

FILED
SUPREME COURT
STATE OF WASHINGTON
6/27/2024 3:31 PM
BY ERIN L. LENNON
CLERK

No. _____
Court of Appeals No. 85285-0-1

Case #: 1032111

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

QUEST DIAGNOSTICS INCORPORATED.

Petitioners,

v.

AIG SPECIALTY INSURANCE COMPANY, et al.,

Respondents.

PETITION FOR REVIEW

K&L GATES LLP
John C. Bjorkman, WSBA # 13426
Emaan R. Jaber, WSBA # 56990
John M. Sylvester, admitted *pro hac vice*
Carolyn M. Branthoover, admitted *pro hac vice*
925 Fourth Avenue Suite 2900
Seattle, WA 98104
(206) 623-7580

Attorneys for Petitioners

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	iii
IDENTITY OF PETITIONERS.....	1
COURT OF APPEALS DECISION	1
ISSUES PRESENTED FOR REVIEW	1
STATEMENT OF THE CASE	2
A. Preliminary Statement.....	2
B. Factual Background	3
1. Quest's All-Risk Insurance Policies Provide Civil Authority Coverage	4
2. The Issuance of Civil Authority Orders Resulting From Direct Physical Loss or Damage	5
3. The Orders Prohibited Access to Property Within Five Miles of an Insured Location.....	9
4. Quest Suffered Business Income Loss Resulting From These Civil Authority Orders	11
C. Procedural History	12
ARGUMENT WHY REVIEW SHOULD BE ACCEPTED ...	14
A. The Court of Appeals Opinion Conflicts with this Court's Prior Decisions.....	15

1. The Opinion Conflicts with this Court’s Decision in Hill & Stout.....	15
2. The Opinion Conflicts with this Court’s Precedent Establishing Standards for Adjudicating Rule 12(c) Motions	20
B. This Case Has Broad Public Importance and Presents Timely Issues Implicating the Rights of Washington Policyholders. RAP 13.4(b)(4).	24
CONCLUSION	29

TABLE OF AUTHORITIES

Cases

<i>Champagne v. Thurston County</i> , 163 Wn.2d 69, 178 P.3d 936 (2008).....	20, 21
<i>FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc.</i> , 180 Wn.2d 954, 331 P.3d 29 (2014).....	21, 22
<i>Hill & Stout PLLC, v. Mutual of Enumclaw Ins. Co.</i> 200 Wn.2d 208, 515 P.3d 525 (2022).....	1, 14, 16
Kemper Holdings, LLC (owner of the Bellevue Collection), Wash. Super. Ct., King Cty., Case No. 20-2-15992-1	27
<i>P.E. Systems, LLC v. CPI Corp.</i> , 176 Wn.2d 198, 289 P.3d 638 (2012).....	21
<i>San Juan County v. No New Gas Tax</i> , 160 Wn.2d 141, 157 P.3d 831 (2007).....	21
<i>Shooting Park Ass’n. v. City of Sequim</i> , 158 Wn.2d 342, 144 P.3d 276 (2006).....	21
Stillaguamish Tribe (owners of Angel of the Woods casino), Wash. Super. Ct., Snohomish Cty., Case No. 22-2-01335-31	27
The Washington State Convention Center Public Facilities District, Wash. Super. Ct., King Cty., Case No. 23-2-14276-4.....	27
The Washington State Convention Center Public Facilities District, Wash. W.D., Case No. No. 2:23-cv-1386-BJR	27

Tulalip Tribes of Washington, Wash. Super. Ct. King Cty., Case No. 20-2-03604-6.....	27
<i>Univ. of Wash. v. Empl’rs. Ins. Co. of Wausau</i> , Wash. Super. Ct., King Cty., Case No. 22-2-15472-1.....	26
<i>Wash. State Univ. v. Factory Mut. Ins. Co.</i> , Wash. Super. Ct., Whitman Cty., Case No. 21-2-00095-38.....	26
<i>Wash. Trucking Associations, Nonprofit Corp. v. State</i> , 188 Wn.2d 198, 393 P.3d 761 (2017).....	21

Statutes

RCW 4.16.040.....	29
RCW 48.01.030.....	26

Rules

CR 12(c)	passim
CR 8.....	18
RAP 13.4	13, 22, 26

IDENTITY OF PETITIONERS

Quest Diagnostics Incorporated (“Quest”), Appellant below, submits this petition for review.

