

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION**

JULIA C. DUDLEY, CLERK
BY: s/ H. MCDONALD
DEPUTY CLERK

DANVILLE REGIONAL)	
MEDICAL CENTER, LLC and)	
CLINCH VALLEY MEDICAL)	No. 4:21CV00012
CENTER, INC.)	
)	
Plaintiffs,)	
)	
)	JURY TRIAL DEMANDED
v.)	
)	
AMERICAN GUARANTEE AND)	
LIABILITY INSURANCE)	
COMPANY)	
)	
Serve:)	
American Guarantee and Liability)	
Insurance Company)	
1299 Zurich Way)	
Schaumburg, IL 60196.)	
)	
Defendant.)	

COMPLAINT

Plaintiffs, Danville Regional Medical Center, LLC (“Danville Regional”) and Clinch Valley Medical Center, Inc. (“Clinch Valley”) (collectively, “Plaintiffs”), by and through undersigned counsel, bring this action against Defendant, American Guarantee and Liability Insurance Company (“Defendant” or “Zurich”), and in support thereof, allege as follows:

NATURE OF THIS ACTION

1. This is an action for declaratory judgment and breach of contract arising out of Zurich’s refusal to pay Plaintiffs’ claim for direct physical loss of or damage to covered property

and related business income and other losses, costs, and extra expenses at three medical centers insured under the property insurance policy Zurich sold to Plaintiffs in exchange for premiums paid, which bears Policy Number ZMD 6986533-00 and covers the time period from June 1, 2019 to June 1, 2020 (the “Policy”). The Policy is attached hereto as **Exhibit A**, and is incorporated herein by reference.

2. Plaintiffs seek a declaration that coverage under the Policy is triggered under a number of the unique coverage grants provided by the Policy, including for Interruption by Communicable Disease, Biocontamination, and Decontamination Costs. Each of these coverages provides a separate amount of insurance coverage to Plaintiffs for any loss that falls within each separate category of loss. Plaintiffs’ losses exceed the full amount of coverage provided by each of these limits, separately and collectively.

3. Plaintiffs further seek monetary damages and all relief available at law for Zurich’s breach of contract in denying coverage to Plaintiffs for a covered claim under the Policy and failing to pay any of Plaintiffs’ losses.

THE PARTIES

4. Danville Regional is a Delaware Limited Liability Company. Danville Regional operates two medical centers in Virginia, one of which is located in Danville and operates under the d/b/a Sovah Health – Danville, and the other of which is located in Martinsville and operates under the d/b/a Sovah Health – Martinsville. The membership of Danville Regional resides in Delaware.

5. Clinch Valley is a Virginia corporation with its principal place of business located in Richlands, Virginia.

6. LifePoint Health, Inc. (“LifePoint”) is a Delaware corporation with its principal place of business located in Brentwood, Tennessee. LifePoint is an organization of affiliated entities that own and operate hospitals and other healthcare providers in more than eighty communities across the United States. LifePoint is a Named Insured under the Policy.

7. Plaintiffs Danville Regional and Clinch Valley are affiliated and/or subsidiary companies of LifePoint and are also Named Insureds under the Policy.

8. Zurich is an insurance company organized and existing under the laws of the State of New York with its principal place of business located at 1299 Zurich Way, Schaumburg, Illinois. Zurich sells policies of insurance, including property and business interruption insurance policies.

9. At all relevant times, Zurich was, and presently is, duly authorized to transact the business of insurance in Virginia and is in fact transacting the business of insurance in Virginia.

JURISDICTION AND VENUE

10. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a) in that there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) in that, among other things, a substantial portion of the events giving rise to the claim occurred in this District.

12. This Court has personal jurisdiction over Zurich because Zurich has the requisite minimum contacts with Virginia by selling the Policy at issue that insures and protects businesses and properties located in Virginia, including Plaintiffs’ properties, and denying coverage under the Policy for losses suffered in Virginia.

FACTUAL BACKGROUND

A. Plaintiffs' Healthcare Businesses

13. Plaintiff Danville Regional operates two medical centers, one located in Danville, Virginia, and the other located in Martinsville, Virginia.

