

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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WELLPATH HOLDINGS, INC.,	:	
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Plaintiff,	:	Index No. _____
	:	
-against-	:	<u>SUMMONS</u>
	:	
XL INSURANCE AMERICA, INC.; THE	:	
PRINCETON EXCESS AND SURPLUS	:	
LINES INSURANCE COMPANY; CRUM &	:	
FORSTER SPECIALTY INSURANCE	:	
COMPANY; EVEREST INDEMNITY	:	
INSURANCE COMPANY; CERTAIN	:	
UNDERWRITERS AT LLOYD’S, LONDON	:	
SUBSCRIBING TO POLICY NO. VPC-CN-	:	
0001984-01; CERTAIN UNDERWRITERS AT	:	
LLOYD’S, LONDON SUBSCRIBING TO	:	
POLICY NO. AMR-64514-01; CERTAIN	:	
UNDERWRITERS AT LLOYD’S, LONDON	:	
SUBSCRIBING TO POLICY NO. AQS-	:	
191329; INDEPENDENT SPECIALTY	:	
INSURANCE COMPANY; INTERSTATE	:	
FIRE & CASUALTY COMPANY; GENERAL	:	
SECURITY INDEMNITY COMPANY OF	:	
ARIZONA; UNITED SPECIALTY	:	
INSURANCE COMPANY; LEXINGTON	:	
INSURANCE COMPANY; HOMELAND	:	
INSURANCE COMPANY OF NEW YORK;	:	
HDI GLOBAL SPECIALTY SE; WESTERN	:	
WORLD INSURANCE COMPANY; and	:	
SAFETY SPECIALTY INSURANCE	:	
COMPANY,	:	
	:	
Defendants.	:	
	:	
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TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of

appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint. This is an insurance coverage action for Breach of Contract and Declaratory Judgment pursuant to CPLR § 3001.

Dated: New York, New York
April 13, 2021

Respectfully submitted,

WELLPATH HOLDINGS, INC.

/s/ Michael S. Levine

Michael S. Levine
Hunton Andrews Kurth LLP
200 Park Avenue
New York, NY 10166
(212) 309-1000 (telephone)
(212) 309-1100 (facsimile)
mlevine@HuntonAK.com

Kevin V. Small
Hunton Andrews Kurth LLP
200 Park Avenue
New York, NY 10166
(212) 309-1000 (telephone)
(212) 309-1100 (facsimile)
ksmall@HuntonAK.com

Walter J. Andrews (*pro hac vice* application to be filed)
Cary D. Steklof (*pro hac vice* application to be filed)
Hunton Andrews Kurth LLP
333 SE 2nd Avenue
Miami, Florida 33131
(305) 810-2500 (telephone)
(305) 810 2460 (facsimile)
wandrews@HuntonAK.com
csteklof@HuntonAK.com

Attorneys for Plaintiff Wellpath Holdings, Inc.

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COMPANY,	:
	:
Defendants.	:
	:
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PLAINTIFF’S COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Wellpath Holdings, Inc. (“Wellpath”), brings this action against Defendants, XL Insurance America, Inc. (“XL Insurance”); The Princeton Excess and Surplus Lines Insurance

Company (“Princeton Excess”); Crum & Forster Specialty Insurance Company (“Crum & Forster”); Everest Indemnity Insurance Company (“Everest”); Certain Underwriters at Lloyd’s, London Subscribing to Policy No. VPC-CN-0001984-01 (“Underwriters A”); Certain Underwriters at Lloyd’s, London Subscribing to Policy No. AMR-64514-01 (“Underwriters B”); Certain Underwriters at Lloyd’s, London Subscribing to Policy No. AQS-191329 (“Underwriters C”); Independent Specialty Insurance Company (“ISIC”); Interstate Fire & Casualty Company (“Interstate Fire”); General Security Indemnity Company of Arizona (“GSICA”); United Specialty Insurance Company (“USIC”); Lexington Insurance Company (“Lexington”); Homeland Insurance Company of New York (“Homeland”); HDI Global Specialty SE (“HDI”); Western World Insurance Company (“Western World”); and Safety Specialty Insurance Company (“SSIC”) (collectively, the “Defendants” or “Insurers”).

I. NATURE OF ACTION

1. This is a breach of contract and declaratory judgment action that arises out of the Insurers’ refusal to honor their insurance policies by reimbursing Wellpath for losses due to the COVID-19 pandemic that has swept the United States.

2. Beginning in or around March 2020, Wellpath – like many other businesses throughout the country – was forced to alter its business operations and incur significant costs and expenses in response to the physical presence of COVID-19 and the declared pandemic.

3. Wellpath incurred necessary costs and expenses in order to continue its operations to the best of its ability.

4. Wellpath purchased insurance from its Insurers to pay for any increased operating expenses necessitated by loss or damage to its property, and ensure that monetary relief was available if Wellpath needed to incur additional costs to operate its business in a normal manner due to unavoidable loss or damage such as that caused by COVID-19 and/or the pandemic.

5. Wellpath's Insurers expressly and unambiguously promised to cover these types of losses. Yet, when Wellpath has needed its Insurers the most, the Insurers have refused to pay for covered losses.

6. The Insurers have breached their insurance policies, and Wellpath is entitled to recover under the policies that indisputably cover the losses at issue.

II. PARTIES

7. Plaintiff Wellpath is a corporation organized under the laws of the state of Delaware, with its principal place of business at 1283 Murfreesboro Road, Nashville, Tennessee 37217. Wellpath is the named insured under the insurance policies issued by the Insurers.

8. Defendant XL Insurance is an insurance company with its principal place of business located in the state of Connecticut. XL Insurance is authorized to sell insurance in the state of Tennessee and, on information and belief, is actively engaged in the business of selling insurance both in Davidson County and throughout the state of Tennessee.

9. Defendant Princeton Excess is an insurance company with its principal place of business located in the state of Delaware. Princeton Excess is authorized to sell insurance in the state of Tennessee and, on information and belief, is actively engaged in the business of selling insurance both in Davidson County and throughout the state of Tennessee.

10. Defendant Crum & Forster is an insurance company with its principal place of business located in the state of New Jersey. Crum & Forster is authorized to sell insurance in the state of Tennessee and, on information and belief, is actively engaged in the business of selling insurance both in Davidson County and throughout the state of Tennessee.

