

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

LAWRENCE GENERAL HOSPITAL,

Plaintiff,

v.

CONTINENTAL CASUALTY COMPANY,

Defendants.

Civil Action No.

22-0567

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
2022 MAR 15 P 2:34
MICHAEL JOSEPH DONOHUE
CLERK / MAGISTRATE

**COMPLAINT FOR DECLARATORY RELIEF
AND DAMAGES FOR
BREACH OF CONTRACT AND DEMAND FOR JURY TRIAL**

1. Plaintiff Lawrence General Hospital, for itself and its insured affiliates (collectively, "Plaintiff" or "Lawrence General" or "LGH"), brings this Complaint for declaratory judgment and damages for breach of contract against its insurer, Defendant Continental Casualty Company ("Continental"), which provided insurance coverage to Lawrence General and its affiliates (collectively, "Lawrence General" or "LGH") expressly designed to respond to the types of losses occasioned by pandemic conditions. Plaintiff also seeks relief under Mass. Gen. L. c. 93A for unfair and deceptive trade practices by Continental in its denial of all relief, including coverage plainly designed to protect Lawrence General from losses stemming from communicable disease.

2. This action is necessitated by Defendant's failure to indemnify Plaintiff against losses arising out physical loss and damage to LGH's and others property by the SARS-CoV-2 virus despite coverage clearly available under the policy (the "Policy") issued by Defendant to cover precisely these types of losses. For its complaint, Lawrence General alleges as follows:

I. PARTIES

3. Plaintiff Lawrence General is a Massachusetts corporation with its principal place of business at 1 General Street, Lawrence, MA 01842. Plaintiff Lawrence General operates throughout northeastern Massachusetts, including usual places of business at 1353 Dorchester Avenue, Dorchester, MA 02122 and 20 Guest St., Suite 225B, Brighton, MA 02135.

4. Defendant Continental is an Illinois corporation with its principal place of business at 151 N. Franklin Street, Chicago, IL 60606 and maintains a usual place of business at 53 State Street, Suite 510, Boston, MA 02109. Continental is a commercial insurance company licensed to do business in Massachusetts and, on information and belief, at all times relevant to this Complaint was engaged in the business of selling contracts of insurance and doing business in Massachusetts.

II. JURISDICTION AND VENUE

5. The Court has subject matter jurisdiction over this action pursuant to Mass. Gen. L. c. 212, §§ 3 and 4, and G.L. c. 214, §1, because it is a civil action seeking relief in excess of \$50,000 in damages.

6. The Court has personal jurisdiction over the parties pursuant to Mass. Gen. L. c. 223A because, among other reasons, Continental transacts business in the Commonwealth (including issuance of the policy at issue in this case) and has the necessary and sufficient contacts with the Commonwealth of Massachusetts.

7. Venue properly lies in this court pursuant to Mass. Gen. L. c. 223, § 1, as both Lawrence General and Continental maintain a usual place of business in this county.

III. STATEMENT OF FACTS

A. LAWRENCE GENERAL HOSPITAL

8. Lawrence General is a private, nonprofit community hospital providing northeastern Massachusetts (especially the Merrimack Valley) and southern New Hampshire with patient-centered, compassionate, and quality health care. Lawrence General owns and operates a hospital in Lawrence, as well as a health care network and numerous facilities in the region.

9. Lawrence General serves some of the most diverse and economically challenged communities in Massachusetts, with a disproportionately large percentage of patients whose sole source of medical care is through the state's Medicaid program. Margins at Lawrence General are tight, and it is consequently dependent – heavily so – on its insurers to provide bargained-for coverage when unforeseen events strike the hospital.

B. OVERVIEW

10. This case is necessitated by enormous losses incurred by Lawrence General due to the direct physical loss of and direct physical damage to property of Lawrence General and others inflicted by the SARS-CoV-2 virus.

11. Throughout this Complaint, the reference to “Affected Property” includes property that has incurred direct physical loss or direct physical damage, including, without limitation, adverse structural alteration; by way of example, Affected Property could include virus-impacted indoor air particles, Heat Ventilation and Air Conditioning (“HVAC”) systems (including the systems as a whole and their component parts such as filters, ductwork, intake and outtake vents and screens, and mechanical equipment), physical indoor surfaces (walls, floors, windows, doors, fixtures), medical equipment and supplies, other areas and objects that cannot be easily cleaned, all of which the SARS-CoV-2 virus encounters, bonds with, and adversely physically alters, and other property susceptible to being physically lost or physically damaged as a result of potential

imminent or actual exposure to, contact with, attachment by, and structural alteration by the SARS-CoV-2 virus.

12. The SARS-CoV-2 virus has inflicted direct physical loss of and damage to the Affected Property of Lawrence General, its key business partners and referral sources, and other businesses and individuals in the immediate one-mile area bordering on Lawrence General's health care facilities. These losses include not just the cost of repairing or replacing Affected Property, but also the cost from resulting suspensions and/or interruption of business activities as well as substantial "extra expense" incurred by Lawrence General to remain open to the extent possible despite the virus-inflicted loss and damage.