14. Plaintiff Clinch Valley operates a medical center in Richlands, Virginia.

15. Plaintiffs are seeking coverage under the Zurich Policy for all of the covered losses, costs, and expenses they suffered at their medical centers as a result of the COVID-19 global pandemic.

B. The COVID-19 Global Pandemic

16. In December 2019, during the term of the Policy, an outbreak of the illness known as COVID-19 caused by a novel coronavirus formally known as SARS-CoV-2 was first identified in Wuhan, Hubei Province, China. In an unprecedented event that has not occurred in more than a century, a pandemic of global proportions ensued, with COVID-19 quickly spreading to Europe and to the United States.

17. The rapid spread of COVID-19 is due in part to the highly transmissible nature of COVID-19. For example, as of March 1, 2020, there were 87,137 confirmed COVID-19 cases across the globe. *See* <https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200301-sitrep-41-covid-19.pdf>. That number increased to over 800,000 confirmed cases in April and over 3 million cases in May. *See* <https://graphics.reuters.com/CHINA-HEALTH-MAP/0100B59S39E/index.html>. As of February 11, 2021, there have been more than 28 million cases in the United States and over 500,000 deaths. *See* <https://www.cnn.com/interactive/2020/health/coronavirus-us-maps-and-cases/>.

18. According to the Centers for Disease Control (the "CDC") and World Health Organization (the "WHO"), a person may become infected by: (1) coming into close contact (about

6 feet) with a person who has COVID-19; (2) respiratory droplets when an infected person talks, sneezes, or coughs; and/or (3) touching surfaces or objects that have the virus on them, and then touching his or her mouth, eyes, or nose. See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>; <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>.

19. Asymptomatic individuals may also transmit COVID-19. See <https://www.nature.com/articles/s41591-020-0869-5>. Over 40% of all infections occur from people without any symptoms. *Id.*; <https://www.nbcnews.com/health/healthnews/asymptomatic-covid-19-cases-may-be-more-common-suspected-n1215481>. Thus, even individuals who appear healthy and present no identifiable symptoms of the disease have and continue to spread COVID-19 by breathing, speaking, or touching objects and surfaces.

20. According to a report in *The New York Times*, “[a]n infected person talking for five minutes in a poorly ventilated space can produce as many viral droplets as one infectious cough.” <https://www.nytimes.com/interactive/2020/04/14/science/coronavirus-transmission-cough-6-feet-ar-ul.html>. Further, one human sneeze can expel droplets that can travel up to 27 feet at nearly a hundred miles an hour. <https://www.nationalgeographic.com/science/2020/04/coronavirus-covid-sneeze-fluid-dynamics-in-photos/>.

21. Although these virus-containing droplets are very small, they are still physical objects that can travel and attach to other surfaces and cause harm, loss, and damage, and these droplets physically exist ubiquitously in the communities and facilities in which Plaintiffs operated and continue to operate.

22. Current evidence suggests that SARS-CoV-2 may remain viable for hours to days on surfaces made from a variety of materials, including materials present at Plaintiffs' medical centers. The virus can survive and remain virulent on stainless steel and plastic for up to 6 days, on glass and banknotes for 3 days, and on wood and cloth for 24 hours. *See* [https://www.thelancet.com/journals/lanmic/article/PIIS2666-5247\(20\)30003-3/fulltext](https://www.thelancet.com/journals/lanmic/article/PIIS2666-5247(20)30003-3/fulltext). Testing of similar viruses suggests SARS-CoV-2 can survive on ceramics and rubber for 3 to 5 days. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4659470/>. In addition, the CDC confirmed that the virus was identified on surfaces of the *Diamond Princess* cruise ship a full 17 days after the cabins were vacated. <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm>.