11. Defendant Everest is an insurance company with its principal place of business located in the state of New Jersey. Everest is authorized to sell insurance in the state of Tennessee

and, on information and belief, is actively engaged in the business of selling insurance both in Davidson County and throughout the state of Tennessee.

12. Defendant Underwriters A is a corporation organized under the laws of the United Kingdom, with its principal place of business in the United Kingdom. Underwriters A is authorized to sell insurance in the state of Tennessee and, on information and belief, is actively engaged in the business of selling insurance both in Davidson County and throughout the state of Tennessee.

13. Defendant Underwriters B is a corporation organized under the laws of the United Kingdom, with its principal place of business in the United Kingdom. Underwriters B is authorized to sell insurance in the state of Tennessee and, on information and belief, is actively engaged in the business of selling insurance both in Davidson County and throughout the state of Tennessee.

14. Defendant Underwriters C is a corporation organized under the laws of the United Kingdom, with its principal place of business in the United Kingdom. Underwriters C is authorized to sell insurance in the state of Tennessee and, on information and belief, is actively engaged in the business of selling insurance both in Davidson County and throughout the state of Tennessee.

15. Defendant ISIC is an insurance company with its principal place of business located in the state of Texas. ISIC is authorized to sell insurance in the state of Tennessee and, on information and belief, is actively engaged in the business of selling insurance both in Davidson County and throughout the state of Tennessee.

16. Defendant Interstate Fire is an insurance company with its principal place of business located in the state of Illinois. Interstate Fire is authorized to sell insurance in the state of Tennessee and, on information and belief, is actively engaged in the business of selling insurance both in Davidson County and throughout the state of Tennessee.

17. Defendant GSICA is an insurance company with its principal place of business located in the state of Arizona. GSICA is authorized to sell insurance in the state of Tennessee and, on information and belief, is actively engaged in the business of selling insurance both in Davidson County and throughout the state of Tennessee.

18. Defendant USIC is an insurance company with its principal place of business located in the state of Texas. USIC is authorized to sell insurance in the state of Tennessee and, on information and belief, is actively engaged in the business of selling insurance both in Davidson County and throughout the state of Tennessee.

19. Defendant Lexington is an insurance company with its principal place of business located in the state of Massachusetts. Lexington is authorized to sell insurance in the state of Tennessee and, on information and belief, is actively engaged in the business of selling insurance both in Davidson County and throughout the state of Tennessee.

20. Defendant Homeland is an insurance company with its principal place of business located in the state of Massachusetts. Homeland is authorized to sell insurance in the state of Tennessee and, on information and belief, is actively engaged in the business of selling insurance both in Davidson County and throughout the state of Tennessee.

21. Defendant HDI is a corporation organized under the laws of Germany with its principal place of business in Germany. HDI is authorized to sell insurance in the state of Tennessee and, on information and belief, is actively engaged in the business of selling insurance both in Davidson County and throughout the state of Tennessee.

22. Defendant Western World is an insurance company with its principal place of business located in the state of New Jersey. Western World is authorized to sell insurance in the

state of Tennessee and, on information and belief, is actively engaged in the business of selling insurance both in Davidson County and throughout the state of Tennessee.

23. Defendant SSIC is an insurance company with its principal place of business located in the state of Missouri. SSIC is authorized to sell insurance in the state of Tennessee and, on information and belief, is actively engaged in the business of selling insurance both in Davidson County and throughout the state of Tennessee.

24. At all material times, Defendants engaged in substantial and not isolated activity on a continuous and systematic basis in the state of Tennessee, namely by issuing and selling insurance policies in Tennessee.

III. JURISDICTION & VENUE

25. A declaratory judgment action may be properly sought in this Court pursuant to CPLR § 3001 and under Judiciary Law 140-b.

26. Personal jurisdiction over the Insurers is proper pursuant to CPLR § 301. Under the policies at issue, the Insurers contracted to resolve any disagreement arising out of the policies within any court of competent jurisdiction in the State of New York. Alternatively, or in addition to the policies' jurisdiction provision, this Court has jurisdiction over the Insurers pursuant to CPLR §§ 301 or 302 because, upon information and belief, the Insurers at all relevant times: (1) carry on a continuous and systematic part of their general business within the State of New York, including but not limited to marketing, selling, and issuing insurance policies to New York businesses, (2) are authorized insurers in the State of New York, and (3) generally transact business throughout the State of New York.

27. Venue is proper in this Court pursuant to CPLR § 501 under the policies' jurisdiction provision. Alternatively, or in addition to the policies' jurisdiction provision, venue is proper in this county under CPLR § 503 because, *inter alia*, Wellpath operates one or more

insured locations in Westchester County, a substantial part of the events or omissions giving rise to this action occurred in Westchester County, and both Wellpath and the Insurers regularly transact business in Westchester County.

IV. FACTUAL BACKGROUND

A. Wellpath and the COVID-19 Pandemic

28. Wellpath delivers medical and behavioral healthcare services to nearly 300,000 patients in over 400 sites across the United States. The sites are located within inpatient and residential treatment facilities, civil commitment centers, and local, state, and federal correctional facilities.

29. To protect its business in the event of property loss and business interruption, Wellpath purchased commercial property insurance policies from each of the Defendant Insurers (collectively, the “Policies”).¹

30. COVID-19 is an illness caused by the novel coronavirus, severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

31. During the Policies’ term, the novel coronavirus swept the globe.

32. As of this filing, more than 30 million Americans have suffered from confirmed cases of COVID-19, countless more have been infected without confirmation, and more than 555,000 Americans have died from COVID-19.²

33. The World Health Organization (“WHO”) has declared the COVID-19 outbreak a pandemic, and former President Donald Trump declared a nationwide emergency due to the public health emergency caused by the COVID-19 outbreak in the United States.

¹ The Policies are described in greater detail in § IV(B), *infra*.

² See <https://coronavirus.jhu.edu/us-map> (last viewed April 6, 2021).

34. A pandemic, by definition, is “an epidemic occurring worldwide...”³ (The omnipresence of COVID-19 as a pandemic is referred to herein as the “Pandemic.”)

35. The declared Pandemic, COVID-19, is present globally, including at Wellpath’s property.

36. Although SARS-CoV-2 is “novel,” scientists now understand that the virus spreads very easily from person to person through three primary modes of transmission.

