

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

**CONNECTICUT CHILDREN’S MEDICAL)
CENTER AND CONNECTICUT)
CHILDREN’S SPECIALTY GROUP, INC.,)**

Plaintiffs)

v.)

**CONTINENTAL CASUALTY COMPANY)
AND CNA FINANCIAL CORPORATION,)**

Defendants.)

JURY TRIAL DEMANDED

MARCH 5, 2021

COMPLAINT

Plaintiffs, Connecticut Children’s Medical Center and Connecticut Children’s Specialty Group, Inc. (“Plaintiffs” or “Connecticut Children’s”), 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 Interruption losses and Extra Expense and Disease Contamination losses incurred due to the necessary suspension of operations at its medical facilities and affiliated and subsidiary organizations caused by the ongoing COVID-19 issues and the Pandemic are covered under the Defendants’ all-risk property insurance policy. As more specifically pled herein, the Defendants agreed to pay for Business Interruption

loss, Extra Expense, and Disease Contamination losses that the Plaintiffs sustained due to the necessary suspension of operations at its children's hospital caused by direct physical loss of or damage to covered properties. Defendants have breached the contract of insurance and the implied covenant of good faith and fair dealing by wrongfully failing to admit coverage for Plaintiffs' claims.

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 existence of the Coronavirus and the Pandemic.

2. Since 1898, Plaintiffs have operated a non-profit children's hospital in Hartford, Connecticut. Since March 2020, Plaintiffs' routine operations have been suspended or limited, and they continue to be at imminent risk of the Coronavirus and the Pandemic.

3. To protect their business in the event that it was suddenly forced to suspend routine operations for reasons outside of its control, or in order to prevent further property damage, Plaintiffs purchased insurance coverage from Defendants, including property coverage.

4. Unlike some policies that provide property 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.

5. In March 2020, Plaintiffs were forced to suspend or reduce operations at their children's hospital due to direct physical loss of or damage to covered property as a result of the Coronavirus and the Pandemic and the ensuing orders issued by authorities in the State of Connecticut, the CDC and guidance from medical associations and societies.

6. In addition, Plaintiffs incurred expenses to rebuild, repair, replace and protect the Covered Property from the impact of the Coronavirus and/or the Pandemic.

7. The Defendants have refused to pay the Plaintiffs under their Business Interruption, Extra Expense and Disease Contamination coverages for losses suffered due to the Coronavirus, the Pandemic and/or governmental orders. In particular, to date, the Defendants have failed to admit coverage for the claims submitted by Plaintiffs.

III. THE PARTIES

8. Connecticut Children's Medical Center is a renowned children's hospital incorporated in the state of Connecticut with its principal place of business in Hartford, Connecticut.

9. Connecticut Children's Specialty Group, Inc. is a corporation organized, incorporated and existing under the laws of the State of Connecticut, with its principal place of business in Hartford, Connecticut. Connecticut Children's Specialty Group, Inc. is a group practice that is a wholly owned subsidiary of Connecticut Children's Medical Center.

10. 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.

11. 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.

12. 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.

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

IV. JURISDICTION AND VENUE

14. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332, because the 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.

15. 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 Policy at issue covers Plaintiffs' facilities located in the State of Connecticut and Plaintiffs purchased the Policy at issue from insurance brokers in the State of Connecticut.

V. FACTUAL BACKGROUND

The Insurance Policy

16. In return for the payment of a premium, Defendants issued Policy No. 6023280696 to Connecticut Children's for the policy period October 1, 2019 to October 1, 2020. Policy No. 6023280696 is attached hereto and incorporated by reference as *Exhibit 1* (the "Policy").

17. Connecticut Children's Medical Center is a Named Insured under the Policy, which remains in force.

18. Connecticut Children's Specialty Group Inc., as a wholly owned subsidiary of Connecticut Children's Medical Center, is an "Affiliated or Subsidiary Organization" as defined in the Policy and therefore also a Named Insured. *Exhibit 1 at 12, 42.*

19. Defendants are the effective and liable insurers under the Policy.

20. Plaintiffs have performed all of their obligations under the Policy including the payment of premiums and cooperation with Defendants' claims investigation and preservation of the property.

21. 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.