13. Lawrence General is covered for such losses under commercial property insurance policy no. 2098233351 (the "Policy"), issued by Continental with effective dates of October 1, 2019 to October 1, 2020 (the "Policy Period"). The Policy provides best-in-class "all risk" policy for which Lawrence General paid substantial additional premiums.

14. Beginning on March 16, 2020, Plaintiff was forced to close or significantly curtail operations at many locations it operates and manages due to numerous occurrences involving direct physical loss and damage to Affected Property at and near its facilities, caused by the SARS-CoV-2 virus.

15. In addition, Lawrence General incurred substantial losses caused by the actual presence at its properties and/or third-party locations of the communicable disease COVID-19 ("COVID-19" or the "disease") and/or the underlying virus, SARS-CoV-2. At Lawrence General's locations as well as third-party health care facilities, employees, patients, contractors, or other visitors expelled the SARS-CoV-2 virus onto Affected Property (including, without limitation, indoor air and HVAC systems). The virus then adhered to, and adversely altered, the

Affected Property and rendered it unreasonably dangerous and unfit for its ordinary purposes. Lawrence General's doctors, nurses, staff members, and patients contracted the coronavirus from Lawrence General's Affected Property. The damage to Lawrence General's Affected Property rendered it unreasonably dangerous and unfit for its ordinary purpose, and forced Lawrence General to shut down or curtail operations, and caused it to incur millions of dollars in "extra expense" to mitigate the damage, avoid closures, and/or resume operations.

16. Lawrence General's owned and third-party business locations were uniquely impacted by the spread of SARS-CoV-2. Human presence and close proximity are essential to Lawrence General's business of providing medical examinations, disease diagnosis, care and treatment, and surgical procedures. This resulted in the initial introduction and continuing reintroduction of SARS-CoV-2 being particularly prevalent and problematic for Lawrence General. It is hard to imagine a business that could be more impacted on a daily basis by the property damage wrought by the emergence and presence of the SARS-CoV-2 virus in the communities and in the facilities where Lawrence General does its business.

17. Lawrence General has incurred additional losses resulting from the *threat* posed to property and persons at its properties and/or third-party locations by the physical prevalence of the SARS-CoV-2 virus and COVID-19 in the communities in which Lawrence General or its business partners (including, but not limited to, referring locations who refer non-elective and/or emergency procedures to Lawrence General) do business. The threat of the SARS-CoV-2 virus spreading to Lawrence General facilities from virus-damaged property in the immediate vicinity of Lawrence General had the result of rendering many of Plaintiff's properties, at least temporarily, unreasonably dangerous and/or unfit for their intended purposes until safe occupancy and

operation could be assured through the undertaking of extraordinary remedial or preventive measures.

18. These threats (as well as the actual presence of the virus and actual infliction of damage to property caused by the virus, both on property and in the immediate vicinity of Lawrence General facilities) also resulted in an unprecedented number of governmental orders requiring, at various times and in various locations, shutdowns, lockdowns, building closures, quarantines, and operating restrictions, all of which substantially impacted, continue to impact, and will impact for the foreseeable future, the operations and activities of Lawrence General, its patrons, and its referral partners. All of the different orders that resulted in losses to Lawrence General were caused by direct physical damage (including adverse physical alteration) to property (including Affected Property) of the type covered under its Policy. These orders expressly prohibited access, completely or with respect to defined categories of patients or persons, to Lawrence General facilities, including prohibitions of access to the hospital itself as well prohibitions of access to medical locations such as those providing non-emergency and/or non-emergent care (including, for example, LGH's physical therapy locations, physician practices, and the locations of many of LGH's referral sources and medical partners).

19. Without limiting the generality of the foregoing, specific locations as to which civil orders prohibited access due the immediate presence of the virus and property damage inflicted by the virus included Lawrence General medical facilities on Marston St. in Lawrence, MA (as to which government orders prohibited access to non-emergent patients and care-givers), the Andover Medical Center on Lowell St. in Andover, MA (which was closed by government order until May 11, 2020) and the facility within the Andover/North Andover YMCA at 165 Haverhill Street, Andover, MA (which was closed by government order until August 18, 2020).

20. Indeed, because the City of Lawrence was affected earlier, harder, and longer than any other community in Massachusetts, it is fair to say that the earliest shutdown and safer-at-home orders issued by local and state authorities in the Commonwealth of Massachusetts were as the direct consequence of actual virus-inflicted property damage in the immediate one-mile radius of Lawrence General facilities, and were issued in order to prevent or control the spread of the virus from such off-site Affected Property to Lawrence General's facilities.