23. Indoor spaces, especially highly trafficked ones, are reportedly particularly susceptible to circumstances favorable to the spread of COVID-19. A recent article published by the CDC analyzed a case study of three families (families A, B, and C) who had eaten at an air-conditioned restaurant in Guangzhou, China. *See* https://wwwnc.cdc.gov/eid/article/26/7/20-0764_article. One member of family A, patient A1, had recently traveled from Wuhan, China. On January 24, 2020, that family member ate at a restaurant with families A, B, and C. By February 5, 2020, 4 members of family A, 3 members of family B, and 2 members of family C had become ill with COVID-19. *Id.* The only known source for those affected persons in families B and C was patient A1 at the restaurant.

24. Since any recently developed treatment or vaccine to protect against COVID-19 remains limited in availability and distribution, effective control of the disease's spread necessarily relies on measures designed to reduce human-to-human and surface-to-human exposure

C. Global, National, State, and Local Reaction

25. On March 11, 2020, the WHO officially declared the COVID-19 outbreak a worldwide pandemic.

26. Beginning in March 2020, during the term of the Policy, state and local governments in the United States issued orders suspending or severely curtailing the operations of hospitals and healthcare providers in response to the virus.

27. On March 25, 2020, the Commonwealth of Virginia issued an Order of the Governor and State Health Commissioner (the “Virginia Order”), a copy of which is attached hereto as **Exhibit B**. The Order stated, in relevant part:

WHEREAS, the State Health Commissioner declared COVID-19 a disease of public health threat on February 7, 2020; and

WHEREAS, Virginia Governor Ralph S. Northam declared a state of emergency due to COVID-19 on March 12, 2020 in Executive Order No. 51 by virtue of the authority vested in the Governor by Article V, Section 7 of the Constitution of Virginia and by §§ 44-146.17 and 44-75.1 of the *Code of Virginia*; and

WHEREAS, the Governor and State Health Commissioner issued Order of Public Health Emergency One on March 17, 2020, as amended on March 20, 2020, declaring a public health emergency; and

WHEREAS, COVID-19 spreads from person-to-person, transmitted via respiratory droplets, and can be spread from an infected person who does not have symptoms to another person; and

...

WHEREAS, the Commonwealth of Virginia seeks to curtail the spread of the COVID-19 pandemic in the Commonwealth, protect our health care workers, and ensure sufficient hospital beds necessary to serve Virginians’ medical needs; and

WHEREAS, pursuant to § 32.1-13 of the *Code of Virginia*, the State Health Commissioner, acting for the State Board of Health when it is not in session pursuant to § 32.1-20 of the *Code of Virginia*, is vested with authority to make separate orders to meet any emergency not provided for by general regulations, for the purpose of suppressing conditions dangerous to the public health and communicable, contagious, and infectious diseases.

NOW THEREFORE, the Governor and State Health Commissioner hereby issue this Order prohibiting all inpatient and outpatient surgical hospitals licensed under 12 VAC 5-410, free-standing endoscopy centers, physicians’ offices, and dental, orthodontic, and endodontic offices in the Commonwealth from providing procedures and surgeries that require PPE, which if delayed, are not anticipated to

cause harm to the patient by negatively affecting the patient's health outcomes, or leading to disability or death.

28. The Virginia Order suspended or slowed down many of Plaintiffs' business activities at their respective medical centers, including medical procedures and surgeries, and prohibited use of or access to significant portions of the properties for these and other business activities due to the threat of spread of COVID-19 communicable disease.

29. The prohibitions imposed on Plaintiffs by the Virginia Order due to the threat of the spread of communicable disease, combined with other necessary volume declines, generated substantial losses by reducing access to the medical centers for various procedures and surgeries, causing reduced revenue, EBITDA and income at Plaintiffs' respective medical centers.

30. Additionally, starting in March 2020, Plaintiffs have experienced several incidents of employees and patients with actual or suspected cases of COVID-19 being present in their facilities. Plaintiffs incurred losses and expenses to remedy these incidents, including but not limited to costs of decontamination, disinfection, clean-up, property replacement and/or repair, and in some cases, suspension of operations.

