

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NEW YORK

THE ROCKEFELLER UNIVERSITY,

Plaintiff,

v.

AETNA CASUALTY & SURETY COMPANY (N/K/A TRAVELERS CASUALTY AND SURETY COMPANY), TRAVELERS INDEMNITY COMPANY, FEDERAL INSURANCE COMPANY, INSURANCE COMPANY OF NORTH AMERICA, ADRIATIC INSURANCE COMPANY (N/K/A ALLIANZ SE), ANCIENNE MUTUELLE REASSURANCE (N/K/A AXA REINSURANCE U.K. P.L.C.), CERTAIN UNDERWRITERS AT LLOYD’S OF LONDON, C.N.A. REINSURANCE OF LONDON LTD. (N/K/A CX REINSURANCE COMPANY LTD.), FIREMAN’S FUND INSURANCE COMPANY, GUARANTY NATIONAL INSURANCE COMPANY (N/K/A ARROWWOOD INDEMNITY COMPANY), RANGER INSURANCE COMPANY (N/K/A TIG INSURANCE COMPANY), NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA, ROYAL INSURANCE COMPANY OF AMERICA (N/K/A ARROWWOOD INDEMNITY COMPANY), TUREGUM INSURANCE COMPANY (N/K/A HARPER INSURANCE LTD), UNIONAMERICA INSURANCE COMPANY LTD., AND UNITED NATIONAL INSURANCE COMPANY,

Defendants.

Index No.: 654425/2019

AMENDED COMPLAINT

JURY TRIAL DEMANDED

Plaintiff The Rockefeller University (the “University”) by and through its undersigned counsel, files this Complaint against defendants Aetna Casualty & Surety Company (“Aetna”) (N/K/A Travelers Casualty and Surety Company), The Travelers Indemnity Company (“TIC”) (together with Aetna, “Travelers”), Federal Insurance Company (“Federal”),

Insurance Company of North America (“INA”) (together with Federal, “Chubb”), Riunione Adriatica di Sicurta (N/K/A Allianz S.p.A), Ancienne Mutuelle Reassurance (N/K/A AXA Reinsurance U.K. P.L.C.), Certain Underwriters at Lloyd’s of London, C.N.A. Reinsurance of London Ltd. (N/K/A CX Reinsurance Company Ltd.), Fireman’s Fund Insurance Company, Guaranty National Insurance Company (N/K/A Arrowood Indemnity Company), National Union Fire Insurance Company of Pittsburgh, PA, Ranger Insurance Company (N/K/A TIG Insurance Company), Royal Indemnity Company (N/K/A Arrowood Indemnity Company), Turegum Insurance Company Ltd. (N/K/A Harper Insurance Ltd.), UnionAmerica Insurance Company Ltd. (N/K/A River Thames Insurance Company Ltd.), and United National Insurance Company (collectively, “Defendants”) and alleges as follows:

PRELIMINARY STATEMENT

1. After a constructive relationship with the Defendants for over seventy years, the University is reluctantly forced to file this action due to Defendants’ continuing, obstructive conduct, all to the University’s detriment. This is an insurance coverage action seeking both damages and declaratory relief relating to the Defendants’ refusal to honor their contractual obligations under four decades of insurance policies that require Defendants to pay for the defense, settlements, and/or judgments in connection with hundreds of claims against the University.

2. For more than seventy years, Defendants have benefitted from their business relationship with the University, a model policyholder that consistently paid its premiums over time, while filing few claims. Now, when the University is in need of coverage for which it has fully paid, Defendants have disregarded and continue to disregard their fiduciary and contractual

duties to the University, while impeding, obstructing, and delaying the resolution of the underlying claims at issue.

3. With the recent passage of the New York Child Victims Act (“CVA”), which revives child sexual abuse claims that are otherwise barred by expired limitations periods, the University has received several hundred separate claims for damages from survivors of alleged childhood sexual abuse by Dr. Reginald Archibald, a former University employee, who passed away in 2007. These claims and any other child sexual abuse claims occurred decades ago from approximately the 1940s to 1980s (the “Underlying Claims”). During the CVA’s one-year revival window beginning in August 2019, the University anticipates that it will receive additional claims, including civil actions filed in court. The Underlying Claims represent the type of substantial potential liability for which the University purchased insurance in the first place.

