and his employer Gallagher were the brokers who, through misrepresentations and omissions, induced Boxer to purchase the Policy and the Excess Policies") In February 2020, Murphy and Gallagher made a presentation to Boxer in which they assured Boxer that coverage under the Policies would be the same coverage that existed under Boxer's prior insurance policies. Further, the authorization to bind coverage, which referenced the presentation materials, mentioned no change to the expiring sub limits.

During the term of the Policy, Boxer has sustained and will continue to sustain covered losses during the COVID-19 outbreak, arising from the manifestation of the disease at the Properties and related fear and avoidance of the Properties by tenants and customers. As a result, Boxer has been forced to cease or limit its operations in many locations because of a physical injury to its properties that includes, but is not limited to, the physical curtailment of access to, and

prohibition against, the use of portions of its properties by patrons, customers, and members of the public, to avoid human contact with a physical contagion known to affix to and survive on property surfaces, where it can be transmitted to humans who come into contact with it. Customers, tenants, and visitors have curtailed use of the Properties in reaction to reports of the disease by any person, resulting in business interruption and interference from the manifestations, loss of income, and related damages—including, but not limited to, additional cleaning and sanitization costs.

The Policy uses the term “manifested” broadly and does not require specifics. The presence of the disease is evident to all (and acknowledged on Chubb’s website and the protocols that it is following to mandate working from home and using virtual tools) which clearly meets the definition of manifest – readily perceived by the senses, easily understood or recognized. Examples that exist in the Insureds buildings that give the perception that any building or structure has Covid-19 manifestation include signage that visitors must wear masks, people with health conditions cannot enter, and notices from landlords informing tenants of a reported case.

Based on widely reported statistics, reported cases only represent a small portion of the amount of people that have manifested the disease at the Insureds properties. Furthermore, the Policy does not say a “direct” consequence of specific cases at Insureds property, it just says as consequence. In addition to the reported cases that the Insureds have demonstrated, it can be fairly assumed that manifested persons have been on all premises and Boxer will continue to have additional manifested persons at our premises despite our best efforts in this on-going event.

A. COVID-19 Outbreaks

On March 11, 2020, the Director General of the World Health Organization (the “WHO”) declared the COVID-19 outbreak a worldwide pandemic. A few days later, the Centers for Disease Control and Prevention (the “CDC”) issued guidance for stopping the spread of COVID-19. The

guidance advised individuals to adopt strict social-distancing measures, including working from home, avoiding travel or gatherings of more than 10 people, and staying away from bars and restaurants.

Following this advisory, many state and local governments across the country took steps to protect the health and safety of their residents from the risk of spreading COVID-19 from human-to-human contact, surface-to-human contact, and exposure to aerosolized molecules of the disease—which poses a particular risk in indoor areas. Many governmental entities entered a series of similar executive orders suspending or severely curtailing, if not closing entirely, the operations of “non-essential” businesses and preventing use of and access to those premises. Many of those orders referenced the physical presence of the disease on surfaces or in the air as a basis for restricting business operations.

In March 2020, Boxer began receiving reports from tenants and employees of both potential and confirmed positive cases of COVID-19 at the Properties. Immediately, occupancy at the hotel Properties declined dramatically, followed by declines in rent payments and attendance at the office and retail Properties.

Boxer manages a hotel in Crested Butte, Colorado on behalf of one of the named Insureds. On March 12, 2020, Gunnison County—which encompasses Crested Butte—issued an emergency declaration and subsequently issued several Public Health Orders that prohibited hotels and other short-term lodging establishments from operating at all. The order was issued after the first case of COVID-19 had been reported in the county on March 10, 2020. Additionally, on March 14th, the Governor of Colorado issued an executive order that directed all downhill ski resorts in the State of Colorado to suspend operations from March 15–22, 2020. This order was later amended

to suspend operations at all ski areas until the end of May. Like other hotels and lodging in Crested Butte, Boxer's hotel was ordered closed to prevent the spread of COVID-19.

In early May, Gunnison County lifted the complete ban on short-term lodging facilities, which were allowed to reopen at 25% capacity on May 15th as part of the county's phased re-opening plan. The Governor's order suspending all downhill ski operations remained in effect until May 23, 2020. The closure, subsequent caps on occupancy, and reported cases at the hotel itself caused significant losses in revenue during what is normally peak season for the Crested Butte area.