COURT OF APPEALS DECISION

The Court of Appeals filed its unpublished opinion on May 28, 2024. A copy of the opinion is included as an Appendix to this petition at pages A-1 through A-13.

ISSUES PRESENTED FOR REVIEW

1. Did the Court of Appeals decision contradict this Court’s holding in *Hill & Stout PLLC, v. Mutual of Enumclaw Ins. Co.* 200 Wn.2d 208, 221, 515 P.3d 525 (2022), in ruling that Quest’s complaint failed to sufficiently allege that the presence of the COVID-19 coronavirus (“COVID”) caused “direct physical loss or damage” to property, thereby inducing governmental officials to issue orders prohibiting access to relevant property, despite Quest’s complaint having alleged facts consistent with the “loss of functionality” test for COVID-related property damage recognized in *Hill & Stout*? [Answer - Yes].

2. Did the Court of Appeals decision contradict this Court's prior holdings establishing the proper standards for reviewing a Rule 12(c) motion for judgment on the pleadings by affirming the dismissal of Quest's complaint on grounds that the complaint did not "show" (*i.e.*, prove) details of the "direct physical loss or damage" to property caused by COVID, even though Quest had pled the existence of such physical loss or damage to property?
[Answer - Yes]

STATEMENT OF THE CASE

A. Preliminary Statement

The Court of Appeals opinion dismissing Quest's complaint effectively closes the door that had been opened by the Supreme Court's *Hill & Stout* decision for policyholders suffering COVID-related business income losses. The opinion should be reviewed by the Supreme Court to address the misapplication of its binding precedent. Furthermore, this case presents a matter of substantial public interest for policyholders throughout Washington, thereby warranting review.

B. Factual Background

Quest's Complaint sought coverage for COVID-related business income losses that it suffered at various of its nationwide facilities during the outset of the pandemic. CP 1–22. Quest is a national diagnostics testing company that performs laboratory tests for its customers, which are typically health care providers, clinics and other entities whose businesses were severely affected by the spate of governmental shutdown orders issued during the pandemic. CP 2–3, 15. Those shutdown orders issued by state and local officials in all regions of the country prohibited persons from entering the business premises of Quest's customers, causing a substantial downturn in their business. CP 2–3, 9–16. As a result of Quest's customers' losing business, Quest suffered corresponding business income losses as well. CP 2–3, 15. Consequently, Quest made a coverage claim under the Civil Authority provision of its all-risk insurance policies. CP 16. The Defendant-Respondents (the "Insurers"), which are Quest's all-risk insurers for the 2020-2021 policy year,

denied Quest's coverage claim, thereby resulting in Quest filing this lawsuit. CP 16–18.

1. Quest's All-Risk Insurance Policies Provide Civil Authority Coverage

The Insurers issued and/or subscribed to all-risk insurance policies for the period March 16, 2020 to March 16, 2021, and these policies cover Quest for a variety of first-party losses, including those for damage to its property and for business interruption arising from various circumstances. CP 5, 322–96. Section 8 of the Insurers' policies is entitled "Extensions of Coverage," which provides three independent types of *extended* coverage beyond the basic types of property and business interruption coverage provided in Section 7. CP 356–57. One of those coverage extensions, Section 8.B ("Interruption by Civil or Military Authority") under which Quest seeks coverage in this case, provides:

This policy is extended to insure loss sustained during the period not to exceed 30 days when as a result of, direct physical loss or damage not excluded in Clause 6., access to property within 5 miles of the Insured's Location is prohibited by

order or action of Civil or Military Authority.

CP 357. As it states, Section 8.B. provides coverage for Quest's business income losses if Quest can establish the following three factual elements: (1) As a result of direct physical loss or damage not otherwise excluded, a civil authority issues an order; (2) The order prohibits access to some property that is located within five miles of a Quest Insured Location; and (3) Quest suffers income loss as a result of the prohibition of access to that property. CP 357.