21. The harms to Lawrence General include direct physical loss and direct physical damage to its properties that have been adversely altered by the virus or that have been rendered unreasonably dangerous and/or unfit for their intended purpose; substantial time-element losses due to partial or complete property closures, government-ordered suspensions of business activities, including elective procedures, and other interruptions due to the actual and/or the threatened presence of the virus and/or resulting disease; damage caused by disease contamination, as well as the substantial cost of cleaning and restoring the resulting damage; frequent and ongoing decontamination expenses in response to orders issued by the Center for Disease Control and governmental authority as a result of the threat of communicable disease; substantial claims preparation costs; and other losses incurred across numerous Lawrence General properties and locations.

22. It should be noted that while the Policy provides limited coverage for loss or damage resulting from Fungi, Wet Rot, Dry Rot, and Microbes, the Policy defines "Microbes" as being forms of "organism," but the scientific consensus does not regard viruses to qualify as organisms. Accordingly, Lawrence General does not seek coverage under that provision to the extent the SARS-CoV-2 virus (like other viruses) does not meet the definition of a "microbe"

under the Policy. For the same reason, the policy exclusion relating to Fungi, Wet Rot, Dry Rot, and Microbes does not apply.

23. The harms to Lawrence General also include Contingent Business Interruption losses resulting from direct physical loss or damage of the type insured under the Policy (including adverse physical alteration of such property) to property of the type insured under the Policy at locations of Lawrence General's referring locations who refer non-elective and/or emergency procedures to Lawrence General, resulting in substantial loss of business to the various Lawrence General properties for which coverage is sought.

24. Lawrence General is continuing to experience physical loss or damage to its properties and interruption of its business as the pandemic continues. While Lawrence General is continuing to assess the losses incurred by its businesses as of the date of this filing, the impact to date is believed to be as high as \$110 million in direct physical loss or damage to property and lost business income that would not have occurred but for the pandemic.

25. The Policy provides coverage of up to \$563 million per occurrence for precisely the types of losses incurred by Lawrence General and at issue in this action.

26. Lawrence General tendered its claim to Defendant no later than April 8, 2020 for losses beginning March 16, 2020. Even though Lawrence General's past and ongoing losses fall within the Policy's coverages, Defendant has denied coverage to Plaintiff, in whole or in part.

27. Those denials cause Lawrence General to conclude that an actual controversy exists between the Parties concerning Plaintiff's right to coverage for its COVID-19 related losses.

28. As a consequence of Defendant's failure to honor their coverage obligations under the Policy, Lawrence General is now compelled to file this lawsuit for damages, declaratory relief, and other relief.

29. Further, as there is no reasonable basis in law or fact for Continental's blanket denial of coverage, which was undertaken without any reasonable investigation and reflected a company-wide policy to deny all COVID-19-related claims regardless of the merits of the claim, Lawrence General is the victim of unfair and deceptive trade practices and seeks relief under Mass. Gen. L. c. 93A, §§ 2 and 11, as well as Mass. Gen. L. c. 176D, § 3(9).

C. THE SARS-COV-2 VIRUS

30. The SARS-CoV-2 virus was identified in China in late 2019 or January 2020 as the cause of a severe respiratory illness known as COVID-19 and began spreading in the United States, with broad community spread underway in many states, including, but not limited to, New York, California, Florida, Washington state, and Massachusetts, in March 2020.

31. The SARS-CoV-2 Virus has particular qualities that make it uniquely dangerous to human health and devastating to businesses and economies. It is a respiratory virus that causes COVID-19 (as opposed to its variant, the SARS-CoV-1 virus, which caused the SARS pandemic in the early 2000s). COVID-19 is a dangerous and potentially fatal communicable disease. The SARS-CoV-2 virus can be transmitted by human-to-human contact, airborne viral particles in ambient air, and contact with affected surfaces or objects.

32. The SARS-CoV-2 virus is uniquely dangerous, for reasons that include the following:

- Many viruses do not cause communicable diseases; SARS-CoV-2 does cause communicable disease.
- Many viruses do not infect humans; SARS-CoV-2 does infect humans.

- Even among viruses that infect humans, many are incapable of direct transmission from human to human; SARS-CoV-2 is capable of human-to-human transmission.
- Even among viruses that transmit between humans, many do not threaten serious illness or any illness at all; SARS-CoV-2 poses a substantial threat of serious illness and even death.
- Even among viruses that can cause serious human illness, many are not contagious until after the carrier has become symptomatic, thus allowing affected individuals to isolate themselves before spreading the virus. By contrast, SARS-CoV-2 has been shown to be transmittable during a pre-symptomatic incubation period of up to 21 days before symptoms appear; even more worrisome, the SARS-CoV-2 virus is transmittable by the estimated 40% to 70% of human carriers who *never* exhibit any symptoms. Whether or not symptoms of COVID-19 ever appear, human carriers of SARS-CoV-2 are believed to be especially contagious during the “pre-symptomatic incubation” period due to high viral loads coupled with a lack of awareness that they are infected and must isolate.
- Finally, few if any viruses have resulted in the widespread illness, death, loss, and damage to property, and economic devastation wrought by SARS-CoV-2 (and new variants of the virus have evolved during this crisis, and are likely to continue to evolve, that have worsened and/or extended the pandemic).