Similarly, Arizona has issued executive orders suspending or severely limiting business operations to slow the spread of COVID-19. On behalf of a named Insured, Boxer manages the Point Hilton Tapatio Cliffs Resort in Phoenix, Arizona. The hotel has experienced countless cancellations of lucrative conferences and a massive decrease in business overall. Boxer has seen similar trends across the country, which have been both preceded and accompanied by reports of tenants, customers, and employees reporting positive cases of COVID-19 on the premises.

B. Boxer's "All Risks" Insurance Policy and Excess Policies

In exchange for substantial premiums, Defendants sold a commercial property insurance policy that provided indemnity benefits for losses sustained by Boxer for business interruption income losses and certain related expenses. The policy covers all of the Properties nationwide, and Boxer paid over \$1.2M in premiums for that coverage. The initial policy period began on October 22, 2018 and ended March 1, 2020. Boxer renewed the policy from March 1, 2020 to March 1, 2021 (Policy No. D42247108002) for approximately \$950,000.00. Overall, Boxer has paid nearly \$2.2M in premiums for commercial property and business interruption coverage—coverage which Chubb (and the other Defendants) now seek to renege on.

Among other things, Boxer's Policy specifically provides coverage for viruses and entitles Boxer to reimbursement for 365 days of business interruption, up to the limits of the Policy. This virus coverage provision does not require physical damage or an executive order issued by local or state governments. Evan G. Greenberg, the Chairman and Chief Executive Officer of Chubb Ltd., discussed this type of provision on the television show "Mad Money" with Jim Cramer on April 16, 2020.² There, Mr. Greenberg acknowledged that some insureds have special forms that cover this event and stated, "... and those claims will be paid. There is no doubt about it. Including Chubb. Where we specifically provided that coverage we will willingly pay." Mr. Greenberg has also made the blanket statement that business interruption insurance "doesn't cover COVID-19" and "[t]he [insurance] industry will fight this tooth and nail... [w]e will pay what we owe."³

Similarly, Boxer purchased "all risks" excess policies from Ategrity, Navigators, Crum & Forster, Everest, and Lexington which cover losses in excess of \$10M, up to \$50M. QBE, GSICA, and StarStone provided an excess policy that covers losses from \$50M to \$100M. Lastly, Lloyd's, HDI, GSICA, QBE, and StarStone provided an excess policy that covers losses from \$100M to \$200M.

C. Boxer's Claim and Chubb's Refusal to Accept or Deny Coverage

On April 8, 2020, Boxer reported its losses to Chubb and requested that Chubb cover the cost for business interruption and losses to the covered Properties pursuant to the terms of the

² Tyler Clifford, CNBC, *Chubb CEO: Forcing Insurers to Pay Pandemic Loss Claims Is "Plainly Unconstitutional,"* <https://www.cnbc.com/2020/04/16/chubb-ceo-making-insurers-cover-pandemic-losses-is-unconstitutional.html> (last accessed July 23, 2020).

³ Julia Jacobs, New York Times, *Arts Groups Fight Their Insurers Over Coverage on Virus Losses,* <https://www.nytimes.com/2020/05/05/arts/insurance-claims-coronavirus-arts.html> (May 5, 2020).

Policy. The next day, the policy's designated adjuster ("McLarens") responded to Boxer via email and requested that Boxer fill out a COVID-19 Questionnaire for each location involved.

On May 1, 2020, after compiling a substantial amount of information, Boxer provided dozens of documents. Among other things, this information included written responses to Chubb's COVID-19 Questionnaire, schedules of damages for each Property, and individual reports of COVID-19 at specific Properties.

On May 20, 2020, McLarens notified Boxer that Chubb was waiting on additional information to assist in evaluating the claim and listed specific requests for information, including copies of any local government orders Boxer believes have impacted or are impacting its business and any costs incurred for decontamination or clean-up of the premises. Boxer began the process of compiling the extensive documentation requested.