4. Despite this, the Defendants have failed to provide assistance and support in dealing with the Underlying Claims to which the University is entitled based on its payment of four decades of premiums. To the contrary, the Defendants not only have refused to assist in the costs of defense or settlement, but also have impeded the University’s efforts to address the Underlying Claims, which actions by the Defendants have been to the University’s detriment as well as to the claimants. In particular, the primary insurers, Travelers and Chubb, have steadfastly refused to consent to the University settling a single one of the Underlying Claims in advance of litigation, and have repeatedly rejected the University’s requests to contribute to the costs of claims already settled and to make payments already due and owing under their policies. These insurers’ baseless refusals to participate in good faith ignore Travelers’ and Chubb’s contractual obligations, and also, decades of public statements by insurers like

Travelers that they are the “insurance company that cares...that provides the coverage...to protect the things that are most important...so [customers] don’t have to worry... [and can have] peace of mind...”¹ when faced with hardship.

5. Moreover, Travelers’ and Chubb’s wait-and-see strategy appears to follow an insurance industry-wide trend in response to the statutory relief provided by the CVA and other similar state statutes. Rather than face substantial financial responsibility for revived claims as they are obligated to do, upon information and belief, insurers have decided to adopt a general practice of delay, perhaps in the hopes that their policyholders and claimants will simply abandon their efforts to seek insurance funds to pay for those liabilities.

6. To that end, in this case, Travelers and Chubb have engaged in numerous bad faith breaches of their obligations by issuing untimely or baseless coverage decisions, refusing to pay for Underlying Claims whose covered status is undisputed, and refusing to search for or provide copies of responsive policies in their files. Even more troubling for policyholders at large, these same insurers are refusing to acknowledge coverage responsibility even when presented with physical copies of their policies that bear the insurers-affiliates’ logos and reference these insurers’ signature policy forms.

7. The University has been directly and substantially damaged by the contractual breaches and bad faith conduct of Travelers and Chubb, its primary insurers, and is threatened with future similar harm by the remaining Defendants absent a judgment declaring the parties’ rights and obligations under the policies covering the Underlying Claims and future claims.

¹ The Travelers Companies Inc., <https://www.travelers.com/about-travelers> (last visited Aug. 1, 2019).

PARTIES

8. The Rockefeller University is a New York not-for-profit education corporation with its principal place of business in New York, New York.

9. On information and belief, Defendant Aetna is a Connecticut corporation with its principal place of business in Hartford, Connecticut, and is an insurance company licensed to do business in the state of New York, among other states. On or about April 2, 1996, financial control of Aetna was transferred to the Travelers Property Casualty Corporation, reflecting the sale of Aetna's domestic property casualty insurance operations to Travelers Insurance Group, Inc. Upon information and belief, following this acquisition, Aetna is now known as Travelers Casualty and Surety Company.

10. On information and belief, Defendant TIC is a Connecticut corporation with its principal place of business in Hartford, Connecticut, and is an insurance company licensed to do business in the state of New York, among other states.

11. On information and belief, Defendant Federal is an Indiana corporation with its principal place of business in Warren, New Jersey, and is an insurance company licensed to do business in the state of New York, among other states. Upon information and belief, Federal operates as a subsidiary of Chubb North America Claims.

12. On information and belief, Defendant INA is a Pennsylvania corporation with its principal place of business in Philadelphia, Pennsylvania, and is an insurance company licensed to do business in the state of New York, among other states. Upon information and belief, INA operates as a subsidiary of Chubb North America Claims.

13. On information and belief, Defendant Riunione Adriatica di Sicurta (N/K/A Allianz S.p.A.) is an Italian corporation with its principal place of business in Milan, Italy, and is an insurance company licensed to do business in the state of New York, among other states.

14. On information and belief, Defendant Ancienne Mutuelle Reassurance (N/K/A AXA Reinsurance U.K. P.L.C.) is a United Kingdom corporation with its principal place of business in London, United Kingdom, and is an insurance company licensed to do business in the state of New York, among other states.

15. On information and belief, Defendants Certain Underwriters at Lloyd's of London, who subscribe to Policy Nos. 547/640223MS, 547/640323MS, and 547/640389MS (and potentially other policies and /or certificates), are underwriting members, or "names" of Lloyd's of London, UK, authorized as eligible surplus lines insurance companies or entities that have and/or currently transact business in the state of New York, including but not limited to by providing Certificates of Insurance to the University.

16. On information and belief, Defendant C.N.A Reinsurance of London Ltd. (N/K/A CX Reinsurance Company LTD.), is a United Kingdom corporation with its principal place of business in London, United Kingdom, and is an insurance company licensed to do business in the state of New York, among other states.