Thus, unique among viruses, SARS-CoV-2 has caused unprecedented levels of illness, death, and global economic calamity.

33. The SARS-CoV-2 virus is expelled from the mouth and/or nose, and it travels within respiratory droplets when humans cough, sneeze, scream, sing, or even speak loudly or breathe heavily.

34. In the health care context, certain procedures are more likely to generate higher concentrations of infectious respiratory aerosols than coughing, sneezing, talking, or breathing. These aerosol-generating procedures put healthcare workers at an increased risk for exposure to and infection with the SARS-CoV-2 virus. There is limited data available to evaluate which procedures may generate potentially infectious aerosols and pose a risk of transmission to health care workers.

35. Mouth and nose secretions, including saliva, nasal discharge, and respiratory secretions such as mucus, form an aerosol cloud in the surrounding air. The expelled aqueous droplets contain multiple copies of suspended infectious SARS-CoV-2 viral particles. Virus-containing droplets eventually encounter physical objects and surfaces (called fomites) and can settle there.

36. When SARS-CoV-2 viral particles come into contact with property, that property suffers actual physical damage (including adverse alteration). Once expelled from the mouth and/or nose, aqueous droplets, including virus-containing ones, can attach to surfaces.

37. Physical objects that have been altered through the formation of a bond with viral particles can be dangerous and even deadly. Humans can become infected by touching, or otherwise coming in contact with, an object to which viral particles have attached for as long as the virus remains infective. When a person touches a surface containing an infectious virus and

then his/her mouth, eyes, or nose, the person may become infected. Even persons who have not contracted the SARS-CoV-2 virus may be asymptomatic carriers (and spreaders).

38. Another main mechanism of SARS-CoV-2 spreading, and causing direct physical loss of or direct damage to Affected Property, is via small aerosol particles traveling over long distances (“airborne transmission”).

39. Viral droplets that physically alter the air are dangerous and potentially deadly. The air particles that become infected with SARS-CoV-2 viral particles present a substantial risk of being inhaled by and infecting individuals in the facility.

40. By bonding with, and becoming part of, the air or other physical objects that it comes in contact with, the SARS-CoV-2 virus adversely alters the air or other physical objects, as well as the facility or building in which air or other physical objects are located. Both, the objects and the building, are transformed from safe for occupancy and commercial activity to property that is uninhabitable and unfit for its intended purpose, dangerous, and even potentially deadly. In short, the Affected Property (including the air particles containing SARS-CoV-2 viral particles) is physically altered and physically damaged. And even the owners of property or buildings that are potentially infected or under threat of infection if utilized or occupied during local virus outbreaks have effectively incurred a loss to property, because—simply put—the personal property or buildings are no longer safe, habitable, or fit for their intended purpose until the local virus outbreaks have been controlled and ultimately eliminated.

D. THE IMPACT OF LOCAL EMERGENCES OF SARS-COV-2 ON LAWRENCE GENERAL

41. Since March 2020, when the virus began spreading in the United States, the SARS-CoV-2 virus caused a series of localized outbreaks, resulting in millions of exposures of SARS-

CoV-2 to Affected Property, including across all of Lawrence General's locations, and causing nearly one million deaths in the United States.

42. Lawrence General is, first and foremost, a health care provider. Front-line healthcare workers and organizations providing front-line health care services were directly and repeatedly impacted by localized SARS-CoV-2 outbreaks. Lawrence General facilities treated patients infected with SARS-CoV-2, tested patients who were infected or potentially infected, or had to prepare to treat infected patients. Lawrence General staff were infected by SARS-CoV-2 themselves, confirming that SARS-CoV-2 was present at Lawrence General properties and caused the loss of or damage to Affected Property. The SARS-CoV-2 viral particles were carried by staff and patients, who then expelled the virus onto property throughout Lawrence General's facilities, causing direct physical loss of or direct physical damage to the Affected Property in a multitude of ways.

43. In light of the necessity of treating infected patients, and needing to remain operational to the extent practicable amidst the virus outbreaks, Lawrence General faced unprecedented challenges. It is not overstatement to call it a crisis. These challenges included the need to protect its patients and staff to the maximum feasible extent, while providing needed medical services to patients requiring care for a wide array of medical reasons, including, but not limited to, the impacts of exposure to SARS-CoV-2.

44. The direct physical loss of or direct physical damage to Affected Property by SARS-CoV-2 significantly impacted Lawrence General's operations. Lawrence General faced substantial challenges in mitigating the repetitive and ongoing direct physical loss of or direct physical damage to Affected Property caused by SARS-CoV-2's presence, and its adverse alteration of such Affected Property.