37. First, COVID-19 spreads via airborne transmission.⁴

38. Clouds of droplets of saliva or nasal discharge of an infected person, which may be released by a cough, a sneeze, or loud speech, can linger in the air for a period of minutes to hours, and can be pulled into air circulation systems.⁵

39. Second, these smaller droplets, known as aerosols, can linger in the air for hours, infecting people further away from the infected person and even after the infected person has left the premises. This kind of spread is referred to as aerosol or airborne transmission.⁶ Aerosol droplets can be pulled into air circulation systems and spread to other areas in a building.⁷

³ Heath Kelly, *The classical definition of a pandemic is not elusive*, 89 Bulletin of the World Health Organization 7, at 540-41 (2011), available at <https://www.who.int/bulletin/volumes/89/7/11-088815/en/> (last accessed March 18, 2021).

⁴ CDC, *How COVID-19 Spreads* (last updated October 28, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last accessed March 18, 2021).

⁵ Ramon Padilla & Javier Zarracina, *WHO agrees with more than 200 medical experts that COVID-19 may spread via the air* (last updated Sept. 21, 2020) (<https://www.usatoday.com/in-depth/news/2020/04/03/coronavirus-protection-how-masks-might-stop-spread-through-coughs/5086553002/>) (last visited March 18, 2021).

⁶ *Id.*

⁷ *Id.*

40. Aerosol transmission involves the airborne transmission of viral RNA in particles smaller than 50 microns (human hair is about 80 microns), and which do not settle onto surfaces.⁸

Aerosol transmission typically involves viral RNA emitted through exhaled breath like larger droplets emitted through saliva and nasal discharge.⁹

41. Viral RNA contained in aerosol form can be circulated through a room via air circulation systems or natural air circulation.¹⁰

42. The Centers for Disease Control and Prevention (“CDC”) published a study in July 2020 concluding that droplets circulating via a restaurant’s ventilation system caused a COVID-19 outbreak among people who dined in the same restaurant, even though they were not seated together.¹¹

43. Indeed, medical researchers recommend the use of HEPA and other specialized air filtration systems to remediate the presence of airborne SARS-CoV-2 in buildings.¹² In other

⁸ Jose-Luis Jimenez, *COVID-19 Is Transmitted Through Aerosols. We Have Enough Evidence, Now It Is Time to Act*, *Time* (Aug. 25, 2020) (<https://time.com/5883081/covid-19-transmitted-aerosols/>) (last accessed March 18, 2021); Pien Huang, *Researchers Say Fresh Air Can Prevent Aerosol Transmission Of The Coronavirus*, *NPR* (Sept. 7, 2020) (<https://www.npr.org/2020/09/07/910499236/researchers-say-fresh-air-can-prevent-aerosol-transmission-of-the-coronavirus>) (last accessed February 2, 2021).

⁹ Ramon Padilla & Javier Zarracina, *WHO agrees with more than 200 medical experts that COVID-19 may spread via the air* (last updated Sept. 21, 2020) (<https://www.usatoday.com/in-depth/news/2020/04/03/coronavirus-protection-how-masks-might-stop-spread-through-coughs/5086553002/>) (last visited March 18, 2021).

¹⁰ Jianyun Lu and Zhicong Yang, *COVID-19 outbreak associated with air conditioning in restaurant, Guangzhou, China, 2020*, 26 *Emerging Infectious Diseases* 11 (Sept. 11, 2020) (https://wwwnc.cdc.gov/eid/article/26/11/20-3774_article#suggestedcitation) (last accessed March 18, 2021) (“We conclude that the air conditioner prompted transmission of SARS-CoV-2; the customers in the airflow were at high risk for infection with SARS-CoV-2 in the poorly ventilated environment. Because the staff and other diners were not exposed to the airflow mixed with SARS-CoV-2 transmitted by patient A1, their risk for infection was lower.”).

¹¹ *Id.*

¹² Zeynep Tufekci, *We Need to Talk About Ventilation*, *THE ATLANTIC* (July 30, 2020, available at <https://www.theatlantic.com/health/archive/2020/07/why-arent-we-talking-more-about-air-borne-transmission/614737/>) (last accessed March 18, 2021).

words, physical alteration of property may be necessary to render it safe from COVID-19 and return the property to a safe and useable state.

44. Third, respiratory droplets can also land on surfaces and objects. Surfaces, once physically affected by SARS-CoV-2, are referred to as fomites.¹³ There, SARS-CoV-2 can linger for up to 28 days,¹⁴ serving as a vehicle for viral transmission during that time.¹⁵ A person can get COVID-19 by touching a surface or object that has the virus on it and then touching his or her own mouth, nose, or eyes.¹⁶

45. In a “Situation Report” released by the WHO, it is reported that the virus can be transmitted through symptomatic transmission, pre-symptomatic transmission, or asymptomatic transmission.

46. Infected persons “shed” the virus (*i.e.*, pose a risk of viral transmission) before, during, and after their illness.¹⁷ In fact, scientists have reason to believe that infected people are the most contagious *before* they experience symptoms, during what is called the “incubation” or “pre-symptomatic” period.¹⁸

¹³ Stephanie A. Boone & Charles P. Gerba, *Significance of Fomites in the Spread of Respiratory and Enteric Viral Disease*, APPLIED & ENVIRON. MICROBIOLOGY (Mar. 13, 2007), available at <https://aem.asm.org/content/73/6/1687> (last accessed March 18, 2021).

¹⁴ Shane Riddell, et al., *The effect of temperature on persistence of SARS-CoV-2 on common surfaces*, VIROLOGY J. (October 7, 2020), available at <https://doi.org/10.1186/s12985-020-01418-7> (last accessed March 18, 2021).

¹⁵ *Id.*

¹⁶ CDC, *How COVID-19 Spreads*, *supra*.

¹⁷ *Id.*

¹⁸ Seungjae Lee, MD, et al., *Clinical Course and Molecular Viral Shedding Among Asymptomatic and Symptomatic Patients With SARS-CoV-2 Infection*, JAMA (Aug. 6, 2020), available at <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2769235> (study revealing that viral loads were similar between the symptomatic and asymptomatic groups and actually decreased more slowly among the asymptomatic carriers, meaning that they had higher loads for longer) (last accessed March 18, 2021);

Lirong Zou, M.Sc., et al., *SARS-CoV-2 Viral Load in Upper Respiratory Specimens of Infected Patients*, 382 NEW ENG. J. MED. 1177 (Mar. 19, 2020), available at <https://www.nejm.org/>

47. In other words, a person may be the most contagious when they feel healthy enough to go about their normal business, increasing the risk of transmission.