17. On information and belief, Defendant Fireman's Fund Insurance Company is a California corporation with its principal place of business in Petaluma, California, and is an insurance company licensed to do business in the state of New York, among other states.

18. On information and belief, Defendant Guaranty National Insurance Company (N/K/A Arrowood Indemnity Company) is a Delaware corporation with its principal place of

business in Charlotte, North Carolina, and is an insurance company licensed to do business in the state of New York, among other states.

19. On information and belief, Defendant National Union Fire Insurance Company of Pittsburgh, PA is a Pennsylvania corporation with its principal place of business in New York, New York, and is an insurance company licensed to do business in the state of New York, among other states.

20. On information and belief, Defendant Ranger Insurance Company (N/K/A TIG Insurance Company) is a California corporation with its principal place of business in Manchester, New Hampshire, and is an insurance company licensed to do business in the state of New York, among other states.

21. On information and belief, Defendant Royal Indemnity Company (N/K/A Arrowood Indemnity Company) is a Delaware corporation with its principal place of business in Charlotte, North Carolina, and is an insurance company licensed to do business in the state of New York, among other states.

22. On information and belief, Defendant Turegum Insurance Company Ltd. (N/K/A Harper Insurance Ltd.) is a United Kingdom corporation with its principal place of business in Guilford, United Kingdom, and is an insurance company licensed to do business in the state of New York, among other states.

23. On information and belief, Defendant UnionAmerica Insurance Company Ltd. (N/K/A River Thames Insurance Company Ltd.) is a United Kingdom corporation with its principal place of business in Guilford, United Kingdom, and is an insurance company licensed to do business in the state of New York, among other states.

24. On information and belief, Defendant United National Insurance Company is a Pennsylvania corporation with its principal place of business in Bala Cynwyd, Pennsylvania, and is an insurance company licensed to do business in the state of New York, among other states.

JURISDICTION AND VENUE

25. This Court has jurisdiction pursuant to N.Y. C.P.L.R. §§ 301 and 302.

26. Venue in this Court is proper pursuant to N.Y. C.P.L.R. § 503.

FACTUAL ALLEGATIONS

A. THE UNIVERSITY AND HOSPITAL

27. The University, formerly known as The Rockefeller Institute for Medical Research, is the oldest biomedical research institute in the United States. Today, the University is a center for scientific research that provides doctoral and postdoctoral education primarily in the biological and medical sciences. A total of 25 Nobel laureates have been affiliated with the University throughout its history; four Nobel laureates remain current members of the University faculty. Further, since 1946, 23 recipients of the Albert Lasker Award for major advances in the understanding, diagnosis, prevention, treatment, and cure of many crippling and fatal diseases have been affiliated with the University.

28. The Rockefeller University Hospital (“RUH”) is a clinical research hospital devoted solely to clinical research. Since its founding, the focus of RUH has been to understand and study human conditions and diseases while not charging for medical or hospital services.

B. DEFENDANTS’ INSURANCE POLICIES

29. The Defendants, in consideration of premiums paid, issued commercial general liability policies which provide insurance coverage to the University for various time periods

that, collectively, span the time period from approximately the 1940s to the 1980s. Defendants Aetna, Travelers, INA, and Federal issued primary layer coverage (the “Primary Policies”). The remaining Defendants² (as well as Aetna (Travelers) and INA (Chubb) (collectively, the “Excess Insurers”) issued coverage in excess of the Primary Policies (the “Excess Policies”) (together with the Primary Policies, the “Policies”).³

AETNA – PRIMARY POLICIES

30. Upon information and belief, Defendant Aetna issued primary liability policies to the University from at least 1948 through 1954 (“Aetna Primary Policies”).

TRAVELERS – PRIMARY POLICIES

31. Defendant Travelers issued primary commercial general liability policies to the University covering the period of 1955 to 1956 and then for the coverage period of January 1, 1958 to February 1, 1972 (“Travelers Primary Policies”). The Travelers Primary Policies for 1968-1972 included coverage for Personal Injury Liability (“PIL”) and Hospital Professional Liability (“HPL”), as, upon information and belief, did the earlier policies issued by Travelers going back to 1955.

32. Each of the Travelers Primary Policies provides coverage, subject to applicable policy limits, conditions, and exclusions, under the general liability coverage part for “all sums which the insured shall become legally obligated to pay as damages because of...bodily injury...to which this insurance applies,” caused by an accident or occurrence. *See, e.g.*, Exhibit B, Travelers Policy No. NS-4920279-01.

