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SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

TULALIP TRIBES OF WASHINGTON,
federally recognized Indian Tribes, and
TULALIP GAMING ORGANIZATION, an
instrumentality and enterprise of Tulalip Tribes
of Washington,

Plaintiffs

v.

- (1) LEXINGTON INSURANCE COMPANY;
- (2) SUBSCRIBING UNDERWRITERS AT LLOYD'S - SYNDICATES: ASC 1414, XLC 2003, TAL 1183, MSP 318, ATL 1861, KLN 510, AGR 3268;
- (3) UNDERWRITERS AT LLOYD'S - SYNDICATE: CNP 4444;
- (4) UNDERWRITERS AT LLOYD'S - ASPEN SPECIALTY INSURANCE COMPANY;
- (5) HOMELAND INSURANCE COMPANY OF NY (ONE BEACON);
- (6) HALLMARK SPECIALTY INSURANCE COMPANY;
- (7) UNDERWRITERS AT LLOYD'S - SYNDICATES: KLN 0510, ATL 1861, ASC 1414, QBE 1886, MSP 0318, APL 1969, CHN 2015, XLC 2003;
- (8) UNDERWRITERS AT LLOYD'S - SYNDICATE: BRT 2987; (9) ENDURANCE WORLDWIDE INSURANCE Ltd t/as SOMPO INTERNATIONAL; (10) UNDERWRITERS AT LLOYD'S - SYNDICATES: KLN 0510,

20 2 03604 31

COMPLAINT FOR
DECLARATORY JUDGMENT
AND MONETARY DAMAGES

1 TMK 1880, BRT 2987, BRT 2988, CNP 4444,
2 ATL 1861, NEON WORLDWIDE PROPERTY
3 CONSORTIUM, AUW 0609, TAL 1183, AUL
4 1274;
5 (11) ARCH SPECIALTY INSURANCE
6 COMPANY;
7 (12) EVANSTON INSURANCE COMPANY;
8 (13) ALLIED WORLD NATIONAL
9 ASSURANCE COMPANY
10 (14) LIBERTY MUTUAL FIRE INSURANCE
11 COMPANY,

12 Defendants.

13 **I. PARTIES**

14 1. Plaintiff Tulalip Tribes of Washington ("TTW" or "Tribe") is a federally
15 recognized Indian Tribe which owns/operates business properties insured by defendants,
16 which properties are physically located in Tulalip, Washington, in Snohomish County.

17 2. Plaintiff Tulalip Gaming Organization ("TGO") is an instrumentality and
18 enterprise of TTW, insured by defendants regarding business properties insured under
19 defendants' policies which properties are physically located in Tulalip, Washington, in
20 Snohomish County.

21 3. Defendant Lexington Insurance Company ("Lexington") is a corporation
22 authorized to issue surplus line coverage under RCW Title 48, and which issued coverage to
23 plaintiffs pursuant to RCW Title 48. On information and belief plaintiffs allege Lexington
24 does business within Snohomish County.

25 4. Defendants Subscribing Underwriters at Lloyds ("Subscribing Underwriters")
26 are members of syndicates which include ASC1414, XLC 2003, TAL 1183, MSP 318, ATL
27 1861, KLN 510, AGR 3268; CNP 4444; KLN 0510, ASC 1414, QBE 1886, MSP 0318, APL
28 1969, CHN 2015, XLC 2003; TMK 1880, BRT 2987, BRT 2988; Neon Worldwide Property
29 Consortium, AUW 0609, TAL 1183, AUL 1274 all of whom are authorized to issue surplus

1 lines coverage under RCW Title 48, and which issued coverage to plaintiffs pursuant to
2 RCW Title 48. On information and belief plaintiffs allege Subscribing Underwriters do
3 business within Snohomish County.

4 5. Defendant Aspen Specialty Insurance Company ("Aspen") is an insurance
5 company authorized to issue surplus lines coverage under RCW Title 48, and which issued
6 coverage to plaintiffs pursuant to RCW Title 48. On information and belief plaintiffs allege
7 Aspen does business within Snohomish County.