D. The Zurich Property Policy

31. To protect against property damage, threats of imminent physical property loss, and interruptions to Plaintiffs' businesses due to these conditions and to protect against resulting orders of civil authorities that may further interrupt their affiliated businesses, LifePoint purchased a \$650 million property insurance program, covering numerous insured hospitals including the medical facilities owned by Plaintiffs Danville Regional and Clinch Valley. This insurance program was underwritten on a quota-share basis by Zurich, Liberty Mutual Fire Insurance Company ("Liberty"), and Lexington Insurance Company ("Lexington") (collectively, the "Insurers").

32. As part of this property insurance program, Zurich issued Property Policy, No. ZMD 6986533-00, effective during the period from June 1, 2019 to June 1, 2020 (defined above as the “Policy”). Pursuant to the Policy, Zurich is responsible for a 45.00% quota share of the \$650 million property insurance program—*i.e.*, \$292,500,000.00. Zurich’s quota share is subject to certain sub-limits within a coverage part set forth in greater detail in the Policy’s Declarations.

33. As affiliated and/or subsidiary companies or corporations of LifePoint, the Plaintiffs Danville Regional and Clinch Valley qualify as Named Insureds under the Policy, and the Policy insures all of Plaintiffs’ medical centers in Virginia as Insured Locations.

34. All conditions precedent to coverage have been fulfilled by the Plaintiffs including payment to Zurich of the premium due.

35. Under the Insuring Agreement, the Policy “insures against all risks of direct physical loss, damage or destruction occurring during the term of this policy to the type of property insured hereunder.”

36. The Policy also provides Additional Coverages, including, as relevant here, ones for loss caused by Communicable Disease, a Biocontamination Coverage extension and coverage for Decontamination Costs.

37. The Policy includes an Interruption by Communicable Disease endorsement subject to a sub-limit of \$1,000,000. The endorsement provides:

The following coverage has been added to Time Element – Section C, 3. Time Element Extensions of this policy:

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 order of an authorized governmental agency enforcing any law or ordinance regulating communicable diseases 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 cost incurred for the cleanup, removal and disposal of the actual not suspected presence of substances(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 Waiting Period in the Waiting Period clause of the Declarations section. If the Waiting 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.

Definitions:

Suspension (Suspended) - The slowdown or cessation of the Insured's business activities: or as respects rental income that a part or all of the Insured Location is rendered untenable.

38. The Biocontamination Extension is subject to a sub-limit of \$5,000,000, and provides:

C. BIOCONTAMINATION EXTENSION

To the extent not otherwise provided herein, this Policy insures physical loss, damage or destruction of insured property by 'biocontamination' arising from material used or stored or from processes conducted by the Insured.

As used herein, 'biocontamination' shall mean the sudden and accidental discharge, dispersal, seepage, migration, release or escape of biological agents or materials used in or resulting from activities of the Insured involving living organisms including, but not limited to, viruses, bacteria, fungi, mold and infective agents.

Nothing herein shall override the Hostile or Warlike Action/Act of Terrorism exclusion.

39. The Decontamination Costs coverage provision is subject to a sub-limit of \$5,000,000, and provides:

I. DECONTAMINATION COSTS

If insured property is contaminated as a direct result of physical damage insured by this Policy 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 insured property in a manner to satisfy such law or ordinance. This Additional Coverage applies only to that part of insured property so contaminated due to the actual not suspected presence of Contaminant(s) as a direct result of insured physical 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 an insured event.

40. The Policy defines Contaminant as “Anything that causes Contamination,” and Contamination as “Any condition of property due to the actual or suspected presence of any . . . virus”

E. Plaintiffs’ Covered Losses

41. Plaintiffs are entitled to coverage under the Interruption by Communicable Disease endorsement, the Biocontamination Extension, and the Decontamination Costs coverage provisions. Each of Plaintiffs’ medical centers suffered losses covered under these provisions, and the losses at each medical center individually exceed the applicable sub-limits.

1. Coverage Under the Interruption by Communicable Disease Endorsement

42. As noted above, the Interruption by Communicable Disease endorsement covers losses resulting from the necessary Suspension of the Insured’s business activities if the Suspension is caused by order of an authorized governmental agency enforcing any law or ordinance regulating communicable diseases, prohibiting access to portions of the Location. Suspension is defined as the “slowdown or cessation of the Insured’s business activities.”