² Riunione Adriatica di Sicurta, Ancienne Mutuelle Reassurance, Certain Underwriters at Lloyd’s of London, C.N.A. Reinsurance of London Ltd., Guaranty National Insurance Company, National Union Fire Insurance Company of Pittsburgh, PA, Ranger Insurance Company, Royal Indemnity Company, Turegum Insurance Company Ltd, UnionAmerica Insurance Company, Ltd., and United National Insurance Company.

³ Upon information and belief, the Policies include, but are not limited to, those listed in the attached Exhibit A.

33. The Travelers Primary Policies define the term “occurrence,” where applicable, to mean “an accident, including injurious exposure to conditions, which results, during the policy period, in bodily injury... neither expected nor intended from the standpoint of the insured.” Ex. B.

34. The Travelers Primary Policies define the term “bodily injury” to mean “bodily injury, sickness or diseases sustained by any person.” Ex. B.

35. Each of the Travelers Primary Policies require the insurer “to defend any suit against the insured seeking damages on account of such bodily injury or property damage, even if any of the allegations are groundless, false or fraudulent...” and that defense will be provided until the limits are “exhausted by payments of judgments or settlements.” Ex. B. Pursuant to the Travelers Primary Policies, expenses incurred by the insurer in defending a claim are paid “in addition to the applicable limits of liability.” Ex. B. “Supplementary Payments”. The HPL coverage part contains similar terms and obligations with respect to the duty to defend. Ex. B.

36. Each of the Travelers Primary Policies contains the following “Limits of Liability,” or a substantially identical term:

Subject to the above provisions respecting “each person” and “each occurrence”, the total liability of the company for all *damages* because of (1) all *bodily injury* included within the *completed operations hazard* and (2) all *bodily injury* included within the *products hazard* shall not exceed the limit of bodily injury liability stated in the declarations as “aggregate”.

Ex. B.

37. None of the Underlying Claims are subject to the limits of liability applicable to a “completed operations hazard” or “products hazard” as those terms are defined in the Travelers Primary Policies. Ex. B.

38. None of the Travelers Primary Policies includes aggregate limits applicable to the Underlying Claims under those Policies' commercial general liability coverage part.

39. The Underlying Claims for bodily injury are covered claims not otherwise subject to any exclusion or limitation under the Travelers Primary Policies.

INA – PRIMARY POLICIES

40. Defendant INA issued primary commercial general liability policies to the University for the coverage period of February 1, 1972 to February 1, 1974 (“INA Primary Policies”).

41. Each of the INA Primary Policies provides coverage, subject to applicable policy limits, conditions, and exclusions, for “all sums which the insured shall become legally obliged to pay as damages because of . . . *personal injury* . . . caused by an *occurrence* within the policy period and within the policy territory.” Exhibit C, INA Policy No. AGP 099852.

42. The INA Primary Policies define the term “occurrence” to mean “an accident, including injurious exposure to conditions, which results in personal injury . . . neither expected nor intended from the standpoint of the insured.” Ex. C.

43. The INA Primary Policies define “personal injury” to include both “bodily injury” and other personal injury such as false imprisonment, libel, wrongful eviction, etc. Ex. C. “Personal injury” also expressly includes assault and battery. Ex. C.

44. Each of the INA Primary Policies requires the insurer “to defend any suit against the insured seeking damages on account of such bodily injury or property damage, even if any of the allegations are groundless, false or fraudulent” and that defense will be provided until the limits are “exhausted by payments of judgments or settlements.” Ex. C. Under the INA Insurance Policies expenses incurred by the insurer in defending a claim are paid “in addition to

the applicable limits of liability.” Ex. C, “Supplementary Payments”. The HPL coverage part contains similar terms and obligations with respect to the duty to defend. Ex. C.

45. Each of the INA Primary Policies contains the following “Limits of Liability,” or a substantially identical term:

Subject to the above provisions respecting “each occurrence”, the total liability of the company for all damages because of all personal injury . . . included within (1) the completed operations (2) the products hazard . . . shall not exceed the limit of bodily injury liability stated in the Declarations under Section II Coverages A and B as “aggregate.” If no limit of liability is stated as applying to “aggregate,” the limit shown as applying to “each occurrence” shall also apply the aggregate limit of liability.

Ex. C, “Limits of Liability.”

46. None of the Underlying Claims are subject to the limits of liability applicable to a “completed operations hazard” or “products hazard” as those terms are defined in the INA Primary Policies. Ex. C.

47. None of the INA Primary Policies includes aggregate limits applicable to the Underlying Claims under those Policies’ commercial general liability part.