48. In addition, the CDC has estimated that approximately 40% of COVID-19 positive individuals never develop symptoms.¹⁹ This gives the CDC reason to speculate that infection rates for COVID-19 likely are at least ten times higher than reported.²⁰

49. During and after illness, viruses are shed in large numbers in body secretions, including blood, feces, urine, saliva, and nasal fluid.²¹

50. Further, the WHO has confirmed that the virus can live on objects or surfaces.

51. According to a study documented in *The New England Journal of Medicine*, COVID-19 was detectable for several days in aerosols, copper, on cardboard, plastic and stainless steel.²²

[doi/full/10.1056/nejmc2001737](https://doi.org/10.1056/nejmc2001737) (“The viral load that was detected in the asymptomatic patient was similar to that in the symptomatic patients, which suggests the transmission potential of asymptomatic or minimally symptomatic patients.”) (last accessed March 18, 2021); Monica Ghandi, et al., *Asymptomatic Transmission, the Achilles’ Heel of Current Strategies to Control Covid-19*, 382 NEW ENG. J. MED. 2158 (Apr. 24, 2020), available at <https://www.nejm.org/doi/full/10.1056/nejme2009758> (“Ultimately, the rapid spread of Covid-19 across the United States and the globe, the clear evidence of SARS-CoV-2 transmission from asymptomatic persons, and the eventual need to relax current social distancing practices argue for broadened SARS-CoV-2 testing to include asymptomatic persons in prioritized settings.”) (last accessed March 18, 2021).

¹⁹ Ellen Cranley, *40% of people infected with COVID-19 are asymptomatic*, BUSINESS INSIDER (Jul. 12, 2020), available at <https://www.businessinsider.com/cdc-estimate-40-percent-infected-with-covid-19-asymptomatic-2020-7> (last accessed March 18, 2021).

²⁰ *Id.*

²¹ *Id.*

²² See National Institutes of Health, *New coronavirus stable for hours on surfaces* (Mar. 17, 2020) (<https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces>)(last accessed March 18, 2021).

52. The study suggests that individuals could become infected with COVID-19 through indirect contact with surfaces or objects used by an infected person, whether they were symptomatic or not.

53. All of these aforementioned materials (including stainless steel, plastic, glass, and copper) are surfaces that Wellpath employees and patients routinely contact on a daily basis.

54. Contamination of frequently touched surfaces is, therefore, a potential source of viral transmission.²³

55. Fomites consist of both porous and nonporous surfaces or objects that can become contaminated with a virus and serve as vehicles for transmission.²⁴

56. Fomites become contaminated with the virus by direct physical contact with body secretions or fluids, contact with soiled hands, contact with aerosolized virus (large droplet spread) released while talking, sneezing, coughing, or vomiting, or contact with airborne virus that settles after disturbance of a contaminated fomite.²⁵

57. Once a fomite is contaminated, transfer of the infectious virus may readily occur between inanimate and animate objects, or vice versa, and between two separate fomites.²⁶

58. On March 27, 2020, the CDC released a report titled “Public Health Responses to COVID-19 Outbreaks on Cruise Ships – Worldwide, February – March 2020.”²⁷

²³ See id. (last accessed March 18, 2021).

²⁴ Id.

²⁵ Id.

²⁶ Id.

²⁷ CDC, *Public Health Responses to COVID-19 Outbreaks on Cruise Ships – Worldwide, February-March 2020* (last updated March 27, 2020), available at https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm?s_cid=mm6912e3_w (last accessed March 18, 2021).

59. The report details COVID-19 outbreaks on three different cruise ships, which caused more than 800 confirmed cases and 10 deaths.²⁸

60. Of the individuals tested, a high percentage was found to be asymptomatic.²⁹

61. Because COVID-19 is a pandemic and is statistically certain to be carried by a number of individuals who visit Wellpath daily, COVID-19 is continually spread and reintroduced into the air and on surfaces of Wellpath's property.

62. Indeed, over 100 Wellpath employees were confirmed to be infected with COVID-19.

63. The presence of COVID-19 on property, including indoor air and surfaces, causes a tangible, physical transformation of the property. It changes the property, including the air and the surfaces, into a dangerous and potentially deadly transmission instrumentality for COVID-19, rendering the affected property unsafe, unfit and uninhabitable for ordinary functional use.

64. More specifically, the presence of COVID-19 and its causative agent, SARS-CoV-2, on property, including indoor air and surfaces (both insured property), causes direct physical loss or, or direct physical damage to property in at least three discrete ways:

²⁸ Id. (“During February 7–23, 2020, the largest cluster of COVID-19 cases outside mainland China occurred on the Diamond Princess cruise ship, which was quarantined in the port of Yokohama, Japan, on February 3. On March 6, cases of COVID-19 were identified in persons on the Grand Princess cruise ship off the coast of California; that ship was subsequently quarantined. By March 17, confirmed cases of COVID-19 had been associated with at least 25 additional cruise ship voyages. On February 21, CDC recommended avoiding travel on cruise ships in Southeast Asia; on March 8, this recommendation was broadened to include deferring all cruise ship travel worldwide for those with underlying health conditions and for persons aged ≥ 65 years. On March 13, the Cruise Lines International Association announced a 30-day voluntary suspension of cruise operations in the United States. CDC issued a level 3 travel warning on March 17, recommending that all cruise travel be deferred worldwide.”)

²⁹ Id.

(a) COVID-19/SARS-CoV-2 distinctly, demonstrably and physically alters and changes the content and concentration of the indoor air and character of surfaces throughout Wellpath's locations (which is insured property under the Policies);

(b) COVID-19/SARS-CoV-2 are intervening distinct, demonstrable and physical forces that have made the insured property entirely uninhabitable and unusable in its ordinary manner, and the property would have remained in that state but for extraordinary mitigation measures and controls that are ongoing; and

(c) COVID-19/SARS-CoV-2 are pervasive, continuous, and cannot be cleaned or removed from the property until the pandemic ends.

65. Under normal operating conditions, the impact and damage caused by COVID-19 is not temporary, as there is no effective way to repair or remediate the loss or damage caused by COVID-19 to commercial properties like Wellpath's property because continued use of that property results in continual spread and reintroduction of COVID-19 to the property.

66. Short of complete closure of the property and restricting access, implementation of strict administrative and operational controls that limit the number of persons at the property are the only effective ways to repair or remediate the tangible loss or damage caused by COVID-19 and protect against further loss or damage from COVID-19.

67. Mere cleaning and disinfecting of the property and the indoor air does not repair or remediate the actual physical and tangible alteration to property caused by COVID-19, nor does it transform the property from its unsafe, hazardous and potentially deadly condition.

68. Given the industry in which Wellpath provides services, Wellpath was considered an essential business and was obligated to continue to operate its business to the best of its

reasonable ability. In doing so, Wellpath incorporated both administrative and engineering controls to aid in hazard mitigation. These controls include, but are not limited to, the mandatory use of personal protective equipment, regular cleaning and disinfection of the property, the hiring of temporary workers, the installation of temporary barriers, and the creation and installation of plastic dividers throughout the property. These controls have been regularly amended over the following months to add additional safety parameters and to follow current regulations and guidance issued by the CDC.

69. Such operation, however, continually subjected and continues to subject Wellpath's property to the presence of people infected with or carrying COVID-19, thereby continually causing physical, tangible alteration to and/or direct physical loss of Wellpath's property, causing that property to remain in an unsafe, hazardous and potentially deadly condition.

70. Indeed, state and local governmental authorities and public health officials around the United States acknowledge that COVID-19 and the Pandemic cause direct physical loss and damage to property. For example:

(a) The City of Aventura, located within Miami-Dade County, has stated that its Stay at Home Orders are based on "the propensity of [the] COVID-19 virus to spread person to person and also **because the virus physically is causing property damage due to its proclivity to attach to surfaces for prolonged periods of time.**" (Emphasis added).

(b) The City of Miami Beach issued a Declaration of a State of Emergency stating that "there is reason to believe that COVID-19 may be spread amongst the population by various means of exposure including the propensity to spread person-to-person and the **propensity to attach to surfaces for prolonged**

periods of time, thereby spreading from surface to person and causing property loss and damage in certain circumstances . . .” (Emphasis added).

(c) Broward County in Florida also issued at least two emergency orders recognizing **“the virus is physically causing property damage** due to its proclivity to attach to surfaces for prolonged periods of time.” (Emphasis added).

(d) The state of Colorado issued a Public Health Order indicating that **“COVID-19...physically contributes to property loss, contamination and damage...”** (Emphasis added).

(e) 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.”** (Emphasis added).

(f) The state of Washington issued a Stay at Home Proclamation stating that the **“COVID-19 pandemic and its progression...remains a public disaster affecting life, health [and] property.”** (Emphasis added).

(g) The state of Indiana issued an Executive Order recognizing that COVID-19 has the **“propensity to physically impact surfaces and personal property.”** (Emphasis added).

(h) 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.” (Emphasis added).

(i) The state of 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.**” (Emphasis added).

(j) 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.” (Emphasis added).

B. Wellpath’s “All Risks” Commercial Property Insurance Program

71. To protect its property and business in the event of a catastrophic peril like COVID-19 and/or the Pandemic, Wellpath purchased commercial property insurance policies from the Insurers covering the Policy Period from October 1, 2019 through October 1, 2020.

72. Wellpath’s commercial property insurance program is specifically tailored and designed for Wellpath’s business. The program includes a number of Insurers that agreed to share Wellpath’s risk via quota share, meaning each Insurer is responsible for a certain percentage of Wellpath’s risk. Each Insurer agreed to take on Wellpath’s risk and adopted the same or substantially the same policy form.

73. Wellpath’s insurance program consists of seven (7) policies, each of which contains a defined limit of liability. In some instances, a policy was issued by a single Insurer. In other instances, multiple Insurers subscribed to a given policy and each Insurer is responsible for a certain percentage of the limit. The following chart reflects the policies at issue in this action and the Insurers associated with each policy:

Policy	Insurer	Policy No.	Exhibit
1	XL Insurance America, Inc.	US00086747PR19A	1
2	Everest Indemnity Insurance Company	RP5CF00248-191	2
3	Independent Specialty Insurance Company	VIS-CN-0001984-01	3
	Certain Underwriters at Lloyds, London (Underwriters A)	VPC-CN-0001984-01	
	Interstate Fire & Casualty Company	VRX-CN-0001984-01	
4	Interstate Fire & Casualty Company	RTX20024219	4
5	Certain Underwriters at Lloyd's, London (Underwriters B)	AMR-64514-01	5
	General Security Indemnity Company of Arizona	10T029659-10617-19-01	
	United Specialty Insurance Company	USI-23749-01	
	Lexington Insurance Company	LEX-014713206-01	
6	Homeland Insurance Company of New York	795010859	6
7	The Princeton Excess and Surplus Lines Insurance Company	3VA3PP0000432-00	7
	Crum & Forster Specialty Insurance Company	SRS-100287	
	Certain Underwriters at Lloyd's, London (Underwriters C)	AQS-191329	
	HDI Global Specialty SE	HAQS-191329	
	General Security Indemnity Company of Arizona	TR00093911901329	
	Crum & Forster Specialty Insurance Company	SRC-101200	
	Western World Insurance Company	SCO0001035	
	Safety Specialty Insurance Company	AMS-191329	

i. **The Policies**

74. The Insurers sold “all risks” insurance policies to Wellpath.
75. All of the Policies contain an Insuring Agreement, which states as follows:

This commercial insurance is for direct physical loss of, or direct physical damage to, property described in the PHYSICAL PROPERTY section set forth below and directly resulting effect on income and expense as more specifically provided for in the sections below. Subject to the terms, conditions and exclusions stated in this policy, the “Company” will pay the “Insured” for “damage” by an “insured cause of loss” during the “policy term” to INSURED PROPERTY at “insured locations” directly and proximately caused.

(Exhibits 1-7).

76. The Policies define “damage” as “direct physical loss of, or direct physical damage to, INSURED PROPERTY arising from an ‘occurrence’ that takes place during the ‘policy term’.”

(Exhibits 1-7).

77. The Policies define “insured cause of loss” as “the fortuitous physical event during the ‘policy term’ that directly and proximately causes during that period ‘damage’ of the type insured by this policy. ‘Insured cause of loss’ does not include events or causes that commenced before the ‘policy term’, that are not fortuitous or known to the ‘Insured’, or that are excluded by the policy wording or any endorsement thereto.” (Exhibits 1-7).