8 6. Homeland Insurance Company of New York ("Homeland") is an insurance
9 company authorized to issue surplus lines coverage under RCW Title 48, and which issued
10 coverage to plaintiffs pursuant to RCW Title 48. On information and belief plaintiffs allege
11 Homeland does business within Snohomish County.

12 7. Hallmark Specialty Insurance Company ("Hallmark") is an insurance
13 company authorized to issue surplus lines coverage under RCW Title 48, and which issued
14 coverage to plaintiffs pursuant to RCW Title 48. On information and belief plaintiffs allege
15 Hallmark does business within Snohomish County.

16 8. Endurance Worldwide Insurance Ltd., t/as Sompo International ("Endurance")
17 is an insurance company authorized to issue surplus lines coverage under RCW Title 48, and
18 which issued coverage to plaintiffs pursuant to RCW Title 48. On information and belief
19 plaintiffs allege Endurance does business within Snohomish County.

20 9. Arch Specialty Insurance Company ("Arch") is an insurance company
21 authorized to issue surplus lines coverage under RCW Title 48, and which issued coverage to
22 plaintiffs pursuant to RCW Title 48. On information and belief plaintiffs allege Arch does
23 business within Snohomish County.

24

1 10. Evanston Insurance Company (“Evanston”) is an insurance company
2 authorized to issue surplus lines coverage under RCW Title 48, and which issued coverage to
3 plaintiffs pursuant to RCW Title 48. On information and belief plaintiffs allege Evanston
4 does business within Snohomish County.

5 11. Allied World National Insurance Company (“Allied”) is an insurance
6 company authorized to issue surplus lines coverage under RCW Title 48, and which issued
7 coverage to plaintiffs pursuant to RCW Title 48. On information and belief plaintiffs allege
8 Allied does business within Snohomish County. Defendants Lexington, Subscribing
9 Underwriters, Aspen, Homeland, Hallmark, Endurance, Arch, Evanston and Allied are
10 sometimes collectively referred to herein as the “non-Liberty defendants.”

11 12. Liberty Mutual Fire Insurance Company (“Liberty”) is an insurance company
12 authorized to issue insurance under RCW Title 48, and which issued coverage to plaintiffs
13 pursuant to RCW Title 48. On information and belief plaintiffs allege Liberty does business
14 within Snohomish County.

15 **II. JURISDICTION AND VENUE**

16 13. The non-Liberty defendants have each contractually consented to in personam
17 jurisdiction. Liberty conducts business in Snohomish County and is subject to suit here.

18 14. One or more defendants reside in Snohomish County for venue purposes and
19 venue is otherwise proper in Snohomish County.

20 **III. INSURANCE TRANSACTIONS**

21 15. On information and belief, plaintiffs allege that defendants entered into an
22 agency relationship with Alliant Specialty Insurance Services, Inc., Alliant Underwriting
23 Solutions/Tribal First, Alliant Insurance Services, Inc., and or affiliated entities (“Alliant”)
24 and/or AmWins Insurance Brokerage Service of California, LLC or its affiliates (“AmWins”)

1 whereby Alliant and/or AmWins (pursuant to RCW 48.15 with respect to the non-Liberty
2 defendants), marketed, underwrote, negotiated and/or sold insurance policies and or
3 insurance contracts to policyholders physically located within the State of Washington,
4 including to the plaintiffs. Alliant issued the Liberty Policy from its Seattle office.

5 16. In its capacity as an authorized agent for each defendant, and pursuant to
6 RCW 48.15, Alliant and/or AmWins marketed, negotiated, underwrote and/or sold certain
7 property and business interruption insurance to plaintiffs through a Seattle based insurance
8 broker, Brown and Brown of Washington, Inc. ("BBW"). With respect to all conduct alleged
9 in this complaint, Alliant and/or AmWins was the authorized agent of each defendant herein,
10 and in connection with all such matters pled herein, acted within the scope of their respective
11 actual and/or apparent authority.

12 17. The policies sold to plaintiffs which are the subject of this dispute were
13 solicited and/or negotiated by BBW from its Seattle office.

14 18. The non-Liberty policies sold to plaintiffs at issue in this case contain the
15 following statement:

16
17 **SURPLUS LINES DISCLOSURE
WASHINGTON**

18 This contract is registered and delivered as a surplus line coverage under the
19 insurance code of the state of Washington, Title 48 RCW. It is not protected
by any Washington state guaranty association law.