22. Part II. COVERAGE states: “Except as hereinafter excluded and subject to the LIMITS OF LIABILITY in Section 1.4 and all other policy provisions, this policy insures against risks of direct physical loss of or damage to property and/or interests described herein at covered Locations”. *Exhibit 1 at 18.*

23. The Policy does not exclude or limit coverage for losses caused by viruses, pandemics, or communicable diseases.

24. The Policy covers against Business Interruption loss: “This policy covers against loss resulting from necessary interruption of business caused by direct physical loss of or damage to covered property...by the perils insured against and occurring during the term of this policy at covered Locations occupied by the Insured, subject to the sublimit specified in section 1.4 of this policy”. *Exhibit 1 at 19.*

25. The Policy covers Extra Expense. “The Company will pay for the reasonable and necessary extra expense, as hereinafter defined, incurred by the Insured in order to continue as nearly practicable the normal operation of the

Insured's business following direct physical loss of or damage to covered property by peril(s) insured against". *Exhibit 1 at 23*.

26. The Policy covers against loss caused by Disease Contamination as a result of an evacuation or decontamination order: "If as a result of an evacuation or decontamination order at a location by the National Center for Disease Control, authorized public health official or governmental authority because of the discovery or suspicion of a communicable disease or the threat of the spread of a communicable disease, the Insurer will pay for: (1) direct physical loss of or damage to covered property; and (2) the necessary and reasonable costs incurred by the Insured to: (a) evacuate the contaminated location, if required by the governmental authority; (b) decontaminate or dispose of contaminated covered property; (c) test after disposal, repair, replacement or restoration of damaged property is completed; and (d) pay employee overtime costs associated with providing additional care to patients affected by a communicable disease."

27. The limit of liability for Blanket Business Interruption (Gross Earnings) is \$300,000,000. *Exhibit 1 at 12*.

28. The Business Interruption Period of Indemnity is twenty-four (24) months. *Id.*

29. Loss and damage caused by the Coronavirus, the Pandemic and the related orders issued by state, and federal authorities triggered coverage under the Business Interruption, Extra Expense and Disease Contamination provisions of the Policy.

Coronavirus, the Pandemic and the Covered Cause of Loss

30. SARS-CoV-2, **also known as the Coronavirus**, 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 contracting COVID-19.

31. 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.

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

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

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

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

36. The Plaintiffs’ covered property remains at imminent risk of contamination with SARS-CoV-2 and it has suffered direct physical loss of or damage to the property.

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

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

39. As a result of the imminent risk of transmission of the virus, Plaintiffs have suspended operations including, without limitations, elective surgeries and other non-essential medical care.

40. 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.

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

42. Plaintiffs have suffered direct physical loss of or damage to Covered Property caused by or resulting from the presence of a deadly virus or the imminent risk of such on-site contamination, or governmental orders limiting the use of Plaintiffs' property and stay at home orders or some combination of the foregoing.

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

44. Plaintiffs treat patients with COVID-19 and their employees have tested positive for COVID-19.

The Connecticut Closure Orders and Related Governmental Orders

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

46. 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.

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

48. 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 Coronavirus and the Pandemic until April 19, 2021.

49. 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.

50. As a response to the Coronavirus 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.

51. 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.

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

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

54. The Pandemic has constituted a disaster.

55. The Plaintiffs have incurred Business Interruption loss and incurred reasonable and necessary Extra Expense and Disease Contamination expense caused by action of governmental authorities due to direct physical loss of or damage to property.

56. In response to the Pandemic, the Occupational Health and Safety Administration (“OSHA”) issued guidance applying to Healthcare Workers and Employees. See <https://www.osha.gov/coronavirus/control-prevention/healthcare-workers>. Among other things, OSHA indicated that “Employers should assess the hazards to which their workers may be exposed; evaluate the risk of exposure; and select, implement, and ensure workers use controls to prevent exposure.” *Id.* OSHA identified various healthcare work tasks and classified them in terms of their risk of exposing healthcare workers to COVID-19, ranging from “Lower (Caution)” to “Very High”. *Id.* OSHA further noted, “The Occupational Safety and Health Act requires employers to comply with safety and health standards and regulations promulgated by OSHA or by a state with an OSHA-approved state plan. In addition, the Act's General Duty Clause, Section 5(a)(1), requires employers to provide their employees with a workplace free from recognized hazards likely to cause death or serious physical harm.” *Id.*

57. In response to the Pandemic, The Centers for Disease Control (“CDC”) issued Infection Control Guidance for Healthcare Professionals about Coronavirus (COVID-19). See <https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control.html>. CDC stated that “CDC recommends using additional infection prevention and control practices during the COVID-19 pandemic, along with standard practices recommended as a part of routine healthcare delivery to all patients.” See <https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations.html>. CDC further indicated, “These

practices are intended to apply to all patients, not just those with suspected or confirmed SARS-CoV-2 infection.” Id. CDC also indicated that “[f]acilities should develop policies and procedures to ensure recommendations are appropriately applied in their setting (e.g., emergency department, home healthcare delivery).” Id.