Quest's Complaint expressly pled the existence of each of the foregoing three factual elements necessary for Civil Authority coverage to apply. CP 2-3, 14-20.

2. The Issuance of Civil Authority Orders Resulting From Direct Physical Loss or Damage

Quest's Complaint alleges that, beginning in March 2020, state and local governmental officials around the country issued multiple COVID-related orders restricting the movement of persons because of the pervasive presence of the coronavirus within their respective jurisdictions that was causing loss of

and/or damage to life, health and property. CP 9–14. As just one example, in paragraph 40 of the Complaint, Quest averred that Washington Governor Jay Inslee issued multiple orders because the COVID pandemic “remains a public disaster affecting life, health, property or the public peace.” CP 9–10, 688–700.

Another jurisdiction referenced in Quest’s Complaint is Colorado, where Governor Jared Polis issued a series of orders prohibiting various activities, including an April 8, 2020, order stating:

COVID-19 also physically contributes to property loss, contamination, and damage due to its propensity to attach to surfaces for prolonged periods of time. The measures ordered through this Executive Order are designed to limit the spread and mitigate the harm caused by COVID-19 and protect our most vulnerable populations.

CP 11, 702–05.

Another example referenced in Quest’s Complaint was the state of Illinois, where Governor J.B. Pritzker issued multiple orders because of COVID-related loss and damage, including his April 1, 2020, Order, extending his earlier March 20, 2020, stay-

at-home order, stating:

. . . the circumstances surrounding COVID-19 have resulted in the occurrence and threat of widespread and severe damage, injury, and loss of life and property under Section 4 of the Illinois Emergency Management Agency Act.

CP 10, 707–22.

Quest’s Complaint alleges that there were many other state and local officials issuing stay-at-home and business shutdown orders because the pandemic was causing loss or damage to property and human health, including the following:

- a. Escambia County, Florida, Board of County Commissioners’ Resolution No. R2020-25, states: “the COVID-19 virus has the propensity to attach to surfaces for prolonged periods of time, ***thus causing property damage and continuing the spread of the virus***[.]”
- b. Pinellas County, Florida, Board of County Commissioners’ Emergency Order No. 20-20, states: “COVID-19 is spread amongst the population by various means of exposure, ***including ... the propensity to attach to surfaces for prolonged periods of time, thereby spreading from surface to person and causing increased infections to persons, and property loss and damage in certain circumstances***[.]”
- c. Walton County, Florida, Board of County

Commissioners' Resolution No. 2020-10, states: "conditions exist requiring the extension of the initial declaration of a state of local emergency ... because *the novel coronavirus physically is causing property damage due to its proclivity to attach to surfaces for prolonged periods of time*["]

- d. Louisiana Governor John Bel Edwards' Proclamation No. 33 JBE 2020, states: "these measures ... are necessary because of the propensity of the COVID-19 virus to spread via personal interactions and *because of physical contamination of property due to its ability to attach to surfaces for prolonged periods of time*["]

CP 14, 749, 753, 762, 767.

Quest's Complaint set forth the circumstances giving rise to its losses by alleging:

This COVID-19 public health crisis has directly and physically damaged property, has physically damaged human health and human welfare, and has caused the loss of use of property across the State of Washington, across all of the states throughout the United States, and has directly forced businesses everywhere to physically limit the use of, and access to, property and has restricted people from entering and/or inhabiting physical buildings at given points in time.

CP 14. Quest alleged additional facts consistent with a loss of functionality of property caused by COVID as follows:

. . . it was statistically certain or near certain that the coronavirus was present in the communities of every major metropolitan area in the country by April 2020, and thus the coronavirus was present on property located in those areas, physically altering those properties and causing them to become physically uninhabitable, unsafe, and unfit for their normal and intended uses, thereby resulting in physical loss or damage to property. . .

CP 14.