48. The Underlying Claims for bodily injury are not subject to any other aggregate limits under the INA Primary Policies.

49. The Underlying Claims for bodily injury are covered claims not otherwise subject to any exclusion or limitation under the INA Policies.

FEDERAL – PRIMARY POLICIES

50. Upon information and belief, Defendant Federal issued primary commercial general liability policies to the University for the coverage period of February 1, 1974 to

February 1, 1987 (“Federal Primary Policies”). *See, e.g.*, Exhibit D, Federal Policy No. MP 690 91 22.

51. Upon information and belief, each of the Federal Primary Policies contain the same or substantially identical coverage terms, conditions and obligations as the INA Primary Policies set forth in paragraphs 40 to 49, which are incorporated by reference as if set forth herein in full.

EXCESS POLICIES

52. Defendants issued commercial general liability Excess Policies, which attach excess of the Primary Policies discussed in paragraphs 40 to 51 and provide coverage upon the exhaustion or unavailability of those Primary Policies.

53. The Excess Policy issued by Aetna [Travelers] from 1974 to 1977 independently obligates it to drop down and “defend any suit seeking damages which are not payable on behalf of the insured under the terms of the policies of Underlying Insurance...because such damages are not covered thereunder, or because of exhaustion...even if any of the allegations of the suit are groundless, false or fraudulent...” and to “pay with respect to any suit defended...in addition to the amount of ultimate net loss payable: (1) all expenses incurred by the company...” within respective limits. Exhibit E, Aetna Policy No. 01 XS 1766 WCA.

54. Other Excess Policies issued by Defendants for the years 1973 to 1987 contain similar obligations to drop down and defend the University from and against suits not covered by other insurance within their respective limits.

55. The Excess Policies generally follow form to the Primary Policies underlying them.

56. The Excess Policies give rise to an independent obligation on behalf of each insurer to fully pay the University for, and/or to pay on the University's behalf, all sums that the University becomes legally obligated to pay as damages or losses, through judgment, settlement or otherwise, in the Underlying Claims, up to the applicable liability limits of its Excess Policies.

C. THE UNDERLYING CLAIMS

57. In January 2019, New York enacted the CVA, which extends the limitations period applicable to claims of childhood sexual abuse. The Act also provides a one-year window, beginning on August 14, 2019, during which survivors of alleged childhood sexual abuse may file lawsuits relating to such abuse regardless of the prior expiration of any limitations period otherwise applicable to those claims.

58. Even before the opening of the CVA window, hundreds of Underlying Claims have been made against the University based on allegations of childhood sexual abuse by Dr. Archibald. Dr. Archibald was employed by the University as a professor and physician. He studied childhood growth and maturation and worked in the RUH from the 1940's to the 1980's. He passed away in 2007.

59. The Underlying Claims allege abuse and bodily injury occurring during the policy periods covered by Policies, giving rise to covered occurrences during all such policy periods.

60. All of the Underlying Claims allege tortious activity by the University, including claims of negligent hiring, retention, and supervision of Dr. Archibald, which was neither expected nor intended from the standpoint of the University, as insured.

61. The University has defended against pending claims. The University has also sought to reach reasonable settlements to compensate claimants where appropriate. Having self-funded all settlements to date, the University is in an untenable position.

D. NOTICE, TENDER AND DEFENDANTS' BAD FAITH CLAIMS HANDLING

62. The University timely notified Defendants of the Underlying Claims beginning in the spring of 2018.

63. On October 15, 2018, the University tendered its defense to Travelers and Chubb. Travelers and Chubb refused to accept the University's tender.

64. Despite timely notice, Defendant Travelers waited six (6) months before it first acknowledged the claims, and even longer to issue a coverage decision. Defendant Chubb refused to open a claim file for months and then waited eight (8) months before it responded with its first letter addressing a coverage position.

65. In response to the notice of the Underlying Claims, Travelers and Chubb wrongfully refused to acknowledge CGL coverage and reserved the right to deny coverage at a later time. Travelers also denied coverage under the CGL coverage parts of their primary policies on the basis that the Underlying Claims of sexual abuse arose out of "professional services" and were expressly excluded. Chubb has refused to indemnify the University for the Underlying Claims on the same basis.

66. Travelers and Chubb effectively conceded that coverage was triggered under their policies and agreed, in Travelers' words, to "participate in and contribute on a pre-suit basis to the settlement of Archibald Claims." Nevertheless, the insurers still have paid nothing toward the defense or settlement of the Underlying Claims.

67. Upon information and belief, Travelers' and Chubb's intentional wait-and-see strategy for CVA-related claims has the effect of buying time for the insurers to determine the full impact on their insurance reserves caused by the CVA and similar legislation in other states. In doing so, the insurers have placed their own interests ahead of their insured and have completely disregarded their contractual obligations towards the University, as insured.

68. The University has been prejudiced by Travelers' and Chubb's actions that protect their own interests to the detriment of their insured's. For more than a year, the University has been frustrated in its efforts to resolve the Underlying Claims, and instead, has been grappling with Travelers and Chubb in an attempt to obtain funding based on undisputed coverage for the Underlying Claims. The University has acted cooperatively and attempted to partner with the insurers at every turn in an effort to secure the coverage that is undisputedly owed to the University for these Underlying Claims. Despite all of the University's efforts, Travelers and Chubb have taken positions that have hampered the University, including refusing to consent to the University's efforts to settle any Underlying Claims prior to litigation, creating unreasonably long delays before agreeing to waive consent as a defense during critical periods of negotiation with certain claimants, and refusing to acknowledge that such claims, although not yet in litigation, constitute Underlying Claims requiring the payment of defense costs. Most significantly, however, is Travelers' and Chubb's refusal to fund the settlements—at all in the case of Travelers, or by placing improper conditions on partial offers to fund *de minimis* portions of settlements in the case of Chubb.

69. The University has demanded payment of its invoices for defense fees and costs in connection with the Underlying Claims. Travelers and Chubb have not agreed in part

because, upon information and belief, Travelers and Chubb have taken the position that they do not have to pay defense costs unless and until the claimants commence litigation.

70. Despite multiple requests from the University, Travelers and Chubb have also refused to search for or provide the University with copies of potentially responsive policies in their files. Moreover, even though the University has presented Travelers and Chubb with primary and secondary evidence of coverage bearing the insurers' affiliates' logos and signature coverage forms, Travelers and Chubb have refused to accept responsibility for those policies.

CONDITIONS PRECEDENT

71. The University has timely complied with all terms, conditions, covenants, or prerequisites to coverage set forth in the Primary Policies and Excess Policies, save and except for those obligations on the part of the insured that have been excused as a result of Defendants' material breaches.

FIRST CAUSE OF ACTION (Declaratory Relief) (Against All Defendants)

72. The University repeats and realleges the allegations set forth in paragraphs 1 through 71 of this Complaint as if fully set forth herein.

73. Pursuant to N.Y. C.P.L.R. § 3001, the University respectfully requests that the Court make a declaration as to the rights, status, and other legal relations existing between the University and Defendants under the Policies.

74. Pursuant to the terms of the Policies, Defendants are obligated to pay for all Underlying Claims for damages because of bodily injury, and defense costs and expenses, pursuant to the insuring agreements of those policies.

75. Defendants' obligations under the Primary Policies include the duty to pay defense costs. In the case of the Excess Policies, Excess Insurer Defendants' duty to pay defense costs is triggered upon exhaustion and/or unavailability of a directly underlying layer.

76. Defendants' obligations under the Policies include the duty to pay on the University's behalf, all sums that the University becomes legally obligated to pay as damages, through judgment, settlement, or otherwise, for the Underlying Claims, up to the applicable liability limits of their respective policies.

77. As alleged above, the allegations of the Underlying Claims come within the CGL coverage part and/or the HPL coverage part of the Policies, and are not otherwise subject to any exclusion.

78. The Underlying Claims and the significant potential liability arising out of such claims and lawsuits implicate coverage under the Policies, and thus trigger Defendants' dual defense and indemnity obligations.

79. Upon information and belief, Defendants dispute their legal obligations to pay for or reimburse defense costs and/or pay for indemnity amounts in the form of judgments or settlements incurred in connection with the Underlying Claims.

80. An actual controversy of a justiciable nature presently exists between the University and Defendants concerning the proper construction of the Policies, and the rights and obligations of the parties thereto. The controversy is of sufficient immediacy and magnitude to justify the issuance of a declaratory judgment.

81. The issuance of prompt declaratory relief by this Court is desirable and necessary to resolve the existing controversy between the parties. Such a declaration would resolve the current controversy between the University and Defendants.

**SECOND CAUSE OF ACTION
(Breach of Contract – Duty to Defend and Pay Defense Costs)
(Against Travelers and Chubb)**

82. The University repeats and realleges the allegations set forth in paragraphs 1 through 71 of this Complaint as if fully set forth herein.