45. In addition to those losses, as a direct result of SARS-CoV-2 adhering to and adversely physically altering Lawrence General's Affected Property, rendering the Affected Property unreasonably dangerous and unfit for its ordinary use, Lawrence General faced increasing costs and decreasing revenues. The property loss or damage caused by SARS-CoV-2 manifested in significant challenges for Lawrence General's operations.

46. One significant consequence of the property loss or damage caused by SARS-CoV-2 was that Lawrence General needed to close locations for extended periods of times, or severely limit operations at its locations (including by restricting non-urgent care, postponing care, limiting hours, and other measures). Many Lawrence General facilities ceased elective procedures for extended periods.

47. Where facilities or portions of facilities remained open, direct physical loss of or direct physical damage to Affected Property by SARS-CoV-2 caused a dramatic decrease in the volume of procedures that Lawrence General performed, with a corresponding sharp decline in revenues.

48. The direct physical loss of or direct physical damage to Affected Property caused by SARS-CoV-2 required that Lawrence General undertake, among many measures, enhanced cleaning and disinfecting of damaged areas and Affected Property (such as indoor air, HVAC systems, and medical equipment and supplies that could not easily or simply be cleaned), incurring substantial costs and reducing the number of patients Lawrence General could treat.

49. Lawrence General also needed to make substantial structural alterations to its facilities layouts to manage to provide environments that would be safer for performing medical operations. This included converting ICU rooms into negative pressure rooms, converting a portion of the ICU into an area for positive-testing patients, installing exhaust fans, and

manipulating the HVAC system. In addition, Lawrence General needed to expand testing operations to a nearby parking lot and build pods or boxes to safely maintain computers and equipment. All of these changes to mitigate the direct physical loss of or direct physical damage to Affected Property by SARS-CoV-2 increased Lawrence General's costs and disrupted its business operations, often decreasing its efficiency and capacity to perform procedures and generate revenue and causing substantial business interruption and time element losses.

50. Notwithstanding these measures, Lawrence General could not prevent SARS-CoV-2 from being repeatedly brought onto its property by asymptomatic and even symptomatic or positive individuals who were carrying the virus. Notably, as a hospital, Lawrence General treated patients ill with COVID-19 or infected with SARS-CoV-2 but requiring treatment for other reasons. For example, even in instances where a patient was known to be carrying the virus, medically urgent and emergent procedures had to be performed at Lawrence General's facilities. Because of the ineffectiveness of cleaning at stopping or preventing the spread of the virus, and the resulting direct physical loss of or direct physical damage to Lawrence General's and third-party Affected Property, Lawrence General was forced to close or suspend its operations in numerous ways and at various times during periods covered by the Policy.

E. LAWRENCE GENERAL'S INSURANCE COVERAGE

51. To protect against losses like those caused by the SARS-CoV-2 virus, Lawrence General maintains – and pays substantial premiums for – robust property and business interruption insurance.

52. Continental issued the Policy, No. 2098233351, to Lawrence General for the Policy Period, beginning on October 1, 2019 and ending October 1, 2020. Ex. A, Policy Declarations. Lawrence General paid a premium of \$240,000 for the Policy. *Id.*

53. The Policy, in the form delivered to Lawrence General by Continental, is attached as Exhibit A. The version of the Policy delivered to Lawrence General by Continental and filed with the Court is subject to confirmation for accuracy and completeness during the discovery process (including, but not limited to, determination whether the Policy includes appropriate state-specific endorsements, whether it must be conformed to comply with applicable state-specific requirements, and whether it faithfully reflects the agreement between the parties as to the scope of coverage and exclusions). Lawrence General reserves all rights in that regard.

54. The Policy covers “direct physical loss of or damage to property and/or interests described herein at covered Locations” *Id.* at PDF p. 22, § II (Coverage). The Policy’s coverages apply at an “locations,” or on land within 1,000 feet thereof. *Id.* at PDF p. 22, § II.A. “Location” means “[T]he area within legal boundaries of the premises, or the portion of the premises, in which the Insured has an interest.” *Id.* at PDF p. 48.

55. Defendant agreed to a policy limit of \$563,000,000 subject to applicable sublimits. *Id.* at PDF p. 16 § I.4. Coverage is available up to the stated limits, per occurrence, except where an annual aggregate is provided. *Id.*

56. The Policy provides broad coverage, with Continental agreeing to provide numerous coverages implicated by Lawrence General’s pandemic-related losses, including, but not limited to, the following.

1. Loss or Damage to Property and Direct Time Element Losses:

57. The Policy provides primary coverage of up to \$406 million for physical loss or damage to Real Property and/or Personal Property (as defined in the Policy), unless such property is excluded or results from an excluded cause of loss. This coverage extends to physical loss or damage to covered property caused by the presence of the SARS-CoV-2 virus and/or incidences of COVID-19 at specific Lawrence General properties locations.