On June 4, 2020, McLarens send an email following up on its May 20th letter, reiterating the same requests for additional information. On Sunday, June 7, 2020, McLarens provided a summary of the outstanding requests for information and asked that Boxer provide the relevant information as soon as possible. These requests were again duplicative of the requests in the May 20th letter. On June 8, 2020,⁴ Boxer responded to McLaren's May 20th letter and provided additional documents related to the specific requests for information.

On June 24, 2020, McLarens again emailed Boxer to follow up on the same requests for information. Boxer reminded McLarens that Boxer had sent a substantive response to those requests on June 8, 2020—more than two weeks prior. Boxer supplemented this email with a formal letter on June 30, 2020 stating that Boxer had answered all of the questions that pertained

⁴ Boxer attempted to send this letter to McLarens on Friday, June 5th but encountered technical issues with its email system. A representative for Boxer left a voicemail for McLarens notifying it of Boxer's forthcoming response that afternoon. The technical issues were resolved, and the email was transmitted to McLarens on Monday, June 8, 2020.

to its claim through its correspondence dated May 1st and June 8th. Boxer again requested that Chubb determine whether it would accept or deny coverage for these losses.

After receiving no formal response from Chubb, Boxer sent another letter, on July 13, 2020, requesting that Chubb provide a formal response to Boxer's claim for coverage and begin the adjustment process. On July 23, 2020, Chubb responded to Boxer's June 30th letter but curiously did not mention Boxer's July 13th letter. Instead, Chubb again requested more information about the incidents reported by Boxer. This is further evidence of Chubb's intent to delay and frustrate the claims process.

Though Chubb assigned a property claims examiner to investigate the loss related to Boxer's business interruption and property damage claims, Chubb has apparently refused to allow the examiner to move forward with adjusting the claims. To date, Chubb has mishandled Boxer's claim and refused to either accept or deny coverage. This has caused and will continue to cause Boxer to incur additional damages. Chubb has made material misrepresentations about Policy provisions, coverage, and relevant Texas law. Chubb continues to delay payment for Boxer's losses by refusing to investigate the claim. On July 31, 2020, Defendant Lexington notified Boxer for the first time that it claimed a sublimit of \$5 million on its excess policy. The alleged sublimit was never discussed nor disclosed during the presentation made by Gallagher and Murphy in the February presentation nor was it discussed or the authorization to bind coverage. Most importantly, the alleged sublimit is not consistent with, nor contained in, the terms of Boxer's prior insurance policies

IV. CAUSES OF ACTION

Count I: Declaratory Judgment (Against Chubb)

Boxer's Policy is a valid and enforceable contract. Boxer paid substantial premiums in exchange for Chubb's promise to reimburse Boxer for any losses it suffered that were covered by the Policy.

Boxer has complied with all applicable provisions of the Policy, those provisions have been waived by Chubb, and/or Chubb is estopped from asserting them. Chubb has wrongfully refused to provide the insurance coverage to which Boxer is entitled.

An actual case or controversy exists regarding Boxer's rights and Chubb's obligations under the Policy to reimburse Boxer for the business income and other losses incurred by Boxer in connection with the COVID-19 outbreak.

Pursuant to the Texas Uniform Declaratory Judgment Act, Boxer seeks a declaratory judgment from this Court as follows:

- The various coverage provisions identified herein are triggered by Boxer's claim;
- No Policy exclusion applies to bar or limit coverage for Boxer's claim; and
- The Policy covers Boxer's claim.

Moreover, Chubb has forced Boxer to obtain judicial relief to compel Chubb to adhere to its obligations under the Policy by refusing to give Boxer a straightforward answer on whether Chubb will accept or deny coverage. Chubb has even refused to begin adjusting the claim, even though more than 90 days have passed since Boxer first notified Chubb of the claim. Thus, in addition to the declarations requested above, Boxer should be awarded its attorneys' fees and costs.

TEX. CIV. PRAC. & REM. CODE § 37.009.

Count II: Declaratory Judgment (Against Excess Carriers)

Boxer's Excess Policies are valid and enforceable contracts. Boxer paid substantial premiums in exchange for the Excess Carriers' promise to reimburse Boxer for any losses it suffered that were covered by the Excess Policies, once the limits of the primary Policy were exhausted.