43. As a result of the Virginia Order, Plaintiffs' have experienced a slowdown and cessation of business activities at each of their medical centers. Accordingly, there has been a necessary Suspension of Plaintiffs' business activities caused by order of an authorized governmental agency.

44. The Virginia Order regulated a communicable disease, namely, COVID-19. Further, the Virginia Order prohibited access to the medical centers to conduct a variety of procedures and surgeries, and this prohibition was expressly due to the threat of the spread of COVID-19.

45. Plaintiffs are therefore entitled to coverage under the Interruption by Communicable Disease endorsement.

46. The losses at each of Plaintiffs' medical centers individually and collectively exceed the \$1,000,000 sub-limit applicable to coverage under Zurich's Communicable Disease endorsement.

2. Coverage Under the Biocontamination Extension

47. As noted above, the Biocontamination Extension defines biocontamination to mean the sudden and accidental discharge, dispersal, or release of biological agents resulting from activities of Plaintiffs involving living organisms, including viruses. Further, the Policy insures physical loss, damage or destruction of insured property where biocontamination arises from processes conducted by Plaintiffs.

48. Plaintiffs' activities include caring for patients who are infected with COVID-19. The coughing or spreading of COVID-19 by those patients constitutes a sudden and accidental discharge, dispersal, or release of biological agents resulting from Plaintiffs' activities. Thus, for this and other reasons, Plaintiffs have experienced biocontamination at their medical centers as defined in the Policy.

49. As a result of this biocontamination, Plaintiffs have had to take various measures to remedy the physical loss, damage or destruction their medical centers suffered, including but not limited to decontamination, disinfection, clean-up, property replacement and/or repair, and in some cases, suspension of operations. Thus, Plaintiffs suffered physical loss, damage or destruction of insured property due to the above-noted biocontamination at their medical centers.

50. Plaintiffs are therefore entitled to coverage under the Biocontamination Extension.

51. The losses at each of Plaintiffs' medical centers individually and collectively exceed the \$5,000,000 sub-limit applicable to the Biocontamination Extension.

3. Coverage Under the Decontamination Costs Coverage Provision

52. As noted above, the Decontamination Costs coverage provision provides coverage for the costs of decontamination and/or removal of contaminated insured property where (1) insured property is contaminated as a direct result of physical damage insured by the Policy, and (2) 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).

53. Plaintiffs' medical centers have been contaminated, as defined in the Policy, on several occasions. Specifically, individuals with actual or suspected cases of COVID-19 have been present in Plaintiffs' medical facilities, and as a result, Plaintiffs were required to decontaminate and remove insured property.

54. Because the Policy protects against property damage "by 'biocontamination,'" which is defined to include discharge, dispersal, or release of a virus, the contamination that occurred at Plaintiffs' medical centers is a type of "physical damage insured by this Policy" for purposes of Decontamination Costs coverage.

55. Further, at the time of these contaminations, there were in force laws and ordinances regulating Contamination due to the actual presence of Contaminants, namely, the Virginia Order, among others.

56. Plaintiffs are therefore entitled to coverage under the Decontamination Costs coverage provision.

57. The losses at each of Plaintiffs' medical centers individually and collectively exceed the \$5,000,000 sub-limit applicable to the Decontamination Costs coverage provision.

F. Zurich's Denial of Plaintiffs' Claim

58. On August 25, 2020, the Plaintiffs and all Named Insureds provided notice of this claim to each of the Insurers, including Zurich.

59. On September 22, 2020, an adjuster engaged by the Insurers, Sedgwick, issued a reservation of rights letter on behalf of the Insurers concerning this claim to the Named Insureds under the Policy. That letter set forth the policy provisions potentially relevant to the claim, and included various Requests for Information to assist the Insurers' in their investigation.