58. The Policy provides a total policy limit of \$563,000,000 for all losses.

59. Lawrence General has incurred substantial covered losses as a consequence of loss or damage to its property as a result of direct exposure of (and actual adverse physical alteration of) its own covered Real Property and Personal Property. This actual adverse physical alteration of its property as a result of the SARS-CoV-2 virus adhering to the property has resulted in loss due to the adherence of the SARS-CoV-2 virus to physical property and resulting adverse alteration of the property, requiring either remediation or disposal and replacement.

60. The Policy's coverage also extends to physical loss to covered property as a result of the *threat* of SARS-CoV-2 becoming present at Lawrence General properties and other business locations and the resulting danger posed by such locations becoming a disease vector for COVID-19. Such *threat of virus* has caused covered loss both at Lawrence General properties and those of third parties (such as Lawrence General's referring locations).

61. The Policy also covers "Time Element" loss as a result of the SARS-CoV-2-virus-related physical loss or damage described above.

62. Lawrence General is entitled to recover its covered losses with respect to physical loss or damage to its property, and resulting Time Element losses, up to the limits provided in the Policy.

63. Continental has not paid Lawrence General for any of its covered Property Damage or Time Element losses.

2. Losses Due to Denial of Access by Civil Authority and Ingress-Egress:

64. The Policy provide up to 45 days per occurrence for losses resulting from the temporary closure or suspension of activities at Lawrence General's insured locations as a result of orders of civil authority occasioned by SARS-CoV-2-virus-caused damage to property of the

type covered under the Policy at or near covered locations, including, but not limited to, orders suspending Lawrence General's ability to perform elective procedures.

65. Lawrence General has incurred substantial covered losses due to Orders of Civil Authority that were entered as a consequence of damage to property of Lawrence General and/or to property belonging to third parties. Such damage to property was of the type covered under the Policy (including, without limitation, (a) damage to property caused by communicable disease (*i.e.*, COVID-19), (b) damage to property caused by exposure to the SARS-CoV-2 virus, and (c) damage to property caused by the threat of exposure to the SARS-CoV-2 virus). Such damage to property occurred within five miles of the covered Lawrence General properties incurring the covered losses due to the Orders of Civil Authority.

66. Lawrence General is entitled to recover its Denial of Access By Civil Authority and Ingress-Egress losses, up to the limits provided in the Policy.

67. Continental has not paid Lawrence General for any of its covered Denial of Access By Civil Authority and Ingress-Egress losses.

3. Contingent Business Interruption Losses:

68. The Policy provide up to \$2.5 million per occurrence for business interruption losses resulting from physical loss or damage of the type insured to property of Lawrence General's referring locations.

69. Numerous of Lawrence General's referring locations have incurred physical loss or damage of the type covered by the Policy at property of the type insured.

70. Lawrence General is entitled to recover its covered Contingent Time Element Losses, up to the limits provided in the Policy.

71. Continental has not paid Lawrence General for any of its covered Contingent Time Element Losses.

4. Disease Contamination Losses:

72. The Policy provide coverage up to \$1 million for Disease Contamination expenses incurred by Lawrence General.

73. Lawrence General has incurred substantial covered losses relating to Disease Contamination, including direct physical loss related to covered property, decontamination of covered property, testing of covered property for the presence of Disease, and business interruption losses.

74. Lawrence General is entitled to recover its covered Disease Contamination losses, up to the limits provided in the Policy.

75. Continental has not paid Lawrence General for any of its covered Disease Contamination losses.

5. Other Available Coverages

76. The foregoing is not intended to be an exhaustive list of the various coverages available to Lawrence General under the Policy for its pandemic-related losses. Lawrence General hereby seeks all available coverages with respect to losses relating to COVID-19, and reserves all rights as to all such coverages.

6. No Applicable Exclusions

77. Of particular value, the policy issued to Lawrence General Hospital did not include a specific “virus” exclusion. The insurance industry responded to the 2004 SARS outbreak by adopting what was intended to be an absolute exclusion for any property losses related in any way to viruses. These so-called “absolute” virus exclusions appeared in a variety of highly similar forms, including the so-called 2006 ISO Virus Exclusion.

78. For competitive reasons, high-end property insurers rejected “absolute” virus exclusions. Instead, insurers adopted a much reduced exclusion that barred coverage for virus-

related losses only when they resulted from classic pollution-type events. These insurers were able to and did charge a higher premium to policyholders, based on the availability of coverage for virus-related losses that did not result from classic pollution events.

79. CNA made a competitive decision not to include any exclusion directed at viruses in its Policy. More specifically, CNA did not include the ISO Virus Exclusion, nor did it include any other form of absolute virus exclusion, nor did it include any exclusion that identified “virus” by name or category as an excluded form of contaminant. By eliminating virus exclusions from its Policy, CNA was able to attract high-end property insurance customers (including Lawrence General) and was able to and did charge higher premiums to those customers (including Lawrence General).

