

DISTRICT COURT, CITY AND COUNTY OF DENVER
1437 Bannock Street, Room 256
Denver, CO 80202
Phone: 720-865-8301

Spectrum Retirement Communities, LLC, SRC of Indiana, LLC, SRC of Illinois, LLC, SRC of Oregon, LLC, SRC of Missouri, LLC, SRC of Arizona, LLC, SRC of Colorado, LLC, Spectrum Retirement of Ohio, LLC, SRC of Texas, LLC d/b/a Spectrum Retirement of Texas, LLC, SRC of New Mexico, LLC d/b/a Spectrum Retirement of New Mexico, SRC of Kansas, LLC, S-K Anson Opportunity, II, LLC, Anson Operator, LLC, S-K Burr Ridge Residential, LLC, Burr Ridge Operator, LLC, S-K Carmel, LLC, Carmel Operator, LLC, CP Eugene OR, LLC, CP Eugene Management OR, LLC, S-K Crestview, LLC, S-K Creve Coeur Owner, LLC, Creve Coeur Operator, LLC, S-K Dougherty Ferry Owner, LLC, Dougherty Ferry Operator, LLC, S-K Chandler Owner, LLC, Chandler Operator, LLC, S-K Green Oaks, LLC, Green Oaks Operator, LLC, S-K HighPointe Owner, LLC, HighPointe Operator, LLC, S-K Hilliard Owner, LLC, Hilliard Operator, LLC, Lakeway Overlook, LLC and Lakeway Townline, LLC, Lakeway Operator, LLC, S-K Mesa Opportunity II, LLC, Mesa Operator, LLC, S-K Santa Fe Opportunity II, LLC, Santa Fe Operator, LLC, S-K Meridian LLC, Lincoln Meadows Senior Living, LLC, S-K Lombard Owner, LLC, Lombard Operator, LLC, S-K Lone Mountain, LLC and S-K Lone Mountain Owner, LLC, Lone Mountain Operator, LLC, S-K Mason Opportunity II, LLC, Mason Operator, LLC, S-K Fishers, LLC, Fishers Operator, LLC, S-K Palos Heights Opportunity II, LLC, PH Operator, LLC, S-K Peoria, LLC, Peoria Senior Living, LLC, Spectrum Park Meadows Land, LLC, Park Meadows Senior Living, LLC, SF Overland Park, LLC, S-K Smoky Hill Owner, LLC, Peakview Operator, LLC, S-K Powell 2 Opportunity I, LLC, Powell 2 Operator, LLC, S-K Powell Owner, LLC, S-K Powell Owner, LLC, SRC Rigden Farms, LLC, S-K Shawnee, LLC, S-K Shawnee, LLC, Reavis St. Holdings, LLC, Reavis St. Operator, LLC, S-K Pickerington Opportunity I, LLC, Pickerington Operator, LLC, S-K Anthem Opportunity I, LLC, Anthem Operator, LLC, S-K Cedar Park Opportunity II, LLC, Cedar Park Operator, LLC, S-K Chandler 2 Opportunity I, LLC, Chandler 2 Operator, LLC, S-K Gilbert Residential,

▲ COURT USE ONLY ▲

<p>LLC, Gilbert Operator, LLC, S-K Round Rock Opportunity I, LLC, Round Rock Operator, LLC, S-K Saxony Opportunity I, LLC, Saxony Operator, LLC, WSPT Hickory View Investors V, LLC, S-K Gahanna, LLC, Gahanna Operator, LLC, S-K Cary, LLC, Cary Senior Living, LLC, S-K West Chester Opportunity I, LLC, West Chester Operator, LLC, S-K Streamwood Owner, LLC Streamwood Operator, LLC, S-K Westerville Opportunity II, LLC, Westerville Operator, LLC, S-K Ellisville, LLC,</p> <p>Plaintiffs</p> <p>v.</p> <p>Continental Casualty Company, an Illinois corporation, authorized to transact insurance business in Colorado Defendant.</p>	
<p>ATTORNEYS FOR PLAINTIFFS: Michael S. Burg, Reg. No. 7143 Thomas W. Henderson, Reg. No. 16892 David K. TeSelle, Reg. No. 29648 Kirsten N. Kube, Reg. No. 51374 Burg Simpson Eldredge Hersh & Jardine, P.C. 40 Inverness Drive East Englewood, Colorado, 80112 Phone No.: (303) 792-5595 Fax No.: (303) 708-0527 Email: mburg@burgsimpson.com thenderson@burgsimpson.com dteselle@burgsimpson.com kkube@burgsimpson.com</p>	<p>Case No.</p> <p>Ctrm/Div:</p>
<p>COMPLAINT AND JURY DEMAND</p>	

Plaintiffs, Spectrum Retirement Communities, LLC, SRC of Indiana, LLC, SRC of Illinois, LLC, SRC of Oregon, LLC, SRC of Missouri, LLC, SRC of Arizona, LLC, SRC of Colorado, LLC, Spectrum Retirement of Ohio, LLC, SRC of Texas, LLC d/b/a Spectrum Retirement of Texas, LLC, SRC of New Mexico, LLC d/b/a Spectrum Retirement of New Mexico, SRC of Kansas, LLC, S-K Anson Opportunity, II, LLC, Anson Operator, LLC, S-K Burr Ridge Residential, LLC, Burr Ridge Operator, LLC, S_K Carmel, LLC, Carmel Operator, LLC, CP Eugene OR, LLC, CP Eugene Management OR, LLC, S-K Crestview, LLC, S-K Creve Coeur