78. The Policies do not define the term “direct.”

79. The Policies do not define the term “physical loss.”

80. The Policies do not define the term “physical damage.”

81. The term “physical loss” has a separate, distinct, and independent meaning from the term “physical damage.”

82. The Policies cover Wellpath’s extra expenses it incurs that result from “damage.” (Exhibits 1-7).

83. The Policies provide up to \$25,000,000 in coverage for extra expenses incurred. (Exhibits 1-7).

84. Wellpath has satisfied all conditions precedent to coverage under the Policies, including the payment of all premiums.

C. The “All Risks” Insurance Policies are Triggered

85. The Policies sold by the Insurers provide “the ‘Company’ will pay the ‘Insured’ for ‘damage’ by an ‘insured cause of loss’ during the ‘policy term’ to INSURED PROPERTY at ‘insured locations’ directly and proximately caused.” (Exhibits 1-7).

86. COVID-19, a highly contagious and deadly disease, is a peril not excluded under the Policies and, therefore, constitutes a covered peril.

87. The Pandemic is a peril not excluded under the Policies and, therefore, constitutes a covered peril.

88. The Policies expressly cover “direct physical loss of” or “direct physical damage to” property. The use of the conjunctive “or” necessarily means that either a “direct physical loss of” property or “direct physical damage to” property is required, and that “loss” is distinct from “damage” and has a separate meaning.

89. As the drafters of the Policies, the Insurers could have supplied a defined meaning to the phrases “direct physical loss of” or “direct physical damage to”, but the Policies are silent.

90. While the terms “direct physical loss of” and “direct physical damage to” are not defined by the Policies, the plain and ordinary meaning of “physical” means “having material existence: perceptible especially through the senses and subject to the laws of nature.”³⁰ Further, “loss” encompasses “the act of losing possession” and “deprivation.”³¹

³⁰ Merriam-Webster, www.merriam-webster.com/dictionary/physical (last accessed February 2, 2021).

³¹ Merriam-Webster, www.merriam-webster.com/dictionary/loss (last accessed February 2, 2021).

91. The phrases “direct physical loss of” and “direct physical damage to” must, therefore, be treated differently in order to provide meaning to each of the terms.

i. **Wellpath Suffered Direct Physical Loss of Property**

92. The Policies provide coverage for “direct physical loss of, or direct physical damage to property” because of an insured cause of loss.

93. Wellpath suffered “direct physical loss of property” caused by COVID-19.

94. COVID-19 is a physical substance that renders property (surfaces) and indoor air hazardous to human health by physically altering and transforming that property and indoor air from a safe and functional condition to a dangerous and potentially deadly condition.

95. By physically altering and transforming that property and indoor air from a safe and functional condition to a dangerous and potentially deadly condition, COVID-19 caused direct physical loss of Wellpath’s property.

96. COVID-19 has also caused direct physical loss of Wellpath’s property by rendering the property unsafe for ordinary use, thereby forcing Wellpath to alter the way it conducts its business operations.

97. Wellpath has taken reasonable steps to mitigate the direct physical loss of its property by implementing administrative and operational controls, including the physical modification of its property. Despite the controls, COVID-19 continues to cause direct physical loss of Wellpath’s property.

98. The WHO has declared the ubiquitous global presence of COVID-19 to be a pandemic.

99. The Pandemic also has caused direct physical loss of Wellpath’s property. The Pandemic also has caused direct physical loss of Wellpath’s property by physically altering and

transforming that property and indoor air from a safe and functional condition to a dangerous and potentially deadly condition.

100. The Pandemic also has caused the direct physical loss of Wellpath's property by rendering the property unsafe for ordinary use, thereby forcing Wellpath to alter the way it conducts its business operations.

101. Wellpath has taken reasonable steps to mitigate the direct physical loss of its property caused by the Pandemic by implementing administrative and operational controls, including the physical modification of its property. Despite the controls, the Pandemic continues to cause direct physical loss of Wellpath's property.

ii. **Wellpath Suffered Direct Physical Damage to Property**

102. COVID-19 caused damage to Wellpath's property and the property of others.

103. COVID-19 causes damage to property because it is physically present on and attaches to objects and surfaces as described above.

104. As alleged above, the physical presence of COVID-19 renders property (surfaces) and indoor air hazardous to human health by physically altering and transforming that property and indoor air from a safe and functional condition to a dangerous and potentially deadly condition.

105. Indeed, the transmissibility of COVID-19 from people and objects and the damage that it causes is a primary consideration underlying the Stay at Home Orders referenced above and a primary reason that administrative and operational controls are required to make property safe to use.

106. COVID-19 caused a physical, tangible alteration to the integrity of property at Wellpath that is not temporary and cannot simply be cleaned up. Therefore, COVID-19 has caused damage to such property.

107. The actual presence of COVID-19 and SARS-CoV-2 cause physical loss and damage to the property at Wellpath's property and/or other properties in a number of ways, including:

(a) introduction of COVID-19 and SARS-CoV-2 to indoor air at Wellpath's property directly and physically changes, alters, and transforms the composition of the air—such that now it contains a concentration of SARS-CoV-2 infectious particles (whereas before it did not).

(b) presence of COVID-19 and SARS-CoV-2 at Wellpath's property transforms the indoor air on the property into a veritable petri dish for COVID-19 and a dangerous transmission mechanism for the communicable disease rendering the property (absent extraordinary and extremely robust administrative and engineering controls that significantly interfere and impede with operations) uninhabitable, unsafe, unfit for occupancy, and/or totally inaccessible. That is the exact same impact that ammonia, asbestos fibers, toxic fumes, pervasive odors and/or wildfire smoke have on air—all of which have been determined to cause physical loss or damage to property.

(c) presence of COVID-19 and SARS-CoV-2 at Wellpath's property also transforms the surfaces at the property in the exact same manner as set forth above in subparagraph (b) rendering the property (absent extraordinary and extremely robust administrative and engineering controls that significantly interfere and impede with operations) uninhabitable, unsafe, unfit for occupancy, and/or totally inaccessible.

108. Consistent with the physical loss and damage experienced by Wellpath at its properties, experts have already opined in other similar matters as to the precise mechanism by which such damage occurs.

109. In litigation pending in Nevada federal court, styled *Treasure Island LLC v. Affiliated FM Ins. Co.*, No. 2:30-cv-00965-JC-EJY (D. Nev.), the insured's virology expert, Dr. Angela Rasmussen, opined as follows in her November 6, 2020 initial report:

(a) "COVID-19 is a communicable disease that impacts and physically damages Treasure Island's property in the following way: persons on site with COVID-19 shed the SARS-CoV-2 virus into the air and surfaces at Treasure Island. This results in tangible, demonstrable, and detectable physical alternation and transformation to the air and surfaces rendering them dangerous transmission vehicles for the potentially deadly disease."