60. In response to Sedgwick's letter and information requests, on December 11, 2020, the Insurers were provided with details concerning an example of losses at a LifePoint subsidiary and Named Insured located in Kentucky, Lake Cumberland Regional Hospital. The loss of income at the Lake Cumberland Regional Hospital far exceeded the sub-limits of the applicable coverage provisions. The Insurers were informed by way of this example that coverage must be provided to the Named Insureds in full under the Biocontamination Extension, Decontamination Costs coverage provision, and Interruption by Communicable Disease endorsement in Zurich's Policy.

61. Between January 11, 2021 and January 21, 2021, each of the Insurers responded concerning this claim via separate letters. In their letters, the Insurers disputed the interpretation of the Policy set forth in the December 11, 2020 letter. The Insurers also reiterated their reservation

of rights, and requested a response to voluminous Requests for Information included in Sedgwick's September 22, 2020 letter.

62. Zurich, for its part, denied coverage to Plaintiffs and all Named Insureds under the Biocontamination Extension and Decontamination Costs coverage provision. As for the Biocontamination Extension, Zurich denied coverage on the grounds that COVID-19 "is not a material used or stored by the insured, does not arise from any processes conducted by the insured, and is not used in or resulting from any processes conducted by the insured." Accordingly, Zurich concluded that COVID-19 "is not 'physical damage of the type insured' under the Biocontamination Extension."

63. Zurich's interpretation is grammatically flawed and fails to consider that coverage exists under the Biocontamination Extension where the discharge, dispersal, or release of COVID-19 results from the activities of insured hospitals, such as Plaintiffs' hospitals, including the caring for patients with COVID-19. Instead, Zurich improperly focuses on the fact that COVID-19 is not a material used or stored by the insured hospitals, does not arise from any processes conducted by the insured hospitals, and is not used in or resulting from any processes conducted by the insured hospitals. There is no rational justification for Zurich's selective, self-serving interpretation of the Biocontamination Extension.

64. With respect to the Decontamination Costs coverage provision, Zurich denied coverage but failed to meaningfully explain the basis for its denial. Zurich instead merely stated that Decontamination Costs coverage "requires physical damage insured by the policy and a law or ordinance regulating contamination in force at the time of the loss," and that the Named Insureds including Plaintiffs have "not provided facts meeting these requirements."

65. Zurich's denial of coverage under the Decontamination Costs coverage provision is similarly flawed because the Policy protects against property damage "by 'biocontamination,'" which is defined to include discharge, dispersal, or release of a virus, and the contamination experienced by the insured hospitals and healthcare providers is a type of "physical damage insured by this Policy" for purposes of Decontamination Costs coverage. Further, laws and ordinances issued by state and local governments across the United States regulate Contamination due to the actual presence of Contaminants. As with Zurich's interpretation of the Biocontamination Extension, there is no rational justification for its complete disregard of these undisputed facts, which place the Plaintiffs' losses squarely within the coverage provided by the Policy's Decontamination Costs provision.

66. As for Interruption by Communicable Disease, Zurich did not deny coverage under the Interruption by Communicable Disease endorsement, but instead made additional requests for information while refusing to provide sufficient time to comply with those requests.

G. Zurich's Failure to Act in Good Faith

67. On January 29, 2021, the Insurers were informed that the process of gathering additional information responsive to their voluminous requests was ongoing by Plaintiffs and other Named Insureds. However, given that the policies each contain one-year "suit limitations," which were set to expire in mid- March 2021, a written waiver of the suit limitations and an extension of time to provide a complete Proof of Loss was requested. Plaintiffs also requested a reasonable limitation on the Requests for Information to sample or exemplar properties in order to expedite the claim examination process.

68. Although both Liberty and Lexington agreed to waive the one-year suit limitations in their policies and provide the requested time extension to provide a complete Proof of Loss, Zurich stood alone in refusing and forcing Plaintiffs to file this lawsuit.