83. The Primary Policies constitute valid and enforceable contracts between the University and Defendants. The University is the named insured under the Primary Policies and entitled to pursue its rights under the contracts.

84. The University paid all premiums, provided prompt notice of the Underlying Claims, and otherwise timely performed all obligations, conditions, covenants, or prerequisites to coverage required of it under the Primary Policies except those excused as a result of Travelers and/or Chubb's breaches of the Primary Policies.

85. Pursuant to the terms of their Primary Policies, Travelers and Chubb are each independently obligated to pay the University for, and/or to pay on the University's behalf, all costs of defense of the Underlying Claims.

86. As alleged above, the facts of the Underlying Claims come within the CGL coverage part and/or the HPL coverage part of the Primary Policies, and are not otherwise subject to any exclusion.

87. Travelers and Chubb have not paid any amounts to the University to date, commensurate with their obligations under the Primary Policies, in connection with the defense costs and expenses incurred in response to the Underlying Claims.

88. By failing to provide coverage for defense expenses, Travelers and Chubb have breached the terms of their respective Primary Policies.

89. As a direct and proximate result of the Travelers' and Chubb's breaches of their respective Primary Policies, the University has suffered and will continue to suffer damages in an amount to be determined at trial.

**THIRD CAUSE OF ACTION
(Breach of Contract – Duty to Indemnify)
(Against Travelers and Chubb)**

90. The University repeats and realleges the allegations set forth in paragraphs 1 through 71 of this Complaint as if fully set forth herein.

91. The Primary Policies constitute valid and enforceable contracts between the University and Travelers and Chubb, and the University is the named insured under the Primary Policies.

92. The University paid all premiums, provided prompt notice of the Underlying Claims, and otherwise timely performed all obligations, conditions, covenants, or prerequisites to coverage required of it under the Primary Policies except those excused as a result of Travelers and/or Chubb's breaches of the Primary Policies.

93. Pursuant to the terms of the Primary Policies, Travelers and Chubb are each independently obligated to pay on the University's behalf, all sums that the University is and will be legally obligated to pay as damages, through judgment, settlement, or otherwise, in the Underlying Claims, up to the applicable liability limits of their policies.

94. As alleged above, the facts of the Underlying Claims come within the CGL coverage part and/or the HPL coverage part of the Primary Policies, and are not otherwise subject to any exclusion.

95. Defendants have made clear that they do not intend to provide coverage pursuant to their obligations under the Primary Policies, under any coverage part, for indemnity

amounts, including but not limited to judgments or settlements incurred in connection with the Underlying Claims.

96. As a direct and proximate result of Travelers' and Chubb's breaches of their respective Primary Policies, the University has suffered and will continue to suffer damages in an amount to be determined at trial.

**FOURTH CAUSE OF ACTION
(Breach of the Implied Covenant of Good Faith and Fair Dealing)
(Against Travelers and Chubb)**

97. The University repeats and realleges the allegations set forth in paragraphs 1 through 71 of this Complaint as if fully set forth herein.

98. The Primary Policies are governed by and construed in accordance with the laws of the state of New York.

99. Under New York law, the Primary Policies contain an implied covenant of good faith and fair dealing.

100. Travelers and Chubb have engaged in continued and unjustified delay for months in the course of responding to the Underlying Claims and have continued to put forward baseless and spurious explanations for their refusal to cover the Underlying Claims, even after the University provided the information Travelers and Chubb claimed they needed to address their concerns and issue final coverage decisions.

101. Despite the fact that Travelers and Chubb concede, as they must, that their coverage obligations are triggered, upon information and belief, Travelers and Chubb have adopted a wait-and-see approach for the Underlying Claims—both to determine the full impact that the CVA will have on their bottom line but also to allow such laws to be tested in other

courts before either insurer will commit to funding settlements of the Underlying Claims under the CVA.

102. Upon information and belief, this wait-and-see approach adopted by Travelers and Chubb (without consideration for its insureds) is driven by concerns about not only the large potential exposure that the Underlying Claims present, but also the unknown, multitude of claims that Travelers and Chubb face as a result of the passage of the CVA, and other similar legislation being considered and passed by other states. Travelers' and Chubb's decisions that protect their own interests to the serious detriment of the University have negatively impacted the University's ability to effectively engage in negotiations to settle the Underlying Claims, and has created greater exposure for the University.

103. Through these actions, Travelers and Chubb have breached the implied covenant of good faith and fair dealing in their respective Primary Policies.