Owner, LLC, Creve Coeur Operator, LLC, S-K Dougherty Ferry Owner, LLC, Dougherty Ferry Operator, LLC, S-K Chandler Owner, LLC, Chandler Operator, LLC, S-K Green Oaks, LLC, Green Oaks Operator, LLC, S-K HighPointe Owner, LLC, HighPointe Operator, LLC, S-K Hilliard Owner, LLC, Hilliard Operator, LLC, Lakeway Overlook, LLC and Lakeway Townline, LLC, Lakeway Operator, LLC, S-K Mesa Opportunity II, LLC, Mesa Operator, LLC, S-K Santa Fe Opportunity II, LLC, Santa Fe Operator, LLC, S-K Meridian LLC, Lincoln Meadows Senior Living, LLC, S-K Lombard Owner, LLC, Lombard Operator, LLC, S-K Lone Mountain, LLC and S-K Lone Mountain Owner, LLC, Lone Mountain Operator, LLC, S-K Mason Opportunity II, LLC, Mason Operator, LLC, S-K Fishers, LLC, Fishers Operator, LLC, S-K Palos Heights Opportunity II, LLC, PH Operator, LLC, S-K Peoria, LLC, Peoria Senior Living, LLC, Spectrum Park Meadows Land, LLC, Park Meadows Senior Living, LLC, SF Overland Park, LLC, S-K Smoky Hill Owner, LLC, Peakview Operator, LLC, S-K Powell 2 Opportunity I, LLC, Powell 2 Operator, LLC, S-K Powell Owner, LLC, S-K Powell Owner, LLC, SRC Rigden Farms, LLC, S-K Shawnee, LLC, S-K Shawnee, LLC, Reavis St. Holdings, LLC, Reavis St. Operator, LLC, S-K Pickerington Opportunity I, LLC, Pickerington Operator, LLC, S-K Anthem Opportunity I, LLC, Anthem Operator, LLC, S-K Cedar Park Opportunity II, LLC, Cedar Park Operator, LLC, S-K Chandler 2 Opportunity I, LLC, Chandler 2 Operator, LLC, S-K Gilbert Residential, LLC, Gilbert Operator, LLC, S-K Round Rock Opportunity I, LLC, Round Rock Operator, LLC, S-K Saxony Opportunity I, LLC, Saxony Operator, LLC, WSPT Hickory View Investors V, LLC, S-K Gahanna, LLC, Gahanna Operator, LLC, S-K Cary, LLC, Cary Senior Living, LLC, S-K West Chester Opportunity I, LLC, West Chester Operator, LLC, S-K Streamwood Owner, LLC, Streamwood Operator, LLC, S-K Westerville Opportunity II, LLC, Westerville Operator, LLC, and S-K Ellisville, LLC, by and through their undersigned counsel, and submit this Complaint and Jury Demand against Defendant, Continental Casualty Company, an Illinois corporation:

Parties

1. Plaintiff Spectrum Retirement Communities, LLC (“Spectrum”) is a Colorado Limited Liability Company with its principal place of business located at 4600 S. Syracuse Street, 11th Floor, in the City and County of Denver, Colorado, 80237.

2. Plaintiff S-K Anson Opportunity II, LLC, a Delaware Limited Liability Company, is the owner of the real estate of, and Plaintiff Anson Operator, LLC, a Colorado Limited Liability Company, is the operator of, Anson Senior Living, a senior living community located at 6800 Central Boulevard, Zionsville, Indiana, 46077.

3. Plaintiff S-K Burr Ridge Residential, LLC, a Delaware Limited Liability Company, is the owner of the real estate of, and Plaintiff Burr Ridge Operator, LLC, a Colorado Limited Liability Company, is the operator of, Burr Ridge Senior Living, a senior living community located at 16W301 91st Street, Burr Ridge, Illinois, 65027.

4. Plaintiff S-K Carmel LLC, a Colorado Limited Liability Company, is the owner of the real estate of, and Plaintiff Carmel Operator, LLC, a Colorado Limited Liability Company, is

the operator of, Carmel Senior Living, a senior living community located at 13390 North Illinois Street, Carmel, Indiana, 46032.

5. Plaintiff CP Eugene OR LLC, a Colorado Limited Liability Company, is the owner of the real estate of, and Plaintiff CP Eugene Management OR, LLC, a Colorado Limited Liability Company, is the operator of, Crescent Park Senior Living, a senior living community located at 2951 Coburg Road, Eugene, Oregon, 97408.

6. Plaintiff S-K Crestview, LLC, a Delaware Limited Liability Company, is the owner of the real estate of Crestview Senior Living, a senior living community located at 8660 Grant Road, Crestwood, Missouri, 63123.

7. Plaintiff S-K Creve Coeur Owner, LLC, a Delaware Limited Liability Company, is the owner of the real estate of, and Plaintiff Creve Coeur Operator, LLC, a Colorado Limited Liability Company, is the operator of, Creve Coeur Assisted Living and Memory Care, a senior living community located at 693 Decker Lane, Creve Coeur, Missouri, 63141.

8. Plaintiff S-K Dougherty Ferry Owner, LLC, a Delaware Limited Liability Company, is the owner of the real estate of, and Plaintiff Dougherty Ferry Operator, LLC, a Colorado Limited Liability Company, is the operator of, Dougherty Ferry Assisted Living & Memory Care, a senior living community located at 2929 Dougherty Ferry Road, St. Louis, Missouri, 63122.

9. Plaintiff S-K Chandler Owner, LLC, a Colorado Limited Liability Company, is the owner of the real estate of, and Plaintiff Chandler Operator, LLC, a Colorado Limited Liability Company, is the operator of, Gardens at Ocotillo Senior Living, a senior living community located at 1601 West Queen Creek Road, Chandler, Arizona, 85226.

10. Plaintiff S-K Green Oaks, LLC, a Colorado Limited Liability Company, is the owner of the real estate of, and Plaintiff Green Oaks Operator, LLC, a Colorado Limited Liability Company, is the operator of, Green Oaks Senior Living, a senior living community located at 14595 West Rockland Road, Libertyville, Illinois, 60048.

11. Plaintiff S-K HighPointe Owner, LLC, a Delaware Limited Liability Company, is the owner of the real estate of, and Plaintiff HighPointe Operator, LLC, a Colorado Limited Liability Company, is the operator of, HighPointe Assisted Living & Memory Care, a senior living community located at 6383 East Girard Place, Denver, Colorado, 80222.

12. Plaintiff S-K Hilliard Owner, LLC, a Delaware Limited Liability Company, is the owner of the real estate of, and Plaintiff Hilliard Operator, LLC, a Colorado Limited Liability Company, is the operator of, Hilliard Assisted Living & Memory Care, a senior living community located at 4303 Trueman Boulevard, Hilliard, Ohio, 43026.

13. Plaintiffs Lakeway Overlook, LLC, a Delaware Limited Liability Company, and Lakeway Townline, LLC, a Delaware Limited Liability Company, are the owners of the real estate

of, and Plaintiff Lakeway Operator, LLC, a Colorado Limited Liability Company, is the operator of, Lake Travis Independent Living, a senior living community located at 302 Medical Parkway, Lakeway, Texas, 78738.

14. Plaintiff S-K Mesa Opportunity II, LLC, a Delaware Limited Liability Company, is the owner of the real estate of, and Plaintiff Mesa Operator, LLC, a Colorado Limited Liability Company, is the operator of, Las Palomas Senior Living, a senior living community located at 9050 East Brown Road, Mesa, Arizona, 85207.

15. Plaintiff S-K Santa Fe Opportunity II, LLC, a Delaware Limited Liability Company, is the owner of the real estate of, and Plaintiff Santa Fe Operator, LLC, a Delaware Limited Liability Company, is the operator of, Las Soleras Independent Living, a senior living community located at 5011 Las Soleras Drive, Santa Fe, New Mexico, 87507.

16. Plaintiff S-K Meridian, LLC, a Delaware Limited Liability Company, is the owner of the real estate of, and Plaintiff Lincoln Meadows Senior Living, LLC, a Colorado Limited Liability Company, is the operator of, Lincoln Meadows Senior Living, a senior living community located at 1001 South Oswego Street, Parker, Colorado, 80134.

17. Plaintiff S-K Lombard Owner, LLC, a Delaware Limited Liability Company, is the owner of the real estate of, and Plaintiff Lombard Operator, LLC, a Colorado Limited Liability Company, is the operator of, Lombard Place Assisted Living & Memory Care, a senior living community located at 300 West 22nd Street, Lombard, Illinois, 60148.

18. Plaintiffs S-K Lone Mountain, LLC, a Delaware Limited Liability Company, and Plaintiff S-K Lone Mountain Owner, LLC, are the owners of the real estate of, and Plaintiff Lone Mountain Operator, LLC, a Colorado Limited Liability Company, is the operator of, Lone Mountain Memory Care, a senior living community located at 7171 East Lone Mountain Road, Scottsdale, Arizona, 85266.

19. Plaintiff S-K Mason Opportunity II, LLC, a Delaware Limited Liability Company, is the owner of the real estate of, and Plaintiff Mason Operator, LLC, a Colorado Limited Liability Company, is the operator of, Mason Assisted Living & Memory Care, a senior living community located at 5225 Cox-Smith Road, Mason, Ohio, 45040.

20. Plaintiff S-K Fishers, LLC, a Colorado Limited Liability Company, is the owner of the real estate of, and Plaintiff Fishers Operator, LLC, a Colorado Limited Liability Company, is the operator of, Meadow Brook Senior Living, a senior living community located at 11011 Village Square Lane, Fishers, Indiana, 46038.

21. Plaintiff S-K Palos Heights Opportunity II, LLC, a Delaware Limited Liability Company, is the owner of the real estate of, and Plaintiff PH Operator, LLC, a Colorado Limited Liability Company, is the operator of, Palos Heights Senior Living, a senior living community located at 7100 West College Drive, Palos Heights, Illinois, 60463.

22. Plaintiff S-K Peoria, LLC, a Delaware Limited Liability Company, is the owner of the real estate of, and Plaintiff Peoria Senior Living, LLC, a Colorado Limited Liability Company, is the operator of, Palos Verde Senior Living, a senior living community located at 18441 North 87th Avenue, Peoria, Arizona, 85382.

23. Plaintiff Spectrum Park Meadows Land, LLC, a Delaware Limited Liability Company, is the owner of the real estate of, and Plaintiff Park Meadows Senior Living, LLC, a Colorado Limited Liability Company, is the operator of, Park Meadows Memory Care, a senior living community located at 5951 West 107th Street, Overland Park, Kansas, 66207.

24. Plaintiff SF Overland Park, LLC, a Delaware Limited Liability Company, is the owner of the real estate of, and Plaintiff Park Meadows Senior Living, LLC, a Colorado Limited Liability Company, is the operator of, Park Meadows Senior Living, a senior community living located at 5901 West 107th Street, Overland Park, Kansas, 66207.

25. Plaintiff S-K Smoky Hill Owner, LLC, a Delaware Limited Liability Company, is the owner of the real estate of, and Plaintiff Peakview Operator, LLC, a Colorado Limited Liability Company, is the operator of, Peakview Assisted Living and Memory Care, a senior living community located at 6021 South Liverpool Street, Centennial, Colorado 80016.

26. Plaintiff S-K Powell 2 Opportunity I, LLC, a Delaware Limited Liability Company, is the owner of the real estate of, and Plaintiff Powell 2 Operator, LLC, a Colorado Limited Liability Company, is the operator of, Powell Assisted Living & Memory Care, a senior living community located at 3872 Attucks Drive, Powell, Ohio, 43065.

27. Plaintiff S-K Powell Owner, LLC, a Delaware Limited Liability Company, is the owner of the real estate of Powell Senior Living, a senior living community located at 10351 Sawmill Parkway, Powell, Ohio, 43065.

28. Plaintiff SRC Rigden Farms, LLC, a Colorado Limited Liability Company, is the owner of the real estate of Rigden Farm Senior Living, a senior living community located at 2350 Limon Drive, Fort Collins, Colorado, 80525.

29. Plaintiff S-K Shawnee, LLC, a Delaware Limited Liability Company, is the owner of Shawnee Hills Senior Living, a senior living community located at 6335 Maurer Road, Shawnee, Kansas, 66217.

30. Plaintiff Reavis St. Holdings, LLC, a Colorado Limited Liability Company, is the owner of the real estate of, and Plaintiff Reavis St. Operator, LLC, a Colorado Limited Liability Company, is the operator of, Southview Assisted Living, a senior living community located at 9916 Reavis Road, Affton, Missouri, 63123.

31. Plaintiff S-K Pickerington Opportunity I, LLC, a Delaware Limited Liability Company, is the owner of the real estate of, and Plaintiff Pickerington Operator, LLC, a Colorado

Limited Liability Company, is the operator of, Sycamore Creek Senior Living, a senior living community located at 611 Windmill Drive, Pickerington, Ohio, 43147.

32. Plaintiff S-K Anthem Opportunity I, LLC, a Delaware Limited Liability Company, is the owner of the real estate of, and Plaintiff Anthem Operator, LLC, a Colorado Limited Liability Company, is the operator of, The Enclave at Anthem Senior Living, a senior living community located at 42015 North Venture Boulevard, Phoenix, Arizona, 85086.

33. Plaintiff S-K Cedar Park Opportunity II, LLC, a Delaware Limited Liability Company, is the owner of the real estate of, and Plaintiff Cedar Park Operator, LLC, a Colorado Limited Liability Company, is the operator of, The Enclave at Cedar Park Senior Living, a senior living community located at 3405 El Salido Parkway, Cedar Park, Texas, 78613.

34. Plaintiff S-K Chandler 2 Opportunity I, LLC, a Delaware Limited Liability Company, is the owner of the real estate of, and Plaintiff Chandler 2 Operator, LLC, a Colorado Limited Liability Company, is the operator of, The Enclave at Chandler Senior Living, a senior living community located at 4950 West Chandler Boulevard, Chandler, Arizona, 85226.

35. Plaintiff S-K Gilbert Residential, LLC, a Delaware Limited Liability Company, is the owner of the real estate of, and Plaintiff Gilbert Operator, LLC, a Colorado Limited Liability Company, is the operator of, The Enclave at Gilbert Senior Living, a senior living community located at 4929 South Val Vista Drive, Gilbert, Arizona, 85298.

36. Plaintiff S-K Round Rock Opportunity I, LLC, a Delaware Limited Liability Company, is the owner of the real estate of, and Plaintiff Round Rock Operator, LLC, a Colorado Limited Liability Company, is the operator of, The Enclave at Round Rock Senior Living, a senior living community located at 2351 Oakmont Drive, Round Rock, Texas, 78665.

37. Plaintiff S-K Saxony Opportunity I, LLC, a Delaware Limited Liability Company, is the owner of the real estate of, and Plaintiff Saxony Operator, LLC, a Colorado Limited Liability Company, is the operator of, The Enclave Senior Living at Saxony, a senior living community located at 12950 Talblich Street, Fishers, Indiana, 46037.

38. Plaintiff WSPT Hickory View Investors V, a Delaware Limited Liability Company, is the owner of the real estate of The Homestead at Hickory View Retirement Community, a senior living community located at 1481 Marbach Drive, Washington, Missouri, 63090.

39. Plaintiff S-K Gahanna, LLC, a Colorado Limited Liability Company, is the owner of the real estate of, and Plaintiff Gahanna Operator, LLC, a Colorado Limited Liability Company, is the operator of, Three Creeks Senior Living, a senior living community located at 5435 Morse Road, Gahanna, Ohio, 43230.

40. Plaintiff S-K Cary, LLC, a Delaware Limited Liability Company, is the owner of the real estate of, and Plaintiff Cary Senior Living, LLC, a Colorado Limited Liability Company,

is the operator of, Three Oaks Assisted Living, a senior living community located at 1055 Silver Lake Road, Cary, Illinois, 60013.

41. Plaintiff S-K West Chester Opportunity I, LLC, a Delaware Limited Liability Company, is the owner of the real estate of, and Plaintiff West Chester Operator, LLC, a Colorado Limited Liability Company, is the operator of, West Chester Assisted Living & Memory Care, a senior living community located at 7047 Hamilton Mason Road, West Chester, Ohio, 45069.

42. Plaintiff S-K Streamwood Owner, LLC, a Delaware Limited Liability Company, is the owner of the real estate of, and Plaintiff Streamwood Operator, LLC, a Colorado Limited Liability Company, is the operator of, Westbrook Senior Living, a senior living community located at 110 West Schaumburg Road, Streamwood, Illinois, 60107.

43. Plaintiff S-K Westerville Opportunity II, LLC, a Delaware Limited Liability Company, is the owner of the real estate of, and Plaintiff Westerville Operator, LLC, a Colorado Limited Liability Company, is the operator of, Westerville Senior Living, a senior living community located at 363 Braun Place, Westerville, Ohio, 43081.

44. Plaintiff S-K Ellisville, LLC, a Delaware Limited Liability Company, is the owner of the real estate of Westview at Ellisville Assisted Living, a senior living community located at 27 Reinke Road, Ellisville, Missouri, 63021.

45. Plaintiff SRC of Indiana, LLC is a Colorado Limited Liability Company that manages Anson Senior Living, Carmel Senior Living, Meadow Brook Senior Living, and The Enclave Senior Living at Saxony.

46. Plaintiff SRC of Illinois, LLC is a Colorado Limited Liability Company that manages Burr Ridge Senior Living, Green Oaks Senior Living, Lombard Place Assisted Living & Memory Care, Palos Heights Senior Living, Three Oaks Assisted Living, and Westbrook Senior Living.

47. Plaintiff SRC of Oregon, LLC is a Colorado Limited Liability Company that manages Crescent Park Senior Living.

48. Plaintiff SRC of Missouri, LLC is a Colorado Limited Liability Company that manages Crestview Senior Living, Creve Coeur Assisted Living and Memory Care, Dougherty Ferry Assisted Living & Memory Care, Southview Assisted Living, The Homestead at Hickory View Retirement Community, and Westview at Ellisville Assisted Living.

49. Plaintiff SRC of Arizona, LLC is a Colorado Limited Liability Company that manages Gardens at Ocotillo Senior Living, Las Palomas Senior Living, Lone Mountain Memory Care, Palos Verde Senior Living, The Enclave at Anthem Senior Living, The Enclave at Chandler Senior Living, The Enclave at Gilbert Senior Living, and Lone Mountain Memory Care.

50. Plaintiff SRC of Colorado, LLC is a Colorado Limited Liability Company that manages HighPointe Assisted Living & Memory Care, Lincoln Meadows Senior Living, Peakview Assisted Living and Memory Care, and Rigden Farm Senior Living.

51. Plaintiff Spectrum Retirement of Ohio, LLC is a Colorado Limited Liability Company that manages Hilliard Assisted Living & Memory Care, Mason Assisted Living & Memory Care, Powell Assisted Living & Memory Care, Powell Senior Living, Sycamore Creek Senior Living, Three Creeks Senior Living, West Chester Assisted Living & Memory Care, and Westerville Senior Living.

52. Plaintiff SRC of Texas, LLC, d/b/a Spectrum Retirement of Texas, is a Colorado Limited Liability Company that manages Lake Travis Independent Living, The Enclave at Cedar Park Senior Living, and The Enclave at Round Rock Senior Living.

53. Plaintiff SRC of New Mexico, LLC, d/b/a Spectrum Retirement of New Mexico, is a Colorado Limited Liability Company that manages Los Soleras Independent Living.

54. Plaintiff SRC of Kansas, LLC is a Colorado Limited Liability Company that manages Park Meadows Memory Care, Park Meadows Senior Living, and Shawnee Hills Senior Living.

55. Defendant, Continental Casualty Company, is an Illinois corporation that is authorized to transact insurance business in Colorado. Continental Casualty is held by CNA Insurance, and is hereinafter referred to as “CNA.”

Jurisdiction and Venue

56. This Court has subject matter jurisdiction over this action pursuant to the Constitution of the State of Colorado, Article VI, Section 9, as the court of general jurisdiction for the State of Colorado.

57. This Court has personal jurisdiction over CNA because it is authorized to transact insurance business and does transact insurance business in Colorado.

58. Venue is proper in the City and County of Denver, pursuant to C.R.C.P. 98(c)(1), because Plaintiff Spectrum’s principal place of business is in the City and County of Denver, and because CNA is being served in the City and County of Denver.

Facts

59. Plaintiffs’ business is owning, operating, and managing senior housing, assisted living, and memory care communities (collectively “senior living communities”), which serve a vulnerable population.

60. In total, Plaintiffs own, operate, and manage the following forty-three communities, which employ approximately 2,230 people, and have approximately 3,800 residents: Anson Senior Living, Burr Ridge Senior Living, Carmel Senior Living, Crescent Park Senior Living, Crestview Senior Living, Creve Coeur Assisted Living and Memory Care, Dougherty Ferry Assisted Living & Memory Care, Gardens at Ocotillo Senior Living, Green Oaks Senior Living, HighPointe Assisted Living & Memory Care, Hilliard Assisted Living & Memory Care, Lake Travis Independent Living, Las Palomas Senior Living, Las Soleras Independent Living, Lincoln Meadows Senior Living, Lombard Place Assisted Living & Memory Care, Lone Mountain Memory Care, Mason Assisted Living & Memory Care, Meadow Brook Senior Living, Palos Heights Senior Living, Palos Verde Senior Living, Park Meadows Memory Care, Park Meadows Senior Living, Peakview Assisted Living and Memory Care, Powell Assisted Living & Memory Care, Powell Senior Living, Rigden Farm Senior Living, Shawnee Hills Senior Living, Southview Assisted Living, Sycamore Creek Senior Living, The Enclave at Anthem Senior Living, The Enclave at Cedar Park Senior Living, The Enclave at Chandler Senior Living, The Enclave at Gilbert Senior Living, The Enclave at Round Rock Senior Living, The Enclave Senior Living at Saxony, The Homestead at Hickory View Retirement Community, Three Creeks Senior Living, Three Oaks Assisted Living, West Chester Assisted Living & Memory Care, Westbrook Senior Living, Westerville Senior Living, and Westview at Ellisville Assisted Living (hereinafter collectively “the Communities”).

61. In addition to offering individual residential units for rent, each Community has communal facilities and offers a number of amenities to appeal to and to foster the socialization of senior citizens. While many of the Communities also offer assisted living and other personal care services, Plaintiffs’ business depends upon an ability to provide social programming, experiences, and services that a senior citizen could not otherwise have living at home.

62. Plaintiffs purchased Policy No. 6073132948 from Defendant Continental Casualty Company (“CNA”) with effective dates of August 15, 2019 to August 15, 2020, and paid a premium of over \$1.3 million for the coverage provided therein (“the Policy”). The Policy is attached as **Exhibit 1** and is incorporated herein, as if set forth in full.

63. Plaintiffs renewed the Policy, effective August 15, 2020 to August 15, 2021, and are paying a premium of over \$1.9 million for the coverage provided therein (“the Renewal Policy”).

64. Each of the Plaintiffs named in this lawsuit are Named Insureds in both the Policy and the Renewal Policy.

65. Each of the above named forty-three Communities are Covered Properties in both the Policy and the Renewal Policy.

66. The coverages provided by CNA to the Plaintiffs, as Named Insureds, in both the Policy and the Renewal Policy are substantially similar.

67. Plaintiffs purchased the Policy and Renewal Policy from CNA to protect each of their Communities from property damage and loss of income in the event Plaintiffs' business operations are suspended because Plaintiffs' are deprived of the use of their property for reasons outside of their control.

68. The Policy issued by CNA to Plaintiffs included blanket real and personal property coverage with limits of \$225 million; the Renewal Policy issued by CNA to Plaintiffs includes blanket real and personal property coverage with limits of \$100 million.

69. The Policy and the Renewal Policy include blanket business interruption (gross earning) and extra expense coverages with limits of \$50 million and a time limit of twenty-four months.

70. The Policy and the Renewal Policy include Denial of Access by Civil Authority/Ingress-Egress coverage with limits of \$2.5 million.

71. Neither the Policy nor the Renewal Policy include a virus or communicable disease exclusion.

72. COVID-19, a disease resulting from the SARS-CoV-2 novel coronavirus (hereinafter "COVID-19"), is a deadly communicable disease that has already infected approximately 27.9 million people in the United States and killed nearly 500,000 Americans.¹ COVID-19 is widely known to have had a particularly devastating impact on senior citizens; a population that the Centers for Disease Control and Prevention ("CDC") considers to be at greater risk for requiring hospitalization, intensive care, a ventilator to help breathe, and death.² Additionally, front-line workers who provide care are, compared to the general community, at a greater risk of exposure to COVID-19. Plaintiffs' communities have senior citizens as residents and employ individuals to provide care to those residents.³

73. On March 11, 2020, the World Health Organization ("WHO") declared the COVID-19 outbreak a pandemic.⁴ On March 13, 2020, President Donald Trump declared a national emergency due to the outbreak of COVID-19 in the United States.⁵

¹ See <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last viewed February 23, 2021).

² See, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>. (last viewed February 23, 2021).

³ See <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>. (last viewed February 23, 2021).

⁴ See <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> (last viewed February 23, 2021).

⁵ See <https://trumpwhitehouse.archives.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>

74. COVID-19 is a virus and a physical substance, one that has the ability to attach itself to other materials and structures; it remains stable and transmittable in aerosols for up to three hours, up to twenty-four hours on cardboard, and up to two to three days on plastic and stainless steel.⁶

75. The ability of the deadly virus to physically infect and remain on surfaces of objects or materials, i.e., “formites,” for up to twenty-eight days has prompted health officials in countries like China, Italy, France and Spain, as well as the United States, to disinfect and fumigate public areas before reopening them.

76. To avoid the increased risk of spreading and contracting the virus in congregate environments, the U.S. Center for Disease Control and Prevention (“CDC”) has advised against gatherings of more than ten people.

77. COVID-19 is physical—it can be seen, counted, measured, and destroyed; it replicates itself and destroys other cells and organisms. It can exist in the air and on surfaces for indeterminate periods of time, and it can be transferred from the air and surfaces into human bodies. The presence of the virus in a facility is a *physical* presence, and it is a damaging one.

78. The physical presence of the COVID-19 virus has been confirmed in and around each of Plaintiffs’ Covered Properties, impairing their function for their ordinary and intended uses, causing Plaintiffs’ to lose significant income, and requiring steps be taken and costs to be incurred to physically restore the facilities to a usable state.

79. The insurance industry has recognized that the presence of a virus constitutes physical damage to property since at least 2006, and, as a result, it has become common for insurance providers to issue policies with a so-called “virus exclusion.” Therefore, the lack of a virus or communicable disease exclusion in a policy is significant because it demonstrates an intent to not exclude from coverage damage caused by a virus. When preparing so-called “virus” exclusions to be placed in some policies, but not others, the insurance industry drafting arm, Insurance Services Offices, Inc. (“ISO”), circulated a statement to state regulators, including to the Division of Insurance in Colorado, stating:

Disease-causing agents may render a product impure (change its quality or substance) or enable the spread of disease by their presence on interior building surfaces or the surfaces of personal property. When disease-causing viral or bacterial contamination occurs, potential claims involve the cost of replacement of property (for example, the milk), cost of decontamination (for example, interior building surfaces), and business interruption (time element) losses.

⁶ See e.g., <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (last viewed February 23, 2021).

Although building and personal property could arguably become contaminated (often temporarily) by such viruses and bacteria, the nature of the property itself would have a bearing on whether there is actual property damage.

See ISO's August 17, 2006 filing with the State of Colorado Division of Insurance, attached as **Exhibit 2**, pp. 5-6 of pdf.

80. The presence of COVID-19 has prompted civil authorities throughout the country, including in each of the states in which the Covered Properties are located, to issue orders mandating the closure of non-essential businesses across a wide range of industries. Even for businesses that are deemed "essential," governmental orders have been issued requiring such businesses to cease certain activities, not use or alter certain physical spaces within such businesses, and to take other steps and incur costs to prevent the spread of COVID-19.

81. Colorado Governor Jared Polis issued Public Health Orders declaring a public health emergency in the State of Colorado due to COVID-19, which recognized that COVID-19 causes property "loss" and "damage." See the 4th Updated Public Health Order 20-24 Implementing Stay at Home Requirements: "**COVID-19 also physically contributes to property loss, contamination, and damage due to its propensity to attach to surfaces for prolonged periods of time**". Governor Polis has also ordered certain senior care facilities to surveil and test, as well as restrict access to those facilities. See 2nd Amended and 5th Amended PHOs 20-20. These Public Health Orders are attached as **Exhibit 3**. Governor Polis and the Colorado Department of Public Health have issued additional Orders since the start of the pandemic that severely impacted the ability of Plaintiffs to conduct their business at their Colorado Communities.

82. Similar governmental orders were issued by the governors and respective Public Health entities in the other nine states in which the Covered Properties are located (including Arizona, Illinois, Indiana, Kansas, Missouri, New Mexico, Oregon and Texas), which Orders also severely impacted the ability of Plaintiffs to conduct their businesses at their Communities in those states.

83. Both the actual presence of COVID-19 in, attaching to, and altering each of Plaintiffs' Covered Properties and the government-ordered restrictions on Plaintiffs' use of the Covered Properties constituted either (if not both) direct physical loss at or damage to those Covered Properties.

84. Residents of and/or employees working at each of the Covered Properties tested positive for COVID-19, meaning that the virus was physically present at each Covered Property.

85. Further, Plaintiffs' inability to use the Covered Properties based upon the potential or risk of COVID-19 entering the Covered Properties and contaminating the surfaces constitutes direct physical loss of and/or damage to the Covered Properties.

86. Given the known science of COVID-19 and its spread, droplets and aerosols containing COVID-19 spread from infected individuals through the air, through the HVAC systems throughout the Covered Properties, and then it attaches to the physical surfaces within the Covered Properties and infects individuals who come into contact. Through this spread, COVID-19 has caused (and continues to cause) physical damage and alterations to the Covered Properties and harms the air quality therein.

87. Plaintiffs have complied with all CDC, Federal, State and Local guidance with respect to protecting the vulnerable populations that reside and seek to reside in Plaintiffs' communities.

88. Plaintiffs' Covered Properties suffered "direct physical loss" or "direct physical damage" due to the governmental orders issued in or applicable to each state in which the Covered Properties are located mandating that Plaintiffs shutter, cease, dramatically limit, or alter physical spaces within or their use of the Covered Properties. The governmental orders, in and of themselves, constitute a Covered Cause of Loss within the meaning of the Policy.

89. In addition to certain limited or ceased operations, at times Plaintiffs were required to suspend all new move-ins and offered, in some circumstances, to provide rent deferrals for existing residents due to those existing residents no longer being able to enjoy the shuttered common areas, facilities and amenities in order to try and mitigate Plaintiffs' losses by retaining residents that considered leaving a Covered Property.

90. Due to the presence and potential presence of COVID-19, and consistent with the governmental orders in the ten subject states, Plaintiffs' had vacant residential units that were required to remain unoccupied and unrented despite interest from otherwise ready and willing new residents who were not allowed to move in because they, as members of the most vulnerable population (a population CNA willingly accepted a premium to insure the business of housing and providing for), were denied access to Plaintiffs' Covered Properties.

91. The governmental restrictions that prohibited Plaintiffs from allowing new residents into their Covered Properties not only caused direct economic damage to Plaintiffs (through lost revenue), but Plaintiffs incurred significant indirect financial damages and costs as a result of their inability to satisfy certain occupancy requirements causing Plaintiffs to be in default under various loan agreements and incur significant costs to financially cure those defaults.

92. During the periods of time that Plaintiffs were prohibited from accepting new residents, only those individuals who resided in Plaintiffs' communities pre-COVID-19 (a number which could only, and did, decrease) and Plaintiffs' staff or other care providers were allowed into the communities, but access to the dining halls and other facilities for those limited groups of people was still denied as areas and operations where people previously gathered were forced to close. At the same time that Plaintiffs' revenue was decreasing and despite having to close or limit certain areas and operations, for reasons discussed below, Plaintiffs' expenses were increasing.

93. In addition to instances of an actual exposure, some portions of Plaintiffs' facilities were forced to shut down due to the potential exposure to COVID-19.

94. Given the pervasive presence of COVID-19, the ease with which COVID-19 spreads, the fact that there had been confirmed cases of COVID-19 *inside* each of the Covered Properties, and the ability of COVID-19 to attach to, exist on, and be transmitted through physical surfaces and objects, there is no doubt that COVID-19 was present in Plaintiffs' communities, causing direct physical loss of Plaintiffs' facilities.

95. Plaintiffs were unable to register new residents and were not able to meet with sale representative or do tours for an extended period of time as only existing residents and staff were allowed into the buildings.

96. Plaintiffs returned deposits for the move-ins they were not permitted to consummate because of governmental orders or to the move-ins who were dissuaded from proceeding to move in because the Covered Properties could no longer offer the communal facilities and amenities.

97. To repair the physical loss or damage and the infestation on the surfaces caused by the physical presence of COVID-19, Plaintiffs made numerous operational and physical changes and/or structural alterations to the Covered Properties.

98. Plaintiffs' communities incurred additional expenses associated with obtaining and maintaining residents and staff members' health and safety, including, but not limited to, obtaining Personal Protective Equipment ("PPE"), providing in-room dining, increased resident care staffing, "hero pay" to Plaintiffs' community resident care teams, enhanced infection control, sterilization procedures and equipment, and creating isolation areas in the communities.

99. Plaintiffs incurred extra expenses for cleaning following positive tests for COVID-19; for purchasing and storing large quantities of PPE and other medical supplies, including masks, gowns, thermometers, etc., used by both staff and residents (and for which Plaintiffs had to arrange and pay for additional warehouse spaces); increased costs for providing food and beverage to resident rooms due to the closure of Plaintiffs' dining halls, including the use of disposable plates, cups, utensils, take-out style containers, etc.; additional cleaning supplies; hiring of additional staff through independent staffing agencies and requiring current employees to work overtime; to pay employees while they were quarantined but not working; to hire medical, nursing and legal consultants to assist in developing responses to various governmental orders and implementing policies and procedures for addressing compliance with various COVID-19 related regulations and guidelines; and, having to physically reconfigure or repurpose interior areas within communities by, for example, purchasing and placing plexiglass dividers and reconfiguring rooms to become visitation rooms.

100. The implementation of these additional safety measures coupled with the communities' stagnant or decreasing occupancy resulted in increased operating expenses and a

significant loss of revenue. Total revenues decreased significantly, starting in March 2020, and continuing through the present.

101. The Policy and the Renewal Policy provide “all risks” coverage, except when expressly excluded. Specifically, the Policy provides, in pertinent part:

Except as hereafter excluded and subject to the LIMITS OF LIABILITY in Section I.4. and all policy provisions, this policy insures against risks of direct physical loss of or damage to property and/or interests described herein at covered Locations.

See **Exhibit 1**, p. 19 of pdf.

102. The Policy and Renewal Policy include coverage for Business Interruption (Gross Earnings), which provides, in pertinent part:

This policy covers against loss resulting from necessary interruption of business caused by direct physical loss of or damage to covered property, except Finished Stock, the peril(s) insured against and occurring during the term of this policy at covered Locations occupied by the insured, subject to the sublimit specified in Section **I.4.** of this policy.

In the event of such physical loss or damage the Company shall be liable for the actual loss sustained by the Insured resulting directly from such interruption of business, but not exceeding the reduction in **Gross Earnings** as set forth below less charges and expenses which do not necessarily continue during the interruption of business, for only such length of time as would be required with the exercise of due diligence and dispatch to rebuild, repair or replace such part of the property herein described as has been damaged or destroyed, commencing with the date of such damage or destruction and not limited by the date of expiration of this policy, but in no event to exceed the number of months specified in Section **I.5. TIME LIMITS** if a Business Interruption Period of Indemnity limit is specified.

See **Exhibit 1**, p 20 of pdf.

103. The Policy and Renewal Policy include Extra Expense coverage, which provides, in pertinent part:

The Company will pay for the reasonable and necessary extra expenses, as hereinafter defined, incurred by the insured in order to continue as nearly as practicable the normal operation of the Insured’s business following direct physical loss of or damage to covered property by perils(s) insured against.

In the event of such physical loss or damage, the Company shall be liable for such reasonable and necessary extra expense incurred for only such length of time as would be required with the exercise of due diligence and dispatch to rebuild, repair or replace such part of the property as has been damaged, commencing with the date of damage and not limited by the date of expiration of this policy, subject to the sublimit specified in Section I.4. of this policy.

See **Exhibit 1**, p. 24-25 of pdf.

104. CNA does not define the terms “direct,” “physical,” “loss,” or “damage.”
105. The words “loss” and “damage” are not synonymous.
106. In the Policy and Renewal Policy, the words “loss” and “damage” are used with the disjunctive “or” so the two words and phrases “loss of” and “damage to” must have different meanings.
107. “Direct” is defined in Merriam-Webster’s Dictionary, in part, as: “characterized by close logical, causal, or consequential relationship.”⁷
108. “Physical” is defined in Merriam-Webster’s Dictionary, in part, as: “having material existence; perceptible especially through the senses and subject to the law of nature.”⁸
109. “Loss” is defined in Merriam-Webster’s Dictionary, in part, as: “the act of losing possession” and “deprivation.”⁹
110. “Damage” is defined in Merriam-Webster’s Dictionary, in part, as: “loss or harm resulting from injury to person, property, or reputation.”¹⁰
111. A plain reading of the phrase “direct physical loss” includes the deprivation (loss) of a building (physical) resulting from a shutdown order (direct) without physical damage.
112. The coverage clause, an undefined disjunctive phrase – “direct physical loss of or damage to” – covers the deprivation or dispossession of a business resulting from a shutdown order (“direct physical loss of”) without physical damage (“or damage to”).
113. As the drafter of the Policy and the Renewal Policy, CNA could have required that “direct physical loss” requires structural or tangible damage, but it did not.

⁷ See <https://www.merriam-webster.com/dictionary/direct> (last viewed February 23, 2021).

⁸ See <https://www.merriam-webster.com/dictionary/physical> (last viewed February 23, 2021 }.

⁹ See <https://www.merriam-webster.com/dictionary/loss> (last viewed February 23, 2021).

¹⁰ See <https://www.merriam-webster.com/dictionary/damage> (last viewed February 23, 2021).

114. The Policy also insures against direct physical loss of “interests ... at Covered Locations.”

115. “Interests” is not defined in the Policy.

116. “Interest” is defined in Merriam-Webster’s Dictionary, in part, as: “right, title, or legal share in something; participation in advantage and responsibility.”¹¹

117. A plain reading of the phrase “direct physical loss ... of interests” includes the deprivation (loss) of the interest in running the Plaintiffs’ businesses in their buildings (physical) resulting from a shutdown order (direct) without physical damage.

118. Unlike some commercial property policies available in the market, the Policy and the Renewal Policy do *not* include an exclusion for a “loss” caused by a pandemic, virus, or infectious disease.

119. If CNA intended to exclude virus-related losses under the Policy and Renewal Policy, it easily could have done so with an express exclusion; it did not.

120. Thus, Plaintiffs reasonably expected the Policy to include coverage for physical loss and business interruption losses caused by viruses such as COVID-19.

121. The Policy and Renewal Policy include coverage for Denial of Access by Civil Authority and Ingress-Egress, which provides, in pertinent part:

This policy is extended to cover for up to the time limit specified in Section **I.5.** but not exceeding the sublimit shown in Section **I.4.** of this policy, the actual loss sustained:

- a.* During the period of time while access to the Insured’s **Location** is prohibited by order of civil authority, but only when such order is given as a direct result of physical loss or damage to property of the type insured from a peril insured against occurring at or in the immediate vicinity of said **Location**, or
- b.* During the period of time when as a direct result of physical loss or damage to property of the type insured from a peril insured against ingress to or egress from the insured’s **Location** is thereby physically prevented.

See **Exhibit 1**, p 23 of pdf.

¹¹ <https://www.merriam-webster.com/dictionary/interest> (last viewed February 23, 2021).

122. Plaintiffs were prohibited by the above-referenced governmental orders from accessing their Communities to the same extent as before those orders, which caused Plaintiffs to sustain losses.

123. As a result of COVID-19's confirmed and potential presence in the Covered Properties and the COVID-19 related governmental shutdown orders, Plaintiffs have suffered direct physical loss of and damage to their Covered Properties and Plaintiffs' interests in the Covered Properties because they have been unable to occupy and use their physical property to the full extent they would have otherwise been able to.

124. As such, the Policy and Renewal Policy insured against the loss of business property to generate income as a direct result of COVID-19's confirmed presence in each of the Covered Properties and the governmental orders suspending or severely curtailing operations of each of the Covered Properties due to COVID-19.

125. Under Colorado law, the loss of the ability to use covered property due to the presence of a dangerous substance in or on the property constitutes "direct physical loss" that triggers first-party property coverage; tangible physical alteration of the property is not required; structural or tangible damage to property is not required. *Western Fire. Ins. Co. v. First Presbyterian Church*, 165 Colo. 34 (1968) (en banc).

126. The virus has physically contaminated each of the Plaintiffs' facilities.

127. COVID-19 is a dangerous substance that was present at each of the Covered Properties and the presence of the COVID-19 virus at each of Plaintiffs' facilities caused "direct physical loss of or damage" to each Covered Property.

128. Having faithfully paid millions of dollars in premiums to CNA over the years for the coverage provided in the Policy and Renewal Policy (and specifically paying more money in premiums for coverage that does *not* have a virus exclusion), Plaintiffs made a claim for business interruption and extra expense coverage and for civil authority and ingress-egress coverage to recoup substantial, ongoing financial losses directly attributed to COVID-19, and extra expenses incurred relating thereto, as well as the governmental orders.

129. By letters dated August 31, 2020 and November 16, 2020, CNA wrongfully denied Plaintiffs' claims. These letters are attached as **Exhibits 4** and **5**, respectively.

130. Beginning in about mid-March of 2020, and continuing thereafter, as a direct result of the COVID-19 pandemic and governmental orders, and due to the presence of COVID-19 at each of the Covered Properties, Plaintiffs were forced to shutter or severely limit and restrict the activities at each of their Covered Properties and to incur covered extra expenses that are covered benefits under the Policy and Renewal Policy.

First Claim for Relief

(Breach of Contract)

131. Plaintiffs incorporate all allegations set forth elsewhere in this Complaint, as though fully set forth herein.

132. The Policy and Renewal Policy are insurance contracts under which CNA was paid premiums in exchange for CNA's promise to pay Plaintiffs' losses for claims covered by the Policy and Renewal Policy, such as business income and extra expense losses, and losses from the denial of access by civil authority and ingress-egress incurred as a result of non-excluded causes, including viruses.

133. Plaintiffs have complied with all applicable provisions of the Policy and Renewal Policy, including payment of the premiums in exchange for coverage under the Policy and Renewal Policy, and yet CNA has breached its insurance coverage obligations pursuant to the Policy's and Renewal Policy's above referenced terms.

134. As a result of CNA's breaches of the Policy and Renewal Policy, Plaintiffs have sustained substantial damages in excess of \$1 million for which CNA is liable in an amount to be determined at trial.

Second Claim for Relief

(Statutory Delay/Denial; Violation of C.R.S. §§ 10-3-1115 & 1116)

135. Plaintiffs incorporate all allegations set forth elsewhere in this Complaint, as though fully set forth herein.

136. CNA owes the benefits referenced above to Spectrum under the Policy and Renewal Policy.

137. CNA denied payment of these covered benefits owed under the Policy and Renewal Policy.

138. CNA's denial of payment of these benefits owed was, and continues to be without a reasonable basis, in violation of C.R.S. §10-3-1115.

139. CNA's violation of C.R.S. §10-3-1115 entitles Plaintiffs to the remedies provided in C.R.S. §10-3-1116, including actual damages of two times the covered benefit, plus attorney's fees and costs.

Third Claim for Relief

(Common Law Bad Faith)

140. Plaintiffs incorporate all allegations set forth elsewhere in this Complaint, as though fully set forth herein.

141. Under Colorado law, insurers are required to “be at all times actuated by good faith in everything pertaining” to providing insurance to the public. C.R.S. §10-1-101.

142. CNA owes the benefits referenced above to Spectrum under the Policy and Renewal Policy and Colorado law.

143. CNA has failed and continues to fail to timely provide Spectrum the benefits owed under the Policy and Colorado law as referenced above, and thus failed to honor its obligations to pay under the Policy and Renewal Policy and Colorado law.

144. CNA did not conduct a meaningful investigation; they never visited any of Plaintiffs’ locations to investigate the claims.

145. CNA at all times owed to Spectrum the duty of good faith and fair dealing.

146. CNA’s failure to timely pay the benefits owed, and CNA’s other conduct, as more fully described above, was a breach of this duty.

147. By its actions and inactions, CNA engaged in one or more of the following acts, some of which are considered Unfair Claim Settlement Practices, pursuant to C.R.S. §10-3-1104(1)(h):

- a. unreasonably failing to pay the claim;
- b. unreasonably failing to properly construe the Policy and Renewal Policy;
- c. unreasonably failing to make payments in a reasonable and timely manner;
- d. misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue [C.R.S. §10-3-1104(1)(h)(I)];
- e. failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under the Policy and Renewal Policy [C.R.S. §10-3-1104(1)(h)(II)];
- f. failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies [C.R.S. §10-3-1104(1)(h)(III)];
- g. refusing to pay claims without conducting a reasonable investigation based upon all available information [C.R.S. §10-3-1104(1)(h)(IV)];
- h. not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear [C.R.S. §10-3-1104(1)(h)(VI)];

- i. failing to act reasonably in the adjustment and resolution of the claims when CNA was aware or should have been aware of its negligence;
- j. failing to comply with reasonable standards in connection with the investigation, resolution and adjustment of the claims;
- k. unreasonably denying or failing to affirm coverage for the claims within a reasonable time after investigation;
- l. continuously and without a reasonable basis, other than pretext, disputing matters for which there was a clear obligation of payment of the claims under the terms of the Policy and Renewal Policy and Colorado law;
- m. creating artifices, pre-textual decisions, and otherwise engaging in a course of conduct designed and calculated to delay reasonable and appropriate resolution of the claims; and,
- n. unreasonably engaging in a course of conduct designed to hamper, delay, thwart and prevent the timely, reasonable or proper resolution of the claims; and

148. The above-described actions and inactions of CNA show that it has acted unreasonably toward Plaintiffs.

149. CNA knew that this conduct was unreasonable, or recklessly disregarded the fact that its conduct was unreasonable.

150. CNA's unreasonable conduct has caused Plaintiffs the damages described above.

151. CNA's bad faith conduct toward Plaintiffs was conducted in a willful, wanton, and reckless disregard of Plaintiffs' rights and feelings.

WHEREFORE, Plaintiffs pray this Honorable Court to:

1. Enter judgment in favor of Plaintiffs and against CNA for their losses and damages resulting from CNA's failure to honor the terms of the Policy and Renewal Policy and Colorado law; for their attorney's fees; and, for other bad faith damages;

2. Award the remedies provided in C.R.S. § 10-3-1116(1), including the actual damages of two times the amount of the covered benefit, plus attorney's fees and costs;

3. Award prejudgment and post-judgment interest and costs; and

4. Award such other and further relief as this Court deems just and proper.

JURY DEMAND

PLAINTIFFS DEMAND A TRIAL BY A JURY ON ALL ISSUES SO TRIABLE.

Respectfully submitted this 24th day of February, 2021.

**BURG SIMPSON
ELDREDGE HERSH & JARDINE, P.C.**

*(Original signed copy on file at the law offices
of Burg Simpson Eldredge Hersh & Jardine, P.C.)*

/s/ Michael S. Burg

Michael S. Burg, Reg. No. 7143

Thomas W. Henderson, Reg. No. 16892

David K. TeSelle, 29648

Kirsten N. Kube, Reg. No. 51374

ATTORNEYS FOR PLAINTIFFS

Plaintiffs' Address:

4600 S. Syracuse Street

11th Floor

Denver, CO 80237