3. The Orders Prohibited Access to Property Within Five Miles of an Insured Location.

Quest's Complaint alleges that the COVID-related governmental orders prohibited patrons from entering the business premises of Quest's customers located within five miles of Quest's Insured Locations. CP 14–16. Specifically, these orders prohibited persons who would otherwise have patronized Quest's customers—such customers typically being physician practices and other healthcare providers—from leaving their homes and engaging in non-emergency medical activities. CP

14–16. For example, the March 19, 2020 business-closure order and the March 23, 2020 stay-at-home order of Pennsylvania Governor Tom Wolf stated:

during a disaster emergency, I am authorized specifically to control ingress and egress to and from a disaster area and the movement of persons within it and the occupancy of premises therein.

CP 724, 727.

As another example, in Tennessee (referenced at CP 11–12), Governor Bill Lee issued a stay-at-home order on March 31, 2020, stating that Tennessee law gave him authority to:

make orders concerning entry and exit and the occupancy of premises within an emergency area, and take measures concerning the conduct of civilians and the calling of public meetings and gatherings, among other things.

CP 11–12, 731.

As averred in Quest’s Complaint, Texas Governor Greg Abbott issued Executive Order GA-14 prohibiting the movement of persons in Texas, citing his authority to “control ingress and egress to and from a disaster area and the movement of persons and the occupancy of premises in the area.” CP 13, 745.

These examples are a few of the many civil authority orders described and/or referenced in Quest's Complaint—all of which are a matter of public record—prohibiting access of patrons to the business premises of Quest's customers located within five miles of Quest's facilities situated around the country. CP 15–16. Taken as true—as they must be in the context of a Rule 12(c) motion—these factual allegations satisfy the second element of Quest's claim for civil authority coverage.

4. Quest Suffered Business Income Loss Resulting From These Civil Authority Orders

Quest's Complaint expressly pleaded a loss of business income resulting from the above-described governmental orders:

The certain and increasingly pervasive presence of the coronavirus in these areas constituted both loss or damage to real and personal property and loss or damage to human health and welfare. This loss or damage to property and to human health and welfare was the basis for the issuance of the orders by civil authorities that, among other measures, prohibited access to the premises of Quest's customers that were located within 5 miles of Quest's insured locations, resulting in business income loss suffered by Quest.

CP 2–3.

Further, Quest's Complaint alleges that the Insurers have denied Quest's claim for coverage under the Civil Authority extension in Quest's policies (CP 17–18), and hence Quest's business income losses resulting from these civil authority orders have not been reimbursed by the Insurers.

Accordingly, Quest's Complaint has alleged each of the elements necessary for recovery for the Insurers' breach of the Civil Authority coverage extension provided in the insurance policies they issued to Quest.

C. Procedural History

In January 2023—one year after Quest filed its Complaint in this action in January 2022, and seven months after the Insurers filed their Answers to Quest's Complaint—while the parties were in the midst of discovery, the Insurers filed a Rule 12(c) Joint Motion for Judgment on the Pleadings (“Motion”). CP 284–319. On March 31, 2023, the Superior Court granted the Motion, by Order, without providing an opinion setting forth its reasoning. CP 995. Quest appealed the Superior Court's grant of

the Insurers' Motion.

The Court of Appeals affirmed, holding in its unpublished opinion dated May 28, 2024, that Quest had failed to “show” (i.e., failed to prove) that the presence of COVID had resulted in direct physical loss or damage to property in Washington, which in turn had caused the issuance of any of the relevant orders issued by Washington Governor, Jay Inslee. A-2. Oddly, the Court of Appeals’ opinion focused only on Quest’s claim for losses arising in Washington, and made no mention of all the other civil authority orders around the country referenced in Quest’s complaint as having resulted from direct physical loss or damage caused by COVID and which caused Quest to suffer business income losses at its facilities located outside of Washington. *See* A-1–13. Indeed, in its opinion, the Court of Appeals mischaracterized Quest’s complaint as if it were only alleging business income losses experienced in Washington resulting from the Washington’s governor’s COVID-related civil orders, rather than the nationwide business income loss

experienced by Quest that was expressly identified in the complaint as being the result of civil authority orders issued around the country. *See* A-9–14.

ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

This Court should accept review pursuant to RAP 13.4(b)(1) and (4). Under subsection 13.4(b)(1), the Supreme Court will accept review if the decision of the Court of Appeals is in conflict with a decision of the Supreme Court. Further, under subsection 13.4(b)(4), the petition for review is accepted if the case involves an issue of substantial public interest that should be determined by the Supreme Court. Both subsections (1) and (4) apply in this case.

The Court of Appeals' opinion contradicts Washington Supreme Court precedent—specifically, the opinion: (i) conflicts with this Court's decision in *Hill & Stout, PLLC v. Mutual of Enumclaw Insurance Co.*, 200 Wn.2d 208, 515 P.3d 525 (2022); and (ii) conflicts with this Court's well-established precedent regarding the standards for analyzing the allegations in a

plaintiff's complaint to overcome a Rule 12(c) motion for judgment on the pleadings. Additionally, this Court should review the Court of Appeals opinion because this case implicates fundamental and urgent issues of broad public import which require prompt and ultimate determination.

A. The Court of Appeals Opinion Conflicts with this Court's Prior Decisions

1. The Opinion Conflicts with this Court's Decision in Hill & Stout

The Court of Appeals decision affirming judgment on the pleadings against Quest is contrary to the Supreme Court's holding in *Hill & Stout*. The Supreme Court in *Hill & Stout* allowed for the possibility that COVID could cause direct physical loss or damage—albeit the *Hill & Stout* plaintiffs did not plead in their complaint the presence of the coronavirus in their dental practice facilities, thereby justifying dismissal of their case.¹ In particular, the Supreme Court held that “there are

¹ The Supreme Court also justified summary judgment in favor of Hill & Stout's insurer on grounds that coronavirus had caused Governor Inslee to issue the relevant Proclamation, and thus the

likely cases in which there is no physical *alteration* to the property but there is a direct physical loss under a theory of loss of functionality. However, this case is not one of them.” *Hill & Stout*, 200 Wn.2d at 221. The Supreme Court’s explanation in *Hill & Stout* that there was “*no alleged imminent danger to the property, no contamination with a problematic substance, and nothing that physically prevented use of the property or rendered it useless; nor were the dental offices rendered unsafe or uninhabitable because of a dangerous physical condition*” served to identify, by negative implication, the circumstances under which COVID could be found to cause direct physical loss or damage to property on a “loss of functionality” basis. *Id.* at 221–22. Yet, in Quest’s case, the Court of Appeals, while acknowledging these circumstances as being sufficient for alleging COVID-induced property damage, failed to apply this

virus exclusion applied. The virus exclusion is not at issue in Quest’s case, as Quest’s unique policies do not contain a virus exclusion.

guidance from *Hill & Stout*, by essentially ignoring the allegations in Quest’s complaint that set forth the distinct possibility of Covid-induced loss of functionality of relevant property.²

Inexplicably, the Court of Appeal’s opinion disregarded the factual allegations of Quest’s complaint alleging that civil authorities around the country were issuing stay-at-home orders based on physical loss or damage to property caused by COVID.³

² For example, Quest’s complaint alleged that the coronavirus was present on properties in the nearly every jurisdiction around the country, “physical altering those properties and causing them to be uninhabitable, unsafe, and unfit for their normal and intended uses, thereby resulting in physical loss or damage to property...” CP 15. Such allegations are clearly consistent with the loss of functionality of property described in *Hill & Stout*.

³ Quest alleged that “...Quest is afforded coverage under the Policies for business income loss resulting from the civil authority orders applicable to King County and to other metropolitan areas and locations around the country wherein, because of the rapid spread of the coronavirus, and the resulting damage and threat of damage the virus posed to property and public health, civil authority orders prohibited access of patrons to the business premises of Quest’s customers located within five miles of Quest’s insured properties...” CP 15–16.

Rather, the opinion only addressed the civil authority orders of Governor Inslee of Washington, as if Quest was alleging only state-wide losses, and not nationwide losses. Setting aside the Court of Appeals' overly narrow reading of Governor Inslee's stay-at-home order as not possibly being based on the existence of property damage, other civil authority orders around the country referenced in Quest's Complaint clearly expressed that the existence of COVID-induced property damage was a basis for those orders' prohibition of access to facilities that caused Quest's business income losses.

The Court of Appeals affirmed the dismissal of Quest's case on a Rule 12(c) motion by holding that Quest had not proved its case that a "loss of functionality" of property was the basis for Governor Inslee's orders. In so ruling, the Court of Appeals completely ignored the possibility that any of the dozens of other jurisdictions' civil orders giving rise to Quest's losses had been based on any property having lost its functionality because of the presence of COVID. By the terms of its opinion, the Court of

Appeals essentially replaced the standard for considering a judgment on the pleadings with a standard of proof, more appropriate for the summary judgment stage of litigation. The Court of Appeals opinion boils down to a ruling that it is impossible for Quest to ever prove a loss of functionality of property, regardless of the fact that Quest's complaint had alleged facts consistent with such a loss.

Accordingly, the Court of Appeals opinion justifying the dismissal of Quest's Complaint is directly contrary to the Supreme Court's holding in *Hill & Stout* that it is *likely* that there are situations where COVID caused a loss of functionality of property—and hence caused direct physical loss or damage to support a business interruption coverage claim.

It is important to note that the relevant facts necessary to be pled and eventually proven by Quest to obtain civil authority coverage under its policies were in some respects the opposite of what the plaintiffs in *Hill & Stout* sought to prove. Specifically, the *Hill & Stout* plaintiffs alleged that the Governor's

proclamation shutting down their facilities had caused direct physical loss or damage to those facilities—and this Court rejected their theory. By contrast, Quest has pled (and was prepared to prove if given the opportunity) the reverse proposition to trigger civil authority coverage under its policies—namely, that the existence of COVID-induced property damage caused the issuance of civil authority orders prohibiting access to relevant facilities.⁴

2. The Opinion Conflicts with this Court’s Precedent Establishing Standards for Adjudicating Rule 12(c) Motions

This Court has previously held that “Washington follows notice pleading rules and simply requires a concise statement of the claim and the relief sought.” *Champagne v. Thurston County*, 163 Wn.2d 69, 84, 178 P.3d 936 (2008) (citing CR 8(a)). A

⁴ Quest’s allegation that COVID caused the issuance of civil orders precipitating Quest’s losses is consistent with the Supreme Court’s ruling against the *Hill & Stout* plaintiffs regarding the applicability of the virus exclusion—*i.e.*, that the coronavirus was the cause of Governor Inslee’s proclamation. *See Id.* at 227.

complaint fails to meet this standard if it neglects to give the opposing party “fair notice” of the claim asserted. *Id.* (citing *Shooting Park Ass’n. v. City of Sequim*, 158 Wn.2d 342, 352, 144 P.3d 276 (2006)).

Appellate courts review pleadings on CR 12(c) dismissals on a *de novo* basis. *Wash. Trucking Associations, Nonprofit Corp. v. State*, 188 Wn.2d 198, 207, 393 P.3d 761 (2017) (citing *FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc.*, 180 Wn.2d 954, 962, 331 P.3d 29 (2014)). Courts “treat a CR 12(c) motion . . . identically to a CR 12(b)(6) motion.” *Id.* (citing *P.E. Systems, LLC v. CPI Corp.*, 176 Wn.2d 198, 203, 289 P.3d 638 (2012)). Dismissal on a CR 12(c) motion is “appropriate only when it appears beyond doubt that the plaintiff cannot prove any set of facts that would justify recovery.” *Id.* (citing *San Juan County v. No New Gas Tax*, 160 Wn.2d 141, 164, 157 P.3d 831 (2007)). Moreover, on review, courts “presume the truth of the allegations and may consider hypothetical facts not included in the record.” *Id.* Therefore,

under this Court's precedent, a complaint should be held to survive a defendant's Rule 12(c) motion if *any* set of facts could exist that would justify recovery. *FutureSelect*, 180 Wn.2d at 963.

Ironically, the Court of Appeals, in rendering its opinion affirming the dismissal of Quest's Complaint, correctly recited the aforementioned standards previously established by the Supreme Court in reviewing a Rule 12(c) ruling by the Superior Court (A-6-7)—and then proceeded to violate those standards in analyzing Quest's detailed complaint. The Court of Appeals even quoted one of the relevant allegations in Quest's Complaint that “the presence of the coronavirus was present on property . . . physically altering those properties and causing them to become physically uninhabitable, unsafe and unfit for their normal and intended use”. A-5. This specific allegation, among others, certainly allows for the possibility of COVID-induced loss of functionality of relevant property as described in *Hill & Stout*,

which would be sufficient to defeat the Insurers' Rule 12(c) motion under this Court's well-established standards.

Rather than following the Supreme Court precedent directing Washington courts to deny a Rule 12(c) motion and allowing Quest to proceed with discovery to prove its case, the Court of Appeals—acting as if it were reviewing a *summary judgment* decision—held that Quest must “**show**” (*i.e.*, must **prove**) the specific details of the alleged loss of functionality of particular properties giving rise to relevant civil authority orders. Moreover, the Court of Appeals focused only on the civil orders from the single state of Washington and declared that the language of Governor Inslee's proclamations did not definitively state they were the result of a loss of functionality of any property (A-11–12), but the Court of Appeals disregarded all of the other civil authority orders referenced in Quest's Complaint (which are a matter of public record for purposes of judicial notice)—including orders that expressly stated they were being issued in part, because of property damage caused by COVID. In so doing,

the Court of Appeals violated the Supreme Court's dictate on how to review a Rule 12(c) Motion *de novo*. The Court of Appeals did not presume the truth of Quest's allegations or give Quest the benefit of any doubt regarding its ability to prove a set of facts consistent with the "loss of functionality" test of *Hill & Stout*, as required. Instead, the Court of Appeals improperly held Quest to a standard of *proof* of the facts of COVID-induced property damage that does not apply at the *pleading stage* and is directly contrary to established Supreme Court precedent.

B. This Case Has Broad Public Importance and Presents Timely Issues Implicating the Rights of Washington Policyholders. RAP 13.4(b)(4).

An opinion by the Supreme Court that clarifies *Hill & Stout* and provides guidance on how a policyholder can plead and prove COVID-related direct physical loss or damage to property under a theory of "loss of functionality"—including what physical effect on property is sufficient to constitute loss—has broad public interest implications, particularly in the context of insurance coverage disputes regarding COVID-related losses.

RAP 13.4(b)(4). Indeed, “[t]he business of insurance is one affected by the public interest . . .”. RCW 48.01.030.

The issues implicated by Quest’s appeal will directly affect the ability of numerous Washington policyholders to obtain property and business interruption insurance coverage for the extensive losses they incurred during the COVID pandemic. The issues presented in this case need to be resolved by this Court as soon as possible because numerous COVID coverage claims have been in progress for over three years without clear and complete guidance from the Court. This uncertainty about the “loss of functionality” aspect of “direct physical loss or damage” has led to inconsistent outcomes at the trial court level and confusion among Washington policyholders.

For instance, both the University of Washington and Washington State University have pending cases in state court that involve the issue of whether COVID-related loss of use or loss of functionality can constitute “physical loss or damage” under their respective policies. *See* A-34–38 (*Univ. of Wash. v.*

Empl'rs. Ins. Co. of Wausau, Wash. Super. Ct., King Cty., Case No. 22-2-15472-1); A-41–45 (*Wash. State Univ. v. Factory Mut. Ins. Co.*, Wash. Super. Ct., Whitman Cty., Case No. 21-2-00095-38).

Significantly the trial courts in those cases have taken two different approaches to the *Hill & Stout* physical loss or damage issue. The trial court denied a motion to dismiss on this issue in *University of Washington*, “on the grounds that UW’s allegations as to the presence of COVID-19 virus on its property, and its contentions as to the effects of that presence, satisfy the ‘loss of functionality’ test articulated by the Washington Supreme Court in *Hill & Stout*. . .” A-17–20. By contrast, the trial court in *Washington State University*, granted the insurer’s motion to dismiss with prejudice. A-39–40.

Other COVID-related insurance coverