

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

ENT AND ALLERGY ASSOCIATES, LLC,)
LITCHFIELD HILLS ORTHOPEDIC)
ASSOCIATES, LLP, and LITCHFIELD)
HILLS SURGICAL CENTER, LLP)

Plaintiffs)

v.)

CONTINENTAL CASUALTY COMPANY)
AND CNA FINANCIAL CORPORATION,)

Defendants.)

JURY TRIAL DEMANDED

MARCH 5, 2021

COMPLAINT

Plaintiffs, ENT and Allergy Associates, LLC, Litchfield Hills Orthopedic Associates, LLP and Litchfield Hills Surgical Center, LLP (“Plaintiffs”), bring this action against Defendants, Continental Casualty Company and CNA Financial Corporation (“Defendants” or “CNA”), and in support thereof state and allege the following:

I. INTRODUCTION

This case concerns whether Plaintiffs’ business income losses and extra expenses incurred due to the necessary suspension of operations at their medical facilities caused by the on-going COVID-19 pandemic are covered under the Defendants’ all-risk Businessowners Special Property Coverage Form and Business Income and Extra Expense Coverage Form. As more specifically pled herein, the

Defendants agreed to pay for the actual loss of Business Income and Extra Expense that the Plaintiffs sustained due to the necessary suspension of operations at their medical facilities when the suspension was caused by direct physical loss of or damage to covered properties. Defendants have breached the respective contracts, the implied covenant of good faith and fair dealing owed to each plaintiff and violated CUIPA/CUTPA by wrongfully denying Plaintiffs' claims for their losses.

II. NATURE OF THE ACTION

1. This action arises out of Defendants' failure to honor its agreement to provide insurance coverage for the losses sustained and expenses incurred by Plaintiffs due to the necessary suspension of operations at their medical facilities caused by the ongoing Coronavirus (COVID-19) Pandemic.

2. For many years, Plaintiffs have operated medical practices in the Trumbull, Torrington, and Bristol areas, respectively. Since March 2020, Plaintiffs' routine operations have been suspended or limited, and they continue to be threatened by and at imminent risk of the novel Coronavirus, SARS-CoV-2, which causes the infectious disease COVID-19.

3. To protect their businesses in the event that they were suddenly forced to suspend routine operations for reasons outside of their control, or in order to prevent further property damage, Plaintiffs purchased insurance coverage from Defendants, including property coverage, as set forth in CNA's Businessowners Special Property Coverage Form and Business Income and Extra Expense endorsement.

4. Defendants' coverage forms provide "Business Income" coverage, which promises to pay for actual loss of Business Income due to the necessary suspension of operations during the period of restoration caused by direct physical loss of or damage to property at the described premises.

5. Defendants' coverage forms provide "Extra Expense" coverage, which promises to pay for necessary Extra Expense that its insureds would not have sustained if there had been no direct loss to property caused by or resulting from a Covered Cause of Loss.

6. Defendants' coverage forms, under sections titled "Duties in the Event of Loss or Damage", require in the event of a loss or damage that the policyholder take all reasonable steps to protect the Covered Property from further damage, and keep a record of the expenses necessary to protect the Covered Property, for consideration in the settlement of the claim.

7. Unlike some policies that provide Business Income (also referred to as "business interruption") coverage, Defendants' coverage forms do not include, and are not subject to, any exclusion for loss or damage caused by viruses, communicable diseases, or pandemics.

8. In March 2020, Plaintiffs were forced to suspend or reduce operations at their medical practices due to direct physical loss of or damage to covered property as a result of the COVID-19 Pandemic and the ensuing orders issued by civil authorities in the State of Connecticut, health guidance from the CDC and guidance from medical associations and societies.

9. In addition, Plaintiffs incurred expenses to repair, restore and protect the Covered Property from the impact of the COVID-19 Pandemic.

10. The Defendants have refused to pay the Plaintiffs under its Business Income, Extra Expense, Civil Authority, and Sue and Labor coverages for losses suffered due to the COVID-19 Pandemic, and any efforts to prevent further property damage or to minimize the suspension of business and continue operations. In particular, the Defendants have denied claims submitted by Plaintiffs under their Policies.

III. THE PARTIES

11. ENT and Allergy Associates, LLC is a Connecticut limited liability company, with its principal place of business in Trumbull, Connecticut.

12. Litchfield Hills Orthopedic Associates, LLP and Litchfield Hills Surgical Center, LLP are Connecticut limited liability partnerships with places of business in Torrington and Bristol, Connecticut.

13. Each of the members of ENT and Allergy Associates, LLC, Litchfield Hills Orthopedic Associates, LLP and Litchfield Hills Surgical Center, LLP is a resident and citizen of Connecticut.

14. Continental Casualty Company is, and at all times relevant hereto has been, an insurance company writing policies and doing business in the State of Connecticut, capable of suing and being sued in the courts of this State. Continental Casualty Company is a foreign corporation organized, incorporated and existing

under the laws of the State of Delaware, with its principal place of business in Chicago, Illinois.

15. Continental Casualty Company is a wholly owned subsidiary of CNA Financial Corporation and acts on its own behalf and on behalf of CNA Financial Corporation.

16. CNA Financial Corporation is, and at all times relevant hereto has been, an insurance company writing policies and doing business in the State of Connecticut, capable of suing and being sued in the courts of this State. CNA Financial Corporation is a foreign corporation organized, incorporated and existing under the laws of the State of Delaware, with its principal place of business in Chicago, Illinois.

17. CNA Financial Corporation provides marketing, underwriting, and claim handling support to Continental Casualty Company.

IV. JURISDICTION AND VENUE

18. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332, because Plaintiffs and Defendants are citizens of different states, and because the amount in controversy exceeds \$75,000.00 exclusive of interest and costs, and no relevant exceptions apply to this claim.

19. Venue is proper in this District under 28 U.S.C. § 1391, because a substantial part of the events or omissions giving rise to the claims occurred, or a substantial part of property that is the subject of this action is situated in this judicial district. The Policies at issue cover Plaintiffs' facilities located in the State

of Connecticut and Plaintiffs purchased the Policies at issue from insurance brokers in the State of Connecticut.

V. **FACTUAL BACKGROUND**

The Insurance Policies

20. In return for the payment of a premium, Defendants issued Policy No. B 6011680724 to ENT and Allergy Associates, LLC for a policy period of September 1, 2019 to September 1, 2020. The Policy contains a Businessowners Special Property Coverage Form and Business Income and Extra Expense endorsement. The Declaration Page for Policy No. B 6011680724 is attached hereto and incorporated by reference as *Exhibit 1*.

21. In return for the payment of a premium, Defendants issued Policy No. B 6011179848 to Litchfield Hills Orthopedic Associates, LLP for a policy period of January 1, 2020 to January 1, 2021. Litchfield Hills Surgical Center, LLP is an additional insured under that Policy. The Policy contains a Businessowners Special Property Coverage Form and the Business Income and Extra Expense endorsement. The Declaration Page for Policy No. B 6011179848 is attached hereto and incorporated by reference as *Exhibit 2*.

22. Attached hereto and incorporated by reference as *Exhibit 3*, is a copy of the Defendants' Businessowners Special Property Coverage Form and the Business Income and Extra Expense Coverage Form, which are the material parts of each Policy.

23. Policy No. B 6011680724 and Policy No. B 6011179848 are collectively referred to as the “Policies”.

24. Plaintiffs are the Named Insureds under the Policies, which remain in force.

25. Defendants are the effective and liable insurer under the Policies.

26. Plaintiffs have performed all of their obligations under the Policies including the payment of premiums and cooperation in Defendants’ claims investigation and preservation of the property.

27. Sometimes property insurance is sold on a specific peril basis, where coverage is limited to risks of loss that are specifically listed (e.g., hurricane, earthquake, etc.). Many property policies sold in the United States, however, including those sold by Defendants, are “all-risk” property damage policies. These types of policies cover all risks of loss except for risks that are expressly and specifically excluded or limited by other portions of the Policy.

28. Under the Policies, “Covered Causes of Loss”, are defined as “RISKS OF DIRECT PHYSICAL LOSS” unless the loss is excluded or limited in the Policies.

29. Under the Policies, Defendants agreed to “pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from a Covered Cause of Loss”.

30. The Policies do not exclude or limit coverage for losses caused by viruses, pandemics, communicable diseases, or anything similar.

31. Under the Policies, Defendants agreed to “pay for the actual loss of Business Income you sustain due to the necessary ‘suspension’ of your ‘operations’ during the ‘period of restoration’. The ‘suspension’ must be caused by direct physical loss of or damage to property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss.”

32. With respect to coverage for loss of Business Income due to the necessary suspension of operations, “suspension” means partial or complete cessation of your business activities; or that a part or all of the described premises is rendered untenable.

33. Under the Policies, Defendants are liable to pay Plaintiffs for loss of “Business Income” which is defined as net income (net profit or loss before income taxes) that would have been earned or incurred and continuing normal operating expenses sustained, including payroll.

34. Defendants also agreed to pay reasonable and necessary Extra Expense that its insureds incurred during the “period of restoration” that the insured would not have incurred if there had been no direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss.

35. “Extra Expense” includes expenses to avoid or minimize the suspension of business and to continue operations at the described premises, and to repair or replace the property.

36. Under the Policies section titled “Duties in the Event of Loss”, in the event of loss or damage to Covered Property the policyholder must take all

reasonable steps to protect the Covered Property from further damages, and to keep a record of the expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This is commonly referred to as “Sue and Labor” coverage. In this instance, Plaintiffs were required to suspend operations to protect the property from further loss or damage caused by the spread of the virus.

37. The Policies also provide coverage for the actual loss of Business Income and reasonable and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises when the civil authority action is due to direct physical loss of or damage to property at locations, other than the described premises, caused by or resulting from a Covered Cause of Loss.

38. Loss and damage caused by SARS-CoV-2, the COVID-19 Pandemic and the related orders issued by state, and federal authorities triggered coverage under the Business Income, Extra Expense, Civil Authority, and Sue and Labor provisions of the Policies.

SARS-CoV-2 / COVID-19 Pandemic and the Covered Cause of Loss

39. SARS-CoV-2 is a highly contagious virus that has rapidly spread and continues to spread across the United States. It is a physical substance, human pathogen and can be present outside the human body in viral fluid particles. The virus frequently causes a disease known as COVID-19. According to the CDC, everyone is at risk of getting COVID-19.

40. COVID-19 is spread by a number of methods, including “community spread”, meaning that some people have been infected and it is not known how or where they became exposed. Public health authorities, including the CDC, have reported significant ongoing community spread of the virus including instances of community spread in all 50 states.

41. The CDC has reported that a person can become infected and it is not known how or where they became exposed.

42. More specifically, COVID-19 infections are spread through droplets of different sizes which can be deposited on surfaces or objects.

43. In addition, The New England Journal of Medicine reported finding that experimentally produced aerosols containing the virus remained infectious in tissue-culture assays, with only a slight reduction of infectivity during a 3-hour period of observations. An April 2020 study published in the journal, *Emerging Infectious Diseases*, found a wide distribution of SARS-CoV-2 on surfaces and in the air about 13 feet from patients in two hospital wards. This means there has been a finding of SARS-CoV-2 in the air.

44. SARS-CoV-2 was and is ubiquitous in all parts of Connecticut including the surrounding areas where plaintiffs’ Covered Property is located.

45. SARS-CoV-2 has been transmitted by way of human contact with surfaces and items of physical property located at premises in Connecticut.

46. SARS-CoV-2 has been transmitted by way of human contact with airborne SARS-CoV-2 particles emitted into the air at premises in Connecticut.

47. The presence of any SARS-CoV-2 particles renders items of physical property unsafe and the premises unsafe.

48. The presence of any SARS-CoV-2 particles on physical property impairs value, usefulness and/or normal function.

49. The imminent threat of SARS-CoV-2 particles on physical property impairs value, usefulness and/or normal function.

50. The presence of any SARS-CoV-2 particles causes direct physical harm, direct physical damage, and direct physical loss to property.

51. The imminent threat of SARS-CoV-2 particles causes direct physical harm, direct physical damage, and direct physical loss to property.

52. The presence of asymptomatic people infected with or carrying COVID-19 at premises renders the premises, including property located at that premises unsafe, resulting in direct physical loss or damage to the premises and property.

53. The Plaintiffs' covered property was contaminated with SARS-CoV-2, and Plaintiffs' premises remain at imminent risk of contamination with SARS-CoV-2 and it has suffered direct physical loss of or damage to the property. The incubation period for COVID-19 is at least 14 days. Current evidence shows that the first death from COVID-19 in the United States occurred as early as February 6, 2020 – weeks earlier than previously reported, suggesting that the virus has been circulated in the United States far longer than previously assumed. It is likely

patients, employees and/or other visitors to the insured properties were infected with COVID-19 and thereby infected the insured property with COVID-19.

54. To reduce the spread of the disease, the CDC has recommended that businesses clean and disinfect all surfaces, prioritizing the most frequently touched surfaces.

55. The effects of COVID-19 have resulted in the World Health Organization declaring the existence of a Pandemic.

56. The Pandemic is a public health crisis that has profoundly impacted American society, including the public's ability to safely obtain medical care.

57. If a person ill with COVID-19 enters a building, then (until disinfected and decontaminated) the building would be physically altered by the direct physical presence of the virus on surfaces or the air, and, thus, physically damaged.

58. As a result of the presence of SARS-CoV-2 on the Covered Properties, the imminent risk of further contamination, the Plaintiffs have made physical repairs, including cleaning, sterilizing, and reconfiguring the Covered Properties so as to mitigate damages posed by the presence of SARS-CoV-2 at the Covered Properties and to minimize the suspension of operations. All of these measures constitute "Extra Expense" under the Policies.

59. Plaintiffs have suffered direct physical loss of or damage to Covered Property caused by or resulting from the possible presence of a deadly virus or the

imminent risk of such on-site contamination, or governmental orders limiting the use of Plaintiffs' properties and stay at home orders or some combination of the foregoing.

60. Plaintiffs plead all theories of liability in the alternative or cumulatively.

The Connecticut Closure Orders

61. On March 10, 2020, Governor Lamont of the State of Connecticut ordered a Declaration of Civil Preparedness and Public Emergencies.

62. On March 20, 2020, Governor Lamont entered an order directing all residents in Connecticut to stay at home, imposing social distancing rules, limited occupancy of buildings, and reiterated that any entity that does not employ individuals to perform essential worker functions as set forth in guidance provided by the U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency (CISA) shall adhere to limitations on social gatherings and social distancing set forth in the Order. The purpose of the order was to mitigate and slow the spread of COVID-19 in the state.

63. Thereafter, Governor Lamont, has continued to enter a series of Executive Orders.

64. On March 26, 2020, the Governor of the State of Connecticut issued a civil authority order limiting social gatherings of more than 5 people. The purpose of the order was to mitigate and slow the spread of COVID-19 in the state. On

February 8, 2021, the Governor of the State of Connecticut extended Connecticut's State of Emergency in response to the COVID-19 pandemic until April 19, 2021.

65. The Connecticut Closure Orders were issued in response to the rapid spread of the COVID-19 Pandemic throughout Connecticut. The Closure Orders are civil authority orders which contributed to causing the suspension of Plaintiff's routine operations.

66. As a response to COVID-19 and the Pandemic, the Governor of Connecticut has issued these orders pursuant to the authority vested in him by the Connecticut Constitution and the laws of Connecticut.

67. Similarly, the Connecticut Department of Public Health, pursuant to its authority under Connecticut law, has issued directives and guidance related to COVID-19 commencing on March 16, 2020 and continuing to the present time.

68. The State of Connecticut is a civil authority contemplated by Defendants' Policies.

69. The Governor of the State of Connecticut and the State of Connecticut Public Health Department are civil authorities contemplated by Defendants' Policies.

70. The Pandemic has constituted a disaster.

71. The Plaintiffs have incurred actual loss of business income and reasonable and necessary Extra Expense caused by action of civil authorities prohibiting access to the covered properties due to direct physical loss of or damage to property.

The Impact of SARS-CoV-2 / COVID-19 and the Closure Orders

72. Loss of use of property due to the presence of SARS-CoV-2 or the imminent risk of the presence of SARS-CoV-2 constitutes direct physical loss of or damage to property for purposes of first-party property insurance.

73. As the drafter of the Policies, if Defendants had wished to exclude from coverage loss of use of property that has not been physically altered or deformed, it could have used explicit language stating such a definition, but it did not do so.

74. The existence of SARS-CoV-2 caused direct physical loss of or damage to the covered property or “premises” under the Plaintiffs’ Policies, by denying use of and damaging the covered property, and by causing a necessary suspension (in whole or in part) of operations during a period of restoration and requiring prevention, repair and restoration measures.

75. The State of Connecticut, through the Governor and Department of Public Health, have issued and continue to issue authoritative orders governing Connecticut citizens and businesses, including the Plaintiff’s business, in response to COVID-19 and the Pandemic, the effect of which have caused and continue to cause Plaintiffs to cease and/or significantly reduce operations at the premises described in the Policies and to incur Extra Expenses.

76. State and local governmental authorities and public health officials around the United States acknowledge that COVID-19 and the Pandemic cause direct physical loss of and damage to the property. For example: (a) The State of

Colorado issued a Public Health Order indicating that “COVID-19...physically contributes to property loss, contamination, and damage...” (b) The City of New York issued an Emergency Executive Order in response to COVID-19 and the Pandemic, in part “because the virus physically is causing property loss and damage”. (c) Broward County, Florida issued an Emergency Order acknowledging that COVID-19 “is physically causing property damage”. (d) The State of Washington issued a Stay-at-Home Proclamation stating the “COVID-19 Pandemic and its progression...remains a public disaster affecting life, health [and] property”. (e) The State of Indiana issued an Executive Order recognizing that COVID-19 has the “propensity to physically impact surfaces and personal property”. (f) The City of New Orleans issued an order stating, “there is reason to believe that COVID-19 may spread amongst the population by various means of exposure, including the propensity to attach to surfaces for a prolonged period of time, thereby spreading from surface to person and causing property loss and damage in certain circumstances”. (g) The State of New Mexico issued a Public Health Order acknowledging the “threat” COVID-19 “poses” to “property”. (h) North Carolina issued a statewide Executive Order in response to the Pandemic not only “to assure adequate protection for lives” but also to “assure adequate protection of...property”. (i) The City of Los Angeles issued an Order in response to COVID-19 “because, among other reasons, the COVID-19 virus can spread easily from person-to-person and it is physically causing property loss or damage due to its tendency to attach to

surfaces for prolonged periods of time; and (j) The City of Kansas City, Missouri issued a Proclamation in response to COVID-19 “to protect life and property”.

77. As a result of the presence of SARS-CoV-2 and/or the imminent threat of the presence of SARS-CoV-2, Plaintiffs lost Business Income and incurred Extra Expense.

Plaintiffs Submitted Notices of Loss to Defendants and Were Wrongfully Denied Coverage

78. Plaintiffs submitted notices of loss to Defendants due to the probable presence of SARS-CoV-2 and the COVID-19 Pandemic. The Defendants denied ENT and Allergy Associates, LLC’s claim and has not responded to Litchfield Hills Orthopedic Associates, LLP and Litchfield Hills Surgical Center, LLP’s claim. The denial letter is attached hereto and incorporated by reference as *Exhibit 4*.

79. Upon information and belief, Defendants are using a form denial letter to deny coverage to all its insureds with policies similar to Plaintiffs’ and is otherwise uniformly refusing to pay insureds under its standard policy for loss and damage related to the COVID-19 pandemic.

80. Upon information and belief, Defendants did not engage in any investigation of the Covered Properties related to the claimed losses at the Covered Properties.

VI. LEGAL CLAIMS FOR RELIEF

Count I – Breach of Contract

81. Plaintiffs repeat and reallege the preceding paragraphs as if fully set forth herein.

82. The Policies are contracts under which Defendants were paid premiums in exchange for its promise to pay Plaintiffs' losses for claims covered by the Policies.

83. Pursuant to the Building and Personal Property Coverage Form and Business Income and Extra Expense endorsement, Defendants agreed to pay for its insureds' actual loss of Business Income sustained due to the necessary suspension of its operations during the "period of restoration".

84. A "slowdown or cessation" of business activities at the Covered Properties is a "suspension" under the Policy, for which Defendants agreed to pay for loss of Business Income during the "period of restoration".

85. "Business Income" means net income (net profit or loss before income taxes) that would have been earned or incurred and continuing normal operating expenses sustained, including payroll.

86. SARS-CoV-2 and the COVID-19 Pandemic have caused direct physical loss and/or damage to Plaintiffs' Covered Property, requiring suspension of operations at the Covered Property. Losses caused by SARS-CoV-2 and the COVID-19 Pandemic thus triggered the Business Income provision of the Policies.

87. Plaintiffs have complied with all applicable provisions of the Policies and/or those provisions have been waived by Defendants, or Defendants is estopped from asserting them, and yet Defendants have abrogated its insurance coverage obligations pursuant to the Policies' terms.

88. By denying coverage for any Business Income losses incurred by Plaintiff in connection with the COVID-19 Pandemic, Defendants have breached its coverage obligations under the Policies.

89. Defendants also agreed to pay necessary Extra Expense that its insureds incurred during the "period of restoration" that the insured would not have sustained if there had been no direct loss to property caused by or resulting from a Covered Cause of Loss.

90. "Extra Expense" includes expenses to avoid or minimize the suspension of business, continue operations, and to repair or replace property.

91. Due to SARS-CoV-2 and the COVID-19 Pandemic, Plaintiffs have incurred Extra Expense at their Covered Property. Plaintiffs have complied with all applicable provisions of the Policies and/or those provisions have been waived by Defendants, or Defendants are estopped from asserting them, and yet Defendants have abrogated their insurance coverage obligations pursuant to the Policy's clear and unambiguous terms.

92. By denying coverage for any Extra Expenses incurred by Plaintiffs in connection with the COVID-19 Pandemic, Defendants have breached their coverage obligations under the Policies.

93. Defendants agreed to give due consideration in settlement of a claim to expenses incurred in taking all reasonable steps to protect Covered Property from further damage.

94. In suspending or limiting operations, Plaintiffs incurred expenses in connection with reasonable steps to protect Covered Property.

95. Plaintiffs have complied with all applicable provisions of the Policies and/or those provisions have been waived by Defendants, or Defendants are estopped from asserting them, and yet, Defendants have abrogated their insurance coverage obligations pursuant to the Policies' terms.

96. By denying coverage for any Sue and Labor expenses incurred by Plaintiffs in connection with the SARS-CoV-2 and the COVID-19 Pandemic, Defendants have breached its coverage obligations under the Policies.

97. In complying with the Closure Orders and otherwise suspending or limiting operations, Plaintiffs incurred expenses in connection with reasonable steps to protect Covered Property.

98. Plaintiffs have complied with all applicable provisions of the Policies and/or those provisions have been waived by Defendants, or Defendants are estopped from asserting them, and yet Defendants have abrogated their insurance coverage obligations pursuant to the Policy's clear and unambiguous terms.

99. Defendants agreed that "when a Covered Cause of Loss causes damage to property other than Covered Property at a 'premises', we will pay for the

actual loss of ‘Business Income’ and necessary Extra Expense you sustain caused by action of a civil authority that prohibits access to the ‘premises’...”.

100. By denying coverage for loss of Business Income and necessary Extra Expense sustained by action of a Civil Authority, Defendants have breached their coverage obligations under the Policies.

101. Plaintiffs’ suffered direct physical loss of or damage to Covered Property and resulting in loss of Business Income due to:

- a. The actual presence of SARS-CoV-2 at the Covered Properties and resulting contamination or other damage;
- b. The imminent risk of contamination and other damages and damages caused by SARS-CoV-2; and
- c. Both the voluntary and government mandated suspension and cessation of Plaintiffs’ business operations in response to the presence and imminent risk posed by SARS-CoV-2.

102. As a result of Defendants’ breaches of the Policies, Plaintiffs have sustained substantial damages for which Defendants are liable, in an amount to be established at trial.

COUNT II – Breach of The Covenant of Good Faith and Fair Dealing

103. Plaintiffs repeat and reallege the preceding paragraphs as though fully set forth herein.

104. In Connecticut, the Defendants are bound by the implied contractual covenant of good faith and fair dealing.

105. The Plaintiffs and Defendants are parties to a contract under which the Plaintiffs reasonably expected to receive certain benefits; the Defendants engaged in conduct that injured the Plaintiffs' right to receive those benefits; and when committing the acts by which they injured the Plaintiffs' rights to receive benefits they reasonably expected to receive under the contract, the Defendants acted in bad faith.

106. The Defendants violated the covenant of good faith and fair dealing by using a predetermined decision not to cover any claim; failing to properly inquire into relevant facts supporting their denial; failing to take the appropriate procedures for handling Plaintiff's claim; failing to advise certain Plaintiffs as to its position regarding their notice of claim; declining to make clear, and good faith efforts to resolve the contractual relationship between Plaintiff and Defendants.

VI. REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in its favor and against Defendants as follows:

- a. For a judgment against Defendants for the causes of action alleged against it;
- b. For compensatory damages in an amount to be proven at trial;
- c. For pre-judgment and post-judgment interest at the maximum rate permitted by law;
- d. For Plaintiff's attorneys' fees;

- e. For Plaintiff's costs incurred;
- f. For punitive damages; and
- g. For such other and further relief as the Court deems just and proper.

VII. DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs hereby demand a trial by jury on all matters so triable.

**Respectfully submitted,
Attorneys for Plaintiffs**

By: /s/ R. Cornelius Danaher, Jr.

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