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

58. 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.

59. As the drafter of the Policy, 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.

60. The presence of SARS-CoV-2 and/or imminent threat of SARS-CoV-2 and/or the Pandemic caused direct physical loss of the covered property or “premises” under the Policy by causing a necessary suspension (in whole or in part) of operations during a period of restoration.

61. 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 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 and Disease Contamination expenses.

62. 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”.

63. As a result of the presence of SARS-CoV-2 and/or the imminent threat of SARS-CoV-2 and/or the Pandemic, Plaintiffs incurred Business Interruption loss, and Extra Expense, and Disease Contamination expenses.

Defendants Have Failed To Admit Or Deny Coverage

64. In April 2020 and in communications subsequent thereto, the Plaintiffs submitted notice of loss to Defendants due to the probable presence of SARS-CoV-2 and the Pandemic. Despite the passage of eleven (11) months since notice of loss, the Defendants have neither denied nor agreed to coverage.

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

VI. LEGAL CLAIMS FOR RELIEF

Count I – Declaratory Relief

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

67. Pursuant to 28 U.S.C. § 2201(a) and Federal Rule of Civil Procedure 57, Plaintiffs bring this action for declaratory judgment.

68. An actual controversy has arisen between Plaintiffs and Defendants as to the rights, duties, responsibilities and obligations in that Plaintiffs contend and Defendants dispute and deny that Plaintiffs' Policy provides coverage to Plaintiffs for any current and future Business Interruption loss, Extra Expense, and Disease Contamination expenses.

69. Pursuant to 28 U.S.C. § 2201(a) and Federal Rule of Civil Procedure 57, Plaintiffs are entitled to a declaration that Defendants are obligated, pursuant to Plaintiffs' Policy, to provide coverage for its Business Interruption loss, Extra Expense, and Disease Contamination expenses.

Count II – Breach of Contract

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

71. The Policy is a contract under which Defendants were paid premiums in exchange for Defendants' promise to pay Plaintiff's losses for claims covered by the Policy.

72. Pursuant to the Policy, Defendants agreed to pay for its insureds' actual loss of Business Interruption losses sustained due to the necessary suspension of its operations during the "period of restoration".

73. SARS-CoV-2 and the 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 Pandemic thus triggered the Business Interruption coverage Defendants agreed to pay.

74. Plaintiffs have complied with all applicable provisions of the Policy 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 terms.

75. By failing to admit coverage for any Business Interruption losses incurred by Plaintiffs in connection with the Pandemic, Defendants have breached the coverage obligations under the Policy.

76. Defendants also agreed to pay necessary Extra Expense that their insured 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.

77. Due to SARS-CoV-2 and the COVID-19 Pandemic, Plaintiffs have incurred Extra Expense at the Covered Property. Plaintiffs have complied with all applicable provisions of the Policy 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.

78. By failing to admit coverage for any Extra Expenses incurred by Plaintiffs in connection with the Pandemic, Defendants have breached the coverage obligations under the Policy.

79. Pursuant to the Policy, Defendants agreed to pay for Disease Contamination expenses incurred as the result of an evacuation or decontamination

order at a location by a governmental authority because of the discovery or suspicion of communicable disease or the threat of the spread of communicable disease.

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

81. By failing to admit coverage for Disease Contamination expenses incurred in connection with the Pandemic, the Defendants have breached the coverage obligations under the Policy.

82. Plaintiffs suffered direct physical loss of or damage to Covered Property and resulting in Business Interruption loss, Extra Expense and Disease Contamination loss 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. The government mandated evacuation or decontamination orders in response to the presence and imminent risk posed by SARS-CoV-2.

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

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

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

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

86. 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.

87. 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 Plaintiffs' claim; failing to advise Plaintiffs as to their position regarding the Plaintiffs' notice of claim; declining to make clear, and good faith efforts to resolve the contractual relationship between Plaintiffs and Defendants.

VI. REQUEST FOR RELIEF

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

- a. For a declaratory judgment that the Defendants are obligated, pursuant to Plaintiffs' Policy, to provide Plaintiffs coverage for their Business Interruption loss, Extra Expense, and Disease Contamination expenses caused by the COVID-19 Pandemic;
- b. For a judgment against Defendants for the causes of action alleged against it;
- c. For compensatory damages in an amount to be proven at trial;
- d. For pre-judgment and post-judgment interest at the maximum rate permitted by law;
- e. For Plaintiffs' attorneys' fees;
- f. For Plaintiffs' costs incurred;
- g. For punitive damages; and
- h. 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 demands a trial by jury on all matters so triable.

**Respectfully submitted,
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