(b) “The impact and physical damage caused by persons with COVID-19 is not temporary and is sustained through any occupation of the property. Because COVID-19 is an infectious viral disease that can be transmitted to susceptible people, it causes additive, sustained property damage. A substantial amount of transmission is prior to onset of clinical symptoms, which makes it difficult to detect. Due to the size of the property at Treasure Island, cleaning and disinfection alone are insufficient to remediate the damage.”

110. In the same litigation, the insured’s epidemiology expert, Dr. Alex LeBeau, opined in his November 6, 2020 initial report as follows: “Individuals with COVID-19 at Treasure Island altered the physical characteristics of surfaces and the air of occupied spaces at the location and at facilities in the vicinity with respiratory secretions and aerosols. As a result, the surfaces and air of occupied spaces at Treasure Island became vehicles for COVID-19 transmission.”

111. Wellpath has sustained damage in the same manner as Treasure Island.

112. As a consequence of the damage, as described above, caused to Wellpath’s property, Wellpath has sustained loss including, without limitation, the costs associated with implementing administrative and operational controls to mitigate the damage caused by COVID-19 and the risks to human health caused by COVID-19.

iii. **Multiple Coverages are Triggered under the “All Risks” Policies**

113. Wellpath’s losses implicate multiple coverages under the “all risk” Policies, including: (1) Extra Expense Coverage, and (2) Professional Fees and Claims Preparation Costs Coverage.

a. Extra Expense Coverage Has Been Triggered

114. The Policies provide coverage for extra expense, stating, the policy insures “Extra expense incurred by the ‘Insured’ after ‘damage’ to the extent necessary to continue as nearly as practicable the ‘normal’ operation of the ‘Insured’s’ business at the ‘insured location’ where the ‘damage’ took place.” (Exhibits 1-7).

115. The Policies define extra expense as “the reasonable and necessary excess (if any) of the total cost incurred as a result of ‘damage’ during the PERIOD OF INDEMNITY chargeable to the operation of the ‘Insured’s’ business over and above the total cost that would normally have been incurred to conduct the business during the same period had no ‘damage’ occurred.” (Exhibits 1-7).

116. As alleged, Wellpath sustained direct physical loss of and direct physical damage to its property beginning in or around March 2020 caused by COVID-19 and/or the Pandemic. That direct physical loss of and direct physical damage to Wellpath’s property caused Wellpath to incur necessary extra expense as defined in the Policies for the purpose of continuing its operations and reducing Wellpath’s covered loss.

117. Wellpath has, therefore, incurred covered extra expense sufficient to trigger coverage under the Policies.

b. Professional Fees and Claims Preparation Costs Coverage has Been Triggered

118. The Policies provide coverage for Professional Fees and Claims Preparation Costs, stating “this policy covers the necessary and reasonable expenses actually incurred by the ‘Insured’ of fees payable to the ‘Insured’s’ accountants, architects, auditors, engineers, or other professionals and the costs of using the ‘Insured’s’ employees, for the sole purpose of producing and certifying any particulars or details contained in the ‘Insured’s’ books or documents, or such other proofs, information or evidence required by the ‘Company’ resulting from a covered claim.” (Exhibits 1-7).

119. Wellpath has incurred and will continue to incur expenses in connection with calculating and determining the cause and origin of the loss, the amount of loss sustained, and the amount of loss payable under the Policies.

120. Wellpath has, therefore, incurred professional fees and claims preparation costs sufficient to trigger coverage under the Policies.

iv. **In the Alternative, the Policies are Ambiguous and Coverage is Triggered**

121. The Policies unambiguously cover the losses claimed by Wellpath. However, the Insurers have refused to acknowledge that COVID-19 and/or the Pandemic constitute non-excluded perils that have and will continue to cause direct physical loss of, or direct physical damage to, property.

122. Under New York law, policy language is considered ambiguous if it is susceptible of two or more reasonable interpretations, and any ambiguities are construed in favor of the policyholder.

123. Notwithstanding the Insurers' refusal to provide coverage under the Policies, dozens of courts throughout the United States have already concluded that COVID-19 and/or the Pandemic meet the requirements under similar insurance policies to trigger coverage and are sufficient to trigger coverage for losses similar to Wellpath's claimed loss and expense.

124. Thus, at worst for Wellpath, the Policies are reasonably susceptible to multiple interpretations, which still requires a finding of coverage for Wellpath's claimed losses.

125. Thus, for this reason as well, there can be no dispute that Wellpath's interpretation of the Policies is reasonable and must be read in favor of coverage. At a minimum, as court decisions make evident, the Policies are reasonably susceptible to multiple interpretations, which requires a finding of coverage for Wellpath's claimed losses under New York law.

D. No Exclusions Apply to Bar Coverage

126. The Insurers issued "All Risks" insurance policies, meaning it was incumbent on the Insurers to clearly, unambiguously, and expressly exclude any peril that is not covered under the Policies.

127. No exclusion in the Policies applies to Wellpath's claim.

128. To the extent the Insurers contend any exclusion(s) apply, such exclusion(s) are ambiguous and/or unenforceable.

E. The Insurers' Refusal to Acknowledge Coverage

129. In early March 2020, shortly after Wellpath recognized that it was incurring covered losses, it promptly provided notice to the Insurers and made a claim under the Policies.

130. The Insurers appointed a single adjuster to handle Wellpath's claim who is responsible for communicating a single, uniform, collective coverage position on behalf of all Insurers.

131. The Insurers had an obligation to conduct a prompt and reasonable investigation of Wellpath's claim.

132. Yet, the Insurers did not visit, or ask to visit, or otherwise inspect or investigate Wellpath's property.

133. The Insurers did not investigate the reported property damage.

134. The Insurers did not test any of Wellpath's property or property of others within the vicinity of Wellpath for the presence of SARS-CoV-2.

135. The Insurers did not request that Wellpath test its own property for the presence of SARS-CoV-2; nor did the Insurers ever inform Wellpath of a means by which to do so.

136. The Insurers did not provide Wellpath with any direction regarding testing its property, employees, or patients for the presence of SARS-CoV-2.

137. The Insurers' investigation fell well short of its legal and contractual obligations.

138. The Insurers issued a denial letter collectively on October 2, 2020.

139. The Insurers' refusal to acknowledge coverage or make any payment under the Policies constitutes a denial of Wellpath's claim.