104. Travelers' and Chubb's conduct has violated the standards for good faith and fair dealing set forth in New York Insurance Law § 2601(a).

105. The University has been damaged by Travelers' and Chubb's breach of the implied covenant of good faith and fair dealing in an amount to be determined at trial.

106. The University is entitled to consequential damages flowing from Travelers' and Chubb's violation of the implied covenant of good faith and fair dealing, including, without limitation, prejudgment interest on the amount owed to the University under their respective Policies, attorneys' fees, and costs incurred by the University in enforcing their rights and as a consequence of Travelers' and Chubb's bad faith delays in providing coverage to the University for the Underlying Claims.

107. Consequential damages as sought herein were reasonably contemplated by the University and Travelers and Chubb at the time that it entered into the Primary Policies.

**FIFTH CAUSE OF ACTION
(Deceptive Business Practices – General Business Law § 349)
(Against Travelers and Chubb)**

108. The University repeats and realleges the allegations set forth in paragraphs 1 through 71 of this Complaint as if fully set forth herein.

109. Travelers and Chubb at all times have acted in bad faith and through a pattern of deceptive conduct in connection with their attempts to manage their exposure, without regard for the insureds, not only for the Underlying Claims but also, upon information and belief, for all abuse claims previously time-barred that have been revived by the CVA. This conduct has injured the University and placed Travelers' and Chubb's interests ahead of the University, their insured.

110. New York Insurance Law § 2601 provides that "No insurer doing business in this state shall engage in unfair claim settlement practices," and defines unfair claim settlement practices to include, among other things:

- (1) knowingly misrepresenting to claimants pertinent facts or policy provisions relating to coverages at issue;
- (2) failing to acknowledge with reasonable promptness pertinent communications as to claims arising under its policies;
- ...
- (4) not attempting in good faith to effectuate prompt, fair and equitable settlements of claims submitted in which liability has become reasonably clear.

111. The deceptive acts and practices by Travelers and Chubb include, without limitation, (i) falsely disclaiming the existence of additional coverage issued by Defendants that is responsive to the Underlying Claims; (ii) relying on false pretenses to justify Travelers' and Chubb's inordinate delays in providing the University copies of their respective policies (some

of which have not been provided to date); (iii) refusing to pay or reimburse the University for defense costs, without a reasonable basis; and (iv) failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of the Claims. This conduct has forced the University to self-fund settlements and institute this coverage action to recover amounts due under the Primary Policies, diverting resources Rockefeller might otherwise use to settle the remaining Underlying Claims.

112. Travelers and Chubb have also taken improper coverage positions and engaged in unjustifiable delays, which they improperly and without a good-faith basis purported to justify as interpretations of the same standard-form insurance policy language that, upon information and belief, Travelers and Chubb use in insurance policies sold to many other educational and hospital institutions in New York and elsewhere, in a manner that would affect, apply to, and injure all of their policyholders with similar policy language that suffer losses and bring coverage claims to Defendants expecting fair and good-faith treatment.

113. Travelers' and Chubb's conduct constitutes deceptive acts and practices in violation of New York General Business Law § 349.

114. Travelers' and Chubb's conduct was knowing, reckless, and willful.

115. By reason of the foregoing, the University has suffered and continues to suffer damages.

116. By reason of the foregoing, the University is entitled to compensatory, consequential, and punitive damages, as well as prejudgment interest and attorneys' fees and costs, against Travelers and Chubb in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, the University prays for relief as follows:

- a) On the First Cause of Action, the University requests that this Court enter a declaratory judgment in favor of the University and against Defendants concerning the extent of Defendants' coverage obligations owed to the University under the Policies in response to the Underlying Claims;
- b) On the Second Cause of Action, the University requests that this Court award the University damages in an amount to be determined at trial;
- c) On the Third Cause of Action, the University requests that this Court award the University damages in an amount to be determined at trial;
- d) On the Fourth Cause of Action, the University requests that this Court award the University damages in an amount to be determined at trial, including consequential damages;
- e) On the Fifth Cause of Action, the University requests that this Court award the University damages in an amount to be determined at trial, including consequential damages, statutory penalties, and punitive damages in an amount deemed sufficient to prevent Travelers and Chubb from engaging in similar deceptive conduct with other policyholders;
- f) On all Causes of Action, the University requests attorneys' fees, and pre- and post-judgment interest to the extent permitted by law; and
- g) Additionally, the University requests such other and further relief as this Court may deem just and proper.

JURY DEMAND

The University demands a jury on all issues contained in this Complaint that are so triable.

Dated: September 26, 2019

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