Boxer has complied with all applicable provisions of the Excess Policies, those provisions have been waived by the Excess Carriers, and/or the Excess Carriers are estopped from asserting them. Boxer's covered losses have exhausted the first layer of coverage under the primary Policy. The Excess Carriers have wrongfully refused to provide the insurance coverage to which Boxer is entitled.

An actual case or controversy exists regarding Boxer's rights and the Excess Carriers' obligations under the Excess Policies to reimburse Boxer for the business income and other losses incurred by Boxer in connection with the COVID-19 outbreak.

Pursuant to the Texas Uniform Declaratory Judgment Act, Boxer seeks a declaratory judgment from this Court as follows:

- The various coverage provisions identified herein are triggered by Boxer's claim;
- No Excess Policy exclusion applies to bar or limit coverage for Boxer's claim;
- The Excess Policies covers Boxer's claim; and
- The Excess Carriers' obligation to reimburse Boxer for covered losses has been triggered.

Count III: Breach of Contract (Against Chubb)

Boxer realleges the preceding allegations by reference. The Policy is a valid and enforceable contract between Boxer and Chubb.

In the Policy, Chubb agreed to cover: (1) the Properties against all risks of physical loss or damage not otherwise excluded; (2) Business Interruption loss and Incurred Extra Expenses as a direct result of physical loss or damage of the type insured under the Policy; and (3) additional risks as provided in the Policy's Additional Coverages and Coverage Extension.

COVID-19 has caused and is continuing to cause physical loss and/or physical damage to Boxer's Properties. The physical loss and/or damage to Boxer's Properties and the property of others has caused Boxer to incur, among other things, business interruption losses, extra expenses, and other losses covered under the Policy's Additional Coverages and Coverage Extensions.

No exclusions apply to bar coverage under the Policy. Boxer is entitled to coverage for: (1) the physical loss and/or damage up to the Policy's \$10 million per occurrence limit of liability per occurrence or any applicable sublimits; (2) its business interruption losses and incurred extra expenses related to COVID-19 up to the Policy's limits; and (3) losses related to COVID-19 up to each Additional Coverage's and Coverage Extension's limit of liability.

Boxer complied with all applicable Policy provisions, including payment premiums and providing timely notice of its claims. Nonetheless, Chubb refuses to pay for Boxer's physical loss and/or damage and Boxer's losses and expenses. This refusal is unjustified and is a breach of the Policy.

Boxer has suffered and continues to suffer damages as a result of Chubb's breaches of the Policy. Thus, Boxer is entitled to damages as a result of Chubb's breaches in an amount to be determined at trial, including pre- and post-judgment interest and other costs and relief as allowed by law.

Count IV. Fraud, Negligent Misrepresentation, and Breach of The Duty of Good Faith and Fair Dealing (against Murphy, Gallagher and Lexington)

Boxer realleges the preceding allegations by reference. Through the material misrepresentations and omissions made by Murphy and Gallagher as set forth above, upon which Boxer reasonably relied, Boxer paid its premiums for coverage including the excess coverage provided by Lexington. At no time, did Murphy, Gallagher or Lexington notify Boxer that there was a \$5 million sub-limit on Lexington's excess policy. To the contrary Murphy and Gallagher specifically represented that the coverage would be the same as the prior insurance policies that did not contain any such alleged sub-limit. The misrepresentations and omissions were material, false and/or grossly misleading and made with the intent that they be relied upon by Boxer. Boxer so relied and has suffered damages in excess of the minimum jurisdictional limits of this court to be determined at trial, including pre- and post judgment interest and costs and relief as allowed by law.

As set forth above Murphy, Gallagher and Lexington breached their duties of good faith and fair dealing. As a result of their bad faith, Boxer has suffered and is continuing to suffer damages. Boxer is entitled to damages as a result of those breaches in an amount to be determined at trial, including pre- and post-judgment interest and other costs and relief as allowed by law.

Count V: Breach of Duty of Good Faith and Fair Dealing (Against Chubb)

Boxer realleges the preceding allegations by reference. Chubb has refused to determine whether it will accept or deny Boxer's claim for coverage under the Policy for losses resulting from COVID-19.