69. More specifically, in a letter dated February 15, 2021, Zurich refused to waive the suit limitation in its Policy to Plaintiffs or other Named Insureds under the Policy, and refused to extend the time for them to provide a Proof of Loss, even as Zurich continued to request extensive amounts of information concerning the claim. Although Zurich stated it would rely on time-sensitive coverage defenses rather than provide any extensions, Zurich confirmed it would initially consider “more comprehensive information and data concerning five or six hospitals as exemplars,” and that it “look[ed] forward” to receiving responses from Plaintiffs and other Named Insureds “to the original request for information as well as the additional requests for information stated in [Zurich’s] January 20, 2021 letter.” Given the impending expiration of the suit limitation in Zurich’s Policy in March 2021, however, Zurich’s demands in January 2021 and February 2021 were not made in good faith.

70. Because Zurich refused to waive the Policy’s suit limitation provision and declined to continue adjusting the claim in good faith, Plaintiffs were left with no choice but to seek judicial relief by way of this Complaint.

COUNT ONE – DECLARATORY JUDGMENT

71. Plaintiffs hereby repeat and re-allege each of the allegations contained in the preceding paragraphs as if the same were set forth herein.

72. Plaintiffs seek a declaration, pursuant to 28 U.S.C. § 2201, that Zurich is obligated, in accordance with the terms of the Policy, to provide insurance coverage for the losses of Plaintiffs incurred from mid-March 2020 forward under the Interruption by Communicable Disease endorsement, the Biocontamination Extension, and the Decontamination Costs coverage provision.

73. Zurich breached and continues to breach its promises, as set forth in the Policy, by failing and/or refusing to honor its promises to pay for the losses, costs, and expenses Plaintiffs have suffered and continue to suffer due to the Virginia Order and the presence or suspected presence of COVID-19 at their medical centers.

74. An actual and justiciable controversy exists between Plaintiffs and Zurich with respect to this issue because of Zurich's refusal to perform its obligations under the Policy.

75. A declaration of the parties' rights and obligations under the Policy will serve to resolve the dispute between them.

COUNT TWO – BREACH OF CONTRACT

76. Plaintiffs hereby repeat and re-allege each of the allegations contained in the preceding paragraphs as if the same were set forth herein.

77. As set forth above, in return for premiums paid, Zurich sold Plaintiffs the Policy, in which Zurich promised to pay for covered losses up to the applicable limits and sub-limits of liability.

78. Plaintiffs promptly advised Zurich that they sustained and continue to sustain losses covered by the Policy, specifically under the Interruption by Communicable Disease endorsement, the Biocontamination Extension, and the Decontamination Costs coverage provision.

79. Zurich denied coverage under the Biocontamination Extension and Decontamination Costs coverage provision, and Zurich effectively denied coverage under the Interruption by Communicable Disease endorsement by refusing to continue adjusting the claim, by way of letter dated February 15, 2021. This denial of coverage and conduct constitutes a breach of the Policy.

80. As a direct and proximate result of Zurich's breach, Plaintiffs have been deprived of the benefits of insurance coverage for which they paid substantial premiums, and have suffered substantial damages.

WHEREFORE, Plaintiffs demand judgment against the Defendant as follows:

- i) On the First Count, a judicial declaration by this Court that Zurich is obligated under the Policy to provide coverage: (a) under the Interruption by Communicable Disease Endorsement for the losses sustained by Plaintiffs resulting from the suspension of their businesses due to the Virginia Order up to the applicable sub-limit of \$1,000,000; (b) under the Biocontamination Extension for physical loss, damage or destruction of insured property by biocontamination up to the applicable sub-limit of \$5,000,000; (c) under the Decontamination Costs coverage provision for costs of decontamination and/or removal of contaminated insured property up to the applicable sub-limit of \$5,000,000; and
- ii) On the Second Count, all actual and compensatory monetary damages in an amount to be proven at trial and all relief available at law for Zurich's breach of contract in denying coverage to Plaintiffs' under the Policy and failing to pay any losses under the Policy in relation to Plaintiffs' medical centers, including costs, expenses, interest, and reasonable attorneys' fees in this action.
- iii) The award of such additional relief as the Court deems just and appropriate.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury of any issue triable of right by a jury in this case.

DATED this 1st day of March, 2021.

Respectfully submitted,

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