20 19. The statement contained in the excerpt in paragraph 18 above that the contract
21 is registered as a surplus lines coverage, is true.

22 20. Pursuant to RCW 48.01.020, RCW 48.01.060 and the policy language, the
23 solicitation, negotiation, execution, registration, delivery, insuring and the transaction of all
24

1 subsequent matters arising out of the foregoing are insurance transactions within the meaning
2 of RCW 48.01.020.

3 **IV. ISSUANCE OF POLICIES**

4 21. The following defendants issued the following policies (collectively, the
5 “Policies”) to one or more of the plaintiffs:

6 A. Lexington Insurance Company, Policy No.’s 017471589/06, 38412453,
7 38412468, 01660435/07, 011660470/07.

8 B. Underwriters at Lloyd’s Syndicates; ASC1414, XLC 2003, TAL 1183, MSP
9 318, ATL1861, KLN 510, AGR 3268, Policy No PJ193647.

10 C. Underwriters at Lloyd’s – Syndicate CNP 4444, Policy No. PJ1900131.

11 D. Underwriters at Lloyd’s – Aspen Specialty Insurance Company, Policy No.
12 PX006CP19.

13 E. Homeland Insurance Company of NY (One Beacon), Policy No. 798000237.

14 F. Hallmark Specialty Insurance Company, Policy No’s. 73PRX19A1B7,
15 and73PRX19A1EF.

16 G. Underwriters at Lloyd’s – Syndicates KLN 0510, ATL 1861, ASC 1414, QBE
17 1886, MSP 0318, APL 1969, CHN 2015, XLC 2003, Policy No. PJ1933021.

18 H. Underwriters at Lloyd’s – Syndicate BRT 2987 (excluding B&M), Policy No.
19 PD-10363-05.

20 I. Endurance Worldwide Insurance Ltd t/as Sompo International, Policy No.
21 PJ1900134.

22 J. Underwriters at Lloyd’s – Syndicates KLN 0510, TMK 1880, BRT 2987,
23 BRT 2988, CNP 4444, ATL 1861, Neon Worldwide Property Consortium, AUW 0609, TAL
24 1183, AUL 1274, Policy No. PJ1900067.

- 1 K. Arch Specialty Insurance Company, Policy No. ESP7303914-02.
- 2 L. Evanston Insurance Company, Policy No. MKLV14XP012536.
- 3 M. Allied World National Assurance Company, Policy No. 0310-8171-1N.
- 4 N. Liberty Mutual Fire Insurance Company, Policy No. MQ2-L9L-470467-259

5 (the "Liberty Policy.")

6 22. One or more defendants failed to deliver its/their policies within the time
7 frame permitted under RCW 48.18.260(1) and in violation of WAC 284-30-580.

8 **V. PERILS INSURED BY NON-LIBERTY DEFENDANTS**

9 23. In 2006, the Insurance Services Office ("ISO") created a specific form of
10 endorsement for the exclusion of all policy benefits in property insurance policies resulting
11 from "direct physical loss" caused by virus (the "Virus Exclusion.") The form is a
12 standardized form and bears the form number CP 01 40 07 06. While recognizing that a virus
13 is capable of causing "direct physical loss" to insured property, the Virus Exclusion excludes
14 all coverage for losses caused by virus.

15 24. Each non-Liberty defendant was aware of the Virus Exclusion, but, on
16 information and belief, plaintiffs allege no such defendant used it.

17 25. The Corona Virus is pathogenic material.

18 26. The Corona Virus causes a communicable disease known as Covid 19.

19 27. Each non-Liberty defendant made a deliberate decision to insure plaintiffs
20 from "all risks" of direct physical loss not excluded under the policies. Liberty made a
21 deliberate decision to provide \$500 million of "excess" insurance over the first \$100 million
22 of the Policies. None of defendants' policies require that a "direct physical loss" involve
23 structural damage to insured properties, and no defendant placed language in its policy
24 containing such a requirement.

1 28. The premium charged to plaintiffs and paid by plaintiffs reflected the fact the
2 policies are “all risk” policies, insuring direct physical loss caused by perils not excluded
3 under the policy.