80. CNA did include a traditional pollution and contamination exclusion in its Policy. That exclusion is applicable solely to traditional pollution events and therefore does not bar coverage for the property loss and damage, and resulting business interruption losses, caused by the natural spread of the SARS-CoV-2 virus.

81. CNA also included a narrow exclusion relating to Fungi, Wet Rot, Dry Rot, and Microbes. As noted earlier, the Policy defines “Microbes” as being forms of “organism,” but the scientific consensus does not regard viruses to qualify as organisms. Accordingly, the policy exclusion relating to Fungi, Wet Rot, Dry Rot, and Microbes does not apply.

82. No other exclusion in the Policy operates to limit or bar Lawrence General’s claim for coverage.

F. DEFENDANT HAS FAILED TO PROVIDE COVERAGE, IN WHOLE OR IN PART, NOTWITHSTANDING LAWRENCE GENERAL’S COMPLIANCE WITH THE POLICY AND CLEAR ENTITLEMENT TO COVERAGE

83. Lawrence General timely provided notice of loss to the Defendant on or about April 8, 2020.

84. Lawrence General has complied with all terms, conditions, and requirements of the Policy or is excused from doing so, as Continental waived or is estopped from enforcing such terms, conditions, and requirements of the Policy.

85. Notwithstanding Lawrence General's timely compliance, Continental to date has failed to pay Lawrence General's claim or any part of the claim.

86. On June 23, 2020, Continental denied coverage under all coverages provided under the Continental Policy for Lawrence General's SARS-CoV-2-related losses.

87. Continental has never visited Lawrence General or investigated Lawrence General's claim to have incurred direct physical loss or damage to property (or resulting business interruption loss).

88. Continental had denied coverage on the grounds that the SARS-CoV-2 virus did not cause any direct loss or direct damage to covered property, despite a broad scientific consensus that the virus attaches to and adversely alters physical property (including Affected Property as defined above), and despite incontrovertible evidence that the virus was actually present at Lawrence General's numerous health care facilities (most of which operate in the immediate Lawrence, MA community, which was impacted by SARS-CoV-2 more heavily than any other city or town in Massachusetts) and therefore necessarily inflicted direct physical loss of or damage to Lawrence General's property.

89. In short, Continental unfairly and deceptively failed to conduct a meaningful claims investigation and evaluation process, failed to treat Lawrence General as a particular policyholder with its own unique circumstances, losses, and policy rights, and instead denied Lawrence General's claim as part of a mass denial of all COVID-19 business interruption losses nationwide.

90. Continental also unreasonably declined Lawrence General's request for an extension of the limitations period for bringing a legal action, which has required Lawrence General to file this suit before the state Supreme Judicial Court has issued a pending decision addressing some of the issues potentially implicated in this lawsuit.

91. This conduct is unfair and deceptive and, as it arises in the context of insurance claims-handling, violates both Mass. Gen. L. c. 93A, §§ 2 and 11 and Mass. Gen. L. c. 176D, § 3(9).

92. As a consequence, to protect its rights and to obtain the insurance coverage for which it has paid, and that Continental agreed to provide, Lawrence General brings this lawsuit.

FIRST CAUSE OF ACTION
Breach of Contract

93. Lawrence General repeats and realleges the allegations in the preceding paragraphs as if fully set forth herein.

94. The Policy is a valid and enforceable contract between Lawrence General and Continental, providing All Risks coverage designed to cover the losses occasioned by the COVID-19 pandemic.

95. Lawrence General is entitled to coverage, up to the applicable limits of liability, of the losses that it has incurred as a consequence of the COVID-19 pandemic.

96. No terms, conditions, or exclusions of the Policy apply to bar or restrict coverage.

97. Lawrence General has complied with all applicable provisions of the Policy, including payment of premiums, timely notice, and timely proof of loss or is otherwise excused from compliance therewith.

98. Continental unjustifiably failed to pay for Lawrence General's covered losses.

99. Continental is in breach of its respective Policy.

100. As a direct and proximate result of the CCA's breach, Lawrence General has suffered and continues to suffer substantial and ongoing damages totaling as much as or more than \$100 million to date.

WHEREFORE, Lawrence General is entitled to damages as a result of the Continental's breach, as well as pre-judgment and post-judgment interest and any other costs and relief that this Court deems appropriate, all in an amount to be established at or before trial.

SECOND CAUSE OF ACTION
Declaratory Relief

101. Lawrence General repeats and realleges the allegations in the preceding paragraphs as if fully set forth herein.

102. Lawrence General is entitled to coverage under the Policy for its existing and ongoing COVID-19 losses, as described in this Complaint and as to be proven at trial.