Chubb's refusal lacks any reasonable basis, and Chubb has refused to articulate any basis for its interpretations of the Policy's coverage, despite Boxer's repeated requests. Chubb has failed to conduct a reasonable investigation of Boxer's claim under the Policy.

Chubb employed a systematic "one-size-fits-all" approach to adjusting and denying coverage for all COVID-19 claims, including Boxer's claim, as demonstrated by the COVID-19 Questionnaire.

Chubb knew or was actually or implicitly aware of the lack of any reasonable basis to deny coverage or to refuse to adjust Boxer's claim. Chubb acted with reckless disregard as to the unreasonableness of its conduct.

Chubb breached its duty of good faith and fair dealing by failing to reasonably investigate Boxer's claim and provide coverage. Chubb's refusal to adjust the claim and provide coverage constitutes bad faith.

As a result of Chubb's bad faith, Boxer has suffered and is continuing to suffer damages. Boxer is entitled to damages as a result of Chubb's breaches in an amount to be determined at trial, including pre- and post-judgment interest and other costs and relief as allowed by law.

Count V: Violation of the Texas Insurance Code (Against Chubb)

Boxer realleges the preceding allegations by reference. Chubb's systematic practice of mischaracterizing the facts provided by policyholders in support of claims for losses from COVID-19 constitutes an unfair or deceptive act or practice in the business of insurance, pursuant to Texas Insurance Code Section 542.003(b)(1).

Chubb's use of the COVID-19 Questionnaire that appears tailored to reaching pre-determined conclusions regarding coverage for claims based on losses from COVID-19, without consideration of the particular facts or applicable law, constitutes an unfair or deceptive act or

practice in the business of insurance. *See* TEX. INS. CODE §§ 542.003(b)(1), (3); *see also* TEX. INS. CODE § 541.060(3).

Chubb has failed to adopt and implement reasonable standards for the prompt investigation and processing of claims related to losses based on COVID-19, which constitutes a violation of Texas Insurance Code Sections 542.003(3) and 541.060(3).

Chubb's systemic practices and procedures have compelled Boxer to file this lawsuit to recover amounts due under the Policy by refusing to proceed with adjustment of the claim or even notify Boxer of whether Chubb will accept or deny coverage. This is a violation of Texas Insurance Code Section 542.003(b)(5).

As a result of Chubb's unfair or deceptive acts or practices, Boxer has suffered and is continuing to suffer damages. Boxer is entitled to an award of damages as a result of Chubb's unfair or deceptive acts or practices in an amount to be determined at trial, including attorneys' fees, pre- and post-judgment interest, and any other costs and relief allowable by law.

V. JURY DEMAND

Boxer demands a trial by jury on all issues so triable and has paid the relevant jury fee.

VI. DISCOVERY CONTROL PLAN

Boxer pleads that discovery should be conducted in accordance with Level 3 of TEX. R. CIV. P. 190.3. This case involves complex issues and will require extensive discovery. Thus, Boxer asks the Court to order that discovery be conducted in accordance with a discovery control plan tailored to the particular circumstances of this case.

VII. VIII. RULE 47 STATEMENT

Boxer seeks monetary relief over \$1,000,000. TEX. R. CIV. P. 47(c).

VIII. REQUEST FOR DISCLOSURES

Boxer requests that Defendants provide the information required by Texas Rule of Civil Procedure 194 within 50 days of service of this Petition.

IX. PRAYER FOR RELIEF

Plaintiff Boxer respectfully requests that the Court enter judgment in its favor against Defendants as follows:

1. A declaration from the Court that:
 - a. The various coverage provisions identified herein are triggered by Boxer's claim;
 - b. No Policy or Excess Policy exclusion applies to bar or limit coverage for Boxer's claim;
 - c. The Policy and Excess Policies cover Boxer's claim; and
 - d. The Excess Carriers' obligation to reimburse Boxer has been triggered.
2. For special and consequential damages against Defendants in an amount to be proved at trial;
3. Pre- and post-judgment interest, as allowed by law;
4. An award of attorneys' fees and cost incurred; and
5. For such other and further relief as the Court deems just and proper.

Dated: September 4, 2020

Respectfully submitted,

DOBROWSKI, LARKIN & STAFFORD, LLP

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