4 29. In the plaintiffs’ Policies, the non-Liberty defendants chose to exclude direct
5 physical loss caused by communicable disease, but limited that exclusion to direct physical
6 loss to animals.

7 30. In the plaintiffs’ Policies, the non-Liberty defendants chose to exclude direct
8 physical loss caused by pathogenic material, but limited that exclusion to direct physical loss
9 caused by “malicious use” thereof.

10 31. In March of 2020, defendants, through Alliant, published revisions for 2020-
11 2021 policies to the coverage terms contained in the 2019-2020 version of the “TPIP” form
12 contained in the 2019-2020 TGO policy. For the upcoming Tulalip policy year (2020-2021),
13 the non-Liberty defendants, through Alliant, added the word “virus” to the contamination
14 exclusion, and added the following “Communicable Disease” exclusion:

15 **ENDORSEMENT 5**

16 **COMMUNICABLE DISEASE EXCLUSION**

17 **VI.** This policy, subject to all applicable terms, conditions and exclusions, covers
18 losses attributable to direct physical loss or physical damage occurring during the
19 period of insurance.

20 Consequently and notwithstanding any other provision of this policy to the
21 contrary, this policy does not insure any loss, damage, claim, cost, expense or
22 other sum, directly or indirectly arising out of, attributable to, or occurring
23 concurrently or in any sequence with a Communicable Disease or the fear or
24 threat (whether actual or perceived) of a Communicable Disease.

2. For the purposes of this endorsement, loss, damage, claim, cost, expense or
other sum, includes, but is not limited to, any cost to clean-up, detoxify,
remove, monitor or test:

2.1. for a Communicable Disease, or

2.2. any property insured hereunder that is affected by such Communicable
Disease.

1 3. As used herein, a Communicable Disease means any disease which can be
2 transmitted by means of any substance or agent from any organism to another
organism where:

3 3.1. the substance or agent includes, but is not limited to, a virus, bacterium,
4 parasite or other organism or any variation thereof, whether deemed living or
5 not, and 3.2. the method of transmission, whether direct or indirect, includes
6 but is not limited to, airborne transmission, bodily fluid transmission,
transmission from or to any surface or object, solid, liquid or gas or between
7 organisms, and 3.3. the disease, substance or agent can cause or threaten
8 damage to human health or human welfare or can cause or threaten damage to,
9 deterioration of, loss of value of, marketability of or loss of use of property
insured hereunder.

4. This endorsement applies to all coverage extensions, additional coverages,
exceptions to any exclusion and other coverage grant(s).

All other terms, conditions and exclusions of the policy remain the same.

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10 32. The communicable disease exclusion in "Endorsement 5" is not part of the
11 non-Liberty Policies at issue in this case, nor is the "virus" modification to the
12 "contamination" exclusion for the 2020-2021 policy year.

13 33. In 1986, the Washington Supreme Court adopted the efficient proximate cause
14 doctrine. In 1989, the Court ruled in *Safeco v. Hirschmann* that an insurer may not
15 "contractually circumvent" the rule. Thirty years later, in violation of the decision in *Safeco*
16 *v. Hirschmann*, defendants issued and sold insurance pursuant to the surplus lines provisions
17 of RCW Title 48, which used policy language in an unlawful and deceptive attempt to make
18 it appear to policyholders that its policy exclusions applied to defeat coverage whether or not
19 one or more of those exclusions was the efficient proximate cause of a loss. This law became
20 part of the policies when they were issued. Defendant Lexington unfairly and deceptively
21 relied in its reservation of rights letter on policy language legally impermissible under *Safeco*
22 *v. Hirschmann*.

1 **VI. THE LIBERTY MUTUAL EXCESS INSURANCE**

2 34. Alliant prepared and issued a 394-page document to TGO (collectively the
3 “Insurance Contract”) in which TTW, TGO and other related entities are insured. The
4 Insurance Contract constitutes “insurance” within the meaning of RCW 48.01.040 and
5 constitutes an “insurance contract” within the meaning of WAC 284-30-320(7).

6 35. When the Insurance Contract was issued by Alliant to TGO, Alliant acted,
7 inter alia, as the authorized agent of Liberty.