103. Based on the coverage positions it has stated, Continental contends otherwise, at least in part.

104. A justiciable controversy exists between Lawrence General and Continental regarding the availability and extent of coverage under the Policy for Lawrence General's claims.

105. The controversy between Lawrence General and Continental is ripe for judicial review.

WHEREFORE, Plaintiff seeks a declaration from the Court that:

- a. Each coverage identified in the preceding paragraphs is triggered by Lawrence General's claims;
- b. All conditions precedent under the Policy have been satisfied or excused, or Continental has waived or is estopped from enforcing, all conditions precedent under the Policy;
- c. No exclusions in the Policy apply to preclude or limit coverage for Lawrence General's claims;

- d. Continental is obligated to cover Lawrence General up to the applicable limit of liability of the Policy with respect to, *e.g.*, (i) COVID-19-related losses and expenses already sustained by Lawrence General businesses to date; and (ii) COVID-19-related losses and expenses to be sustained by Lawrence General businesses as the COVID-19 pandemic continues;
- e. Continental is obligated under the Policy to indemnify Lawrence General for its real property losses, time element losses, and other losses sustained as a result of direct physical loss or damage to property due to the SARS-CoV-2 virus and/or COVID-19;
- f. Continental is obligated under the Policy to indemnify Lawrence General for its claims of losses as a result of orders of civil authority that have limited, restricted, or prohibited access to insured properties, including, but not limited to, limiting elective procedures performed by Lawrence General, as a result of the SARS-CoV-2 virus and/or COVID-19 at insured property;
- g. Continental is obligated under the Policy to indemnify Lawrence General for its claims of losses wherever ingress to or egress from insured property has been partially or totally prevented as a result of the SARS-CoV-2 virus and/or COVID-19 at insured property or other locations;
- h. Continental is obligated under the Policy to indemnify Lawrence General for its claims for losses associated with physical loss or damage to contingent time element locations;
- i. Continental is obligated under the Policy to indemnify Lawrence General for losses as a result of disease contamination;
- j. The threat of physical exposure of property or premises to the SARS-CoV-2 virus that renders property unreasonably dangerous and/or unfit for its ordinary intended purpose constitutes “direct physical loss or damage” under the Policy;
- k. Actual or suspected exposure of property to the SARS-CoV-2 virus constitutes “direct physical loss of or damage to property” under the Policy; and
- l. None of the Policy’s exclusions apply to this ongoing loss.

THIRD CAUSE OF ACTION
Violation of Mass. Gen. L. c. 93A and c.176D

106. Lawrence General re-alleges and incorporates the allegations in the preceding paragraphs of its Complaint as if fully set forth herein.

107. Continental is an insurer that is subject to the terms and provisions of Mass. G. L. c. 93A, §§ 2 and 11.

108. Continental has knowingly, intentionally, and unreasonably delayed acknowledging its duties under the Policy. After receiving notice of Lawrence General's losses, Continental knowingly, intentionally, and unreasonably refused to provide coverage for the losses.

109. In taking these actions, Continental has placed its own interests above those of Lawrence General.

110. Chapter 176D, §3(9) of the Massachusetts General Laws itemizes a number of insurer activities that have been declared by the legislature to constitute "unfair claim settlement practices." Certain of the unfair practices set forth in c. 176D are implicated in this case, including, among others, c. 176D, § 3(9)(c), which prohibits insurers from "failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies."

111. Continental's unfair and deceptive conduct has caused and will continue to cause Lawrence General to incur substantial monetary loss as well as potential irreparable harm.

112. Continental's unfair and deceptive conduct has occurred under a policy issued in Massachusetts, and the monetary loss and potential irreparable harm faced by Lawrence General will be experienced primarily and substantially in Massachusetts and pursuant to this Massachusetts contract.

113. Continental's conduct has been knowing and willful. Lawrence General thus seeks double to treble damages under G.L. c. 93A, its full reasonable attorney's fees and costs, and all other relief to which it is entitled under that statute.

PRAYER FOR RELIEF

WHEREFORE, Lawrence General Hospital prays for judgment against Defendant as follows:

114. An award of all damages of any nature to which Lawrence General may be entitled under contract, in equity or at law;
115. Appropriate declaratory relief;
116. Pre- and post-judgment interest as provided by law;
117. An award of attorneys' fees and costs of suit incurred; and
118. Such other and further relief as the Court deems just and proper.

JURY TRIAL DEMAND

Lawrence General hereby requests a jury trial as to all triable claims and issues in the above-entitled action.

Dated: March 15, 2022

Respectfully submitted,

LAWRENCE GENERAL HOSPITAL

By its attorneys,

/s/ Robert J. Gilbert

Robert J. Gilbert (BBO# 565466)

Julia Lippman (BBO# 688852)

Latham & Watkins LLP

200 Clarendon Street

Boston, MA 02116

Telephone: (617) 948-6000

Facsimile: (617) 948-6001

robert.gilbert@lw.com

julia.lippman@lw.com