140. The Insurers' denial of coverage constitutes a breach of contract by which Wellpath has been damaged.

F. Compliance with All Conditions Precedent

141. Wellpath has satisfied all of the applicable terms, conditions, and other requirements of the Policies. Alternatively, compliance with the applicable terms, conditions, and other requirements in whole or in part has been waived, excused, or is unnecessary for other reasons.

G. Retention of Counsel

142. Wellpath has retained the law firm of Hunton Andrews Kurth LLP and its attorneys to represent Wellpath in this action and has agreed to pay reasonable attorneys' fees and all expenses incurred for their services.

COUNT I – BREACH OF CONTRACT
(Extra Expense Coverage)

143. Wellpath repeats and re-alleges the allegations in the preceding paragraphs as if set forth herein.

144. The Policies are valid and enforceable contracts between Wellpath and each of the Insurers.

145. In the Policies, the Insurers promised to pay for extra expense incurred as a result of perils not excluded.

146. COVID-19 and/or the Pandemic have caused and continue to cause direct physical loss of and direct physical damage to Wellpath's property.

147. These expenses incurred trigger the Policies' Extra Expense Coverage.

148. Wellpath has complied with all applicable provisions in the Policies.

149. Nonetheless, the Insurers have, in breach of the Policies, unjustifiably refused to pay for Wellpath's extra expenses in breach of the Policies.

150. Wellpath has suffered and continues to suffer damages as a result of the Insurers' breaches of their respective Policies.

151. As a direct, proximate, and natural result of the Insurers' breaches, Wellpath has been deprived of the benefits due under the Policies.

152. Wellpath is entitled to damages as a result of the Insurers' breaches in an amount to be determined at trial, including compensatory and consequential damages, pre- and post-judgment interest, attorneys' fees, costs, and any further relief this Court deems equitable, just and proper.

COUNT II – BREACH OF CONTRACT
(Professional Fees and Claim Preparation Costs)

153. Wellpath repeats and re-alleges the allegations in the preceding paragraphs as if set forth herein.

154. The Policies are valid and enforceable contracts between Wellpath and each of the Insurers.

155. In the Policies, the Insurers promised to pay for Wellpath's expenses for calculating and determining the cause and origin of the loss, the amount of loss sustained, and the amount of loss payable under the Policies.

156. Wellpath has experienced and continues to experience a covered loss under the Policies, and Wellpath has incurred and/or will incur expenses in connection with calculating and determining the cause and origin of the loss, the amount of loss sustained, and the amount of loss payable under the Policies and the presentation of Wellpath's claim to the Insurers.

157. These expenses trigger the Professional Fees and Claims Preparation Costs coverage under the Policies.

158. Wellpath has complied with all applicable provisions in the Policies.

159. Nonetheless, the Insurers have unjustifiably, in breach of the Policies, refused to pay for Wellpath's losses and expenses in breach of the Policies.

160. Wellpath has suffered and continues to suffer damages as a result of the Insurers' breaches of their respective Policies.

161. As a direct, proximate, and natural result of the Insurers' breaches, Wellpath has been deprived of the benefits due under the Policies.

162. Wellpath is entitled to damages as a result of the Insurers' breaches in an amount to be determined at trial, including compensatory and consequential damages, pre- and post-judgment interest, attorneys' fees, costs, and any further relief this Court deems equitable, just and proper.

COUNT III – DECLARATORY JUDGMENT

163. Wellpath repeats and re-alleges the allegations in the preceding paragraphs as if set forth herein.

164. The Policies are valid and enforceable contracts between Wellpath and each of the Insurers.

165. The Policies provide coverage for, among other things, Wellpath's extra expenses incurred as a result of perils not excluded and expenses for calculating and determining the cause and origin of the loss, the amount of loss sustained, and the amount of loss payable under the Policies.

166. Wellpath submitted a claim for loss as a direct result of a covered cause of loss.

167. The Insurers denied coverage or repudiated their obligation to provide coverage under the Policies based on the improper position that, among other things, Wellpath had not suffered any direct physical loss or damage to its covered properties as a result of the actual or suspected presence of COVID-19.

168. An actual, justiciable controversy exists between Wellpath and the Insurers concerning the availability and amount of coverage under the Policies for Wellpath's claim.

169. The controversy between Wellpath and the Insurers is ripe for judicial review.

170. As a result, Wellpath seeks a declaration from the Court that: (a) Wellpath's claim triggers the various coverage provisions identified above; (b) the Policies cover Wellpath's claim; (c) Wellpath sustained direct physical loss or damage from a covered cause of loss under the Policies; (d) no exclusion applies to bar or limit coverage for Wellpath's claim; and (e) granting any other declaratory relief useful to resolving the dispute between the parties.

WHEREFORE, Wellpath requests that the Court:

1. Declare that: (a) Wellpath's claim triggers the various coverage provisions identified above; (b) the Policies cover Wellpath's claim; (c) Wellpath sustained direct physical loss or damage from a covered cause of loss under the Policies; (d) no exclusion applies to bar or limit coverage for Wellpath's claim; and (e) granting any other declaratory relief useful to resolving the dispute between the parties.
2. Order the Insurers to provide coverage for Wellpath's claim under the Policies;
3. Award damages, including compensatory and consequential, against the Insurers in an amount to be determined at trial;
4. Award pre-judgment, post-judgment, and statutory interest;
5. Award attorneys' fees and costs of suit incurred; and

6. Grant such other and further relief as the Court deems equitable, just, and proper.

Dated: April 13, 2021

Respectfully submitted,

WELLPATH HOLDINGS, INC.

/s/ Michael S. Levine

Michael S. Levine
Hunton Andrews Kurth LLP
200 Park Avenue
New York, NY 10166
(212) 309-1000 (telephone)
(212) 309-1100 (facsimile)
mlevine@HuntonAK.com

Kevin V. Small
Hunton Andrews Kurth LLP
200 Park Avenue
New York, NY 10166
(212) 309-1000 (telephone)
(212) 309-1100 (facsimile)
ksmall@HuntonAK.com

Walter J. Andrews (*pro hac vice* application to be filed)
Cary D. Steklof (*pro hac vice* application to be filed)
Hunton Andrews Kurth LLP
333 SE 2nd Avenue
Miami, Florida 33131
(305) 810-2500 (telephone)
(305) 810 2460 (facsimile)
wandrews@HuntonAK.com
csteklof@HuntonAK.com