8 36. On p. 29 of the Insurance Contract Alliant made the following representation:

9 This document outlines and summarizes the coverages, limits, sublimits, and
10 deductibles for this Named Insured, and is subject to the policy wording being
11 the ‘TPIP USA Form No. 15, Tribal Terrorism Policy, Tribal Excess Boiler
Policy and Specific Carrier Policies.’ which forms an integral part of this
insurance.

12 37. Immediately below the statement that TPIP Form 15 “forms an
13 integral part of this insurance” the following language appears:

14 This document does not create, modify extend or otherwise affect the
15 terms, conditions, provisions or exclusions as outlined in the Declaration Page
16 or Insurance Policies that have subscribed to the 2019 Tribal Property
Insurance Program Placement. To the extent there exists any discrepancy
17 between this document and the Declaration Page or Insurance Policies
referred to herein, the Declaration Page or Policies shall control.

18 38. The coverage promised in the Insurance Contract incepted July 1,
2019.

19 39. As of July 1, 2019, Liberty had not issued the policy which was part of the
20 Insurance Contract.

21 40. There is no term in the Insurance Contract whereby the insurance promised to
22 be provided by Liberty would be subject to any terms more restrictive than those contained in
23 TPIP Form 15.

1 41. As of July 1, 2019 when the insurance promised in the Insurance Contract
2 incepted, neither TTW nor TGO had agreed to any limitation to the Insurance Contract which
3 involved the issuance of a policy exclusion naming "virus" as an excluded peril.

4 42. As of July 1, 2019, a virus exclusion was not a term of the TPIP insurance
5 promised in the Insurance Contract.

6 43. As of the date the insurance referenced in the Insurance Contract went into
7 effect (July 1, 2019), and as of the date plaintiffs paid the insurance premium applicable to
8 the Insurance Contract, the insurance promised in the Insurance Contract to be provided by
9 Liberty was not subject to a virus exclusion.

10 44. Liberty purported to issue the Liberty Policy on September 16, 2019, some 75
11 days after the insurance promised in the Insurance Contracts went into effect, and
12 approximately a month after the premium then due was paid.

13 45. The policy issued by Liberty on September 16, 2019 breached the Insurance
14 Contract by inclusion of an exclusionary provision not part of the Insurance Contract, and
15 which was not contained in the TPIP 15 form (stated in the Insurance Contract to be "an
16 integral part of this insurance.")

17 46. Liberty's belated attempt to modify the insurance promised in the Insurance
18 Contract through the inclusion of a virus exclusion in the Liberty Policy violated RCW
19 48.01.030 and is unenforceable.

20 47. To the extent Liberty has relied on the virus exclusion in the Liberty Policy in
21 its ongoing refusal to pay policy benefits to plaintiffs, Liberty has committed an unfair and
22 deceptive act or practice under RCW 19.86.020.

1 48. Liberty did not deliver the Liberty Policy prior to the business interruption
2 suffered by plaintiffs. Liberty's belated delivery of the policy violated RCW 48.18.240
3 and WAC 284-30-580, and constituted an unfair and deceptive act or practice as prohibited
4 under RCW 19.86.020.

5 49. Liberty's wrongful conduct regarding its breach of the Insurance Contract has
6 damaged plaintiffs in an amount to be proven at trial.

7 **VII. PLAINTIFFS' INSURANCE CLAIMS**

8 50. In March of 2020, the Corona Virus was detected by TTW and TGO at premises
9 insured under the Policies.

10 51. The interiors of insured premises suffered a direct physical loss when (1) the air
11 inside became unsafe to breath, and (2) virus was transferred by business patrons and/or
12 employees of insureds onto real and personal property covered by the Policies.

13 52. The spread of the Virus at insured premises set into motion a chain of events which
14 resulted in a direct physical loss to covered properties under the Policies.

15 53. As a direct result of the direct physical loss to premises insured under the
16 policy, plaintiffs became entitled to certain benefits under the Policies, which plaintiffs
17 expect will exceed \$100 million dollars.

18 54. On May 5, 2020, plaintiffs made claim to defendants in the manner prescribed in the
19 Policies and in the Insurance Contract, as covered persons for coverage and benefits under
20 the Policies.

21 55. Pursuant to standards of the insurance industry, as well as under RCW Title 48 and
22 Fair Claim Practice Regulations propounded as authorized therein, each defendant became
23 obligated to conduct all activities directly or indirectly related to the determination of their
24 own liabilities under the Policies each issued.

1 **VIII. DEFENDANTS' CLAIM HANDLING VIOLATIONS**

2 56. It is a cornerstone of industry claim handling practice that an insurer (or its
3 representatives) never place its own financial interests ahead of its insureds.

4 57. It is a cornerstone of industry claim handling practice that insurers and their
5 representatives perform all tasks directly or indirectly related to the determination of
6 liabilities under policies they issue in a fair and impartial manner.

7 58. It is a standard in the claims handling industry that insurers adopt and
8 implement standards for the prompt investigation of claims.

9 59. It is a standard of the claim handling industry that insurers keep an open mind
10 concerning coverage at all times before and after a claim or claims under its policies are
11 made.

12 60. It is a standard of the claim handling industry that an insurer considers the
13 good faith making of policy benefit advances when it is necessary that its investigation be
14 conducted beyond 30 days from the making of a claim.

15 61. It is a standard in the claims handling industry that an insurer fully discloses
16 all information to its policyholders as that information is uncovered in the insurer's
17 investigation.

18 62. It is a standard in the claim handling industry that insurers and their
19 representatives be actuated by good faith, abstain from deception, and practice honesty and
20 equity in all claim handling work.

21 63. It is a standard in the claim handling industry that insurers and their claim
22 representatives do not keep secrets from their policyholders.

23 64. It is a standard in the claims handling industry that insurers and their
24 representatives not misrepresent pertinent facts or policy provisions.

1 65. Unfair and deceptive acts or practices in trade or commerce are unlawful. One
2 or more violations of the standards set forth in paragraph 56-64 are unfair and deceptive acts
3 or practices in the business of insurance. Each defendant engaged in one or more violations
4 of the standards recited in paragraphs 56-64 herein, and otherwise have unreasonably
5 withheld (and continue to unreasonably withhold) coverage benefits promised under the
6 policies and under the Insurance Contract.

7 66. With the exception of Lexington and Liberty, no other defendant has
8 acknowledged the claim made by plaintiffs on May 5, 2020.

9 67. No defendant other than Lexington or Liberty has acknowledged plaintiffs'
10 claims or furnished information concerning the representative who would perform the tasks
11 necessary in the determination of liabilities under the policies and under the Insurance
12 Contract, pursuant to WAC 284-30-320(9). No defendant other than Lexington or Liberty has
13 communicated with plaintiffs concerning insurance coverage for plaintiffs' losses, from the
14 date of plaintiff's claim through the filing of this suit.

15 68. On information and belief, plaintiffs allege each non-Liberty defendant
16 developed a strategy prior to May 5, 2020, to resist claims under "Tribal First" insurance for
17 business interruption efficiently and proximately caused by the Corona Virus.

18 69. On information and belief, plaintiffs allege that non-Liberty defendants herein
19 acted in concert with one another to refuse business interruption benefits to plaintiffs,
20 notwithstanding their failure to exclude virus or communicable disease as risks of direct
21 physical loss and resulting business interruption.

22 70. On information and belief, plaintiffs allege that part of defendants' strategy in
23 pursuing an ongoing refusal to pay claims under Tribal First policies has been to invest
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1 monies which would otherwise be paid to plaintiffs as policy benefits for defendants' own
2 account.

3 71. Plaintiffs have been damaged in an amount to be proven at time of trial,
4 including consequential damages, in an amount in excess of \$100 million.

5 CAUSES OF ACTION

6 FIRST CAUSE OF ACTION—BREACH OF CONTRACT

7 72. Plaintiffs reallege paragraphs 1-71 as though fully set forth herein.

8 73. The conduct of each defendant constitutes a breach of the policy(ies) of each
9 and/or a breach of the Insurance Contract. Plaintiffs have been damaged directly and
10 consequentially in an amount to be proven at trial, expected to substantially exceed \$100
11 million.

12 SECOND CAUSE OF ACTION—NEGLIGENCE

13 74. Plaintiffs reallege paragraphs 1-73 as though fully set forth herein.

14 75. It was reasonably foreseeable to each insurer that the failure of each to conduct
15 a fair and impartial investigation and to timely pay benefits due under the policy would harm
16 and damage the business of plaintiffs. It was also reasonably foreseeable that the concerted
17 actions of each of the defendants to aid and abet other defendants in the wrongful denial of
18 benefits under their respective policies would cause damage to plaintiffs beyond the mere
19 breach of each defendant of its own individual policy or contract of insurance. Pursuant to
20 RCW 4.22.070, each defendant is jointly and severally liable for plaintiffs' damages in an
21 amount to be proven at trial, expected to substantially exceed \$100 million.

22 THIRD CAUSE OF ACTION—VIOLATION OF CONSUMER PROTECTION ACT

23 76. Plaintiff realleges paragraphs 1-75 as though fully set forth herein.
24

1 77. Each of the acts and omissions described herein were committed in the course
2 of trade and commerce conducted within the State of Washington.

3 78. The acts and omissions pled herein are per se unfair and deceptive acts or
4 practices pursuant to the Washington Consumer Protection Act, and/or had the capacity to
5 deceive.

6 79. Each of the acts or omissions described herein impacts the public interest.

7 80. The acts or omissions described herein have caused injury/damage to
8 plaintiffs in their business/property.

9 81. Plaintiffs are entitled to recover trebled damages up to the statutory maximum
10 against each syndicate member insurer for the several damages of each.

11 **FOURTH CAUSE OF ACTION—DECLARATORY RELIEF**

12 82. Plaintiffs reallege Paragraphs 1-81 as though fully set forth herein.

13 83. There is an actual and justiciable controversy between plaintiffs and the
14 insurer participants in defendant syndicates concerning certain respective rights and
15 obligations inter se.

16 84. Plaintiffs herein seeks declaratory relief including but not limited to the
17 following:

18 A. An adjudication of whether insurer members of defendant syndicates
19 committed breaches of WAC 284-30-330(1), (3), (4), (6), (7) and/or (13);

20 B. Whether defendants, either individually, collectively, and/or through
21 their members or agents, breached RCW 48.01.030;

22 C. Whether defendants, either individually, collectively or through their
23 members or agents, violated WAC 284-30-360 (1)(3) and or (4);

1 D. Whether certain policy provisions constitute a deliberate violation of
2 the rule of *Safeco v. Hirschmann* that an insurer may not “contractually circumvent” the rule
3 of efficient proximate cause;

4 E. Whether “communicable disease, and “pathogenic material,” are
5 contractually distinct perils from “contamination” under the policies;

6 F. Whether the promises made in the Insurance Contract constitute
7 “insurance” within the meaning of RCW 48.01.040;

8 G. Whether the virus exclusion in the Liberty Policy was a term of the
9 Insurance Contract;

10 H. Whether Liberty’s purported inclusion of a virus exclusion in the
11 policy it issued on September 16, 2019, constituted a breach of the Insurance Contract;

12 I. Such other and further declaratory relief as the court may deem
13 appropriate.

14 **IX. RESERVATION OF CLAIM PURSUANT TO RCW 48.30.015**

15 85. Contemporaneously with the service and/or filing of this suit, plaintiffs are
16 serving the notice required under RCW 48.30.015(8), and reserve the right to amend this suit
17 to assert claims pursuant to RCW 48.30.015(1) once the notice time period required under
18 sub-section 8 has run.

19 **X. PRAYER FOR RELIEF**

20 WHEREFORE, having stated its Complaint for monetary damages and declaratory
21 relief, plaintiffs pray for relief as follows:

- 22 i. For money damages in an amount to be proven at trial;
- 23 ii. For declaratory relief as requested herein, and expedited trial pursuant
24 to CR 57;

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- iii. For prejudgment interest authorized by statute and law;
- iv. For treble damages as allowed by statute;
- v. For attorney's fees and other costs, as allowed under applicable law, statute, and/or recognized grounds of equity;
- vi. For such other and further relief as the court may deem just and equitable.

DATED: July 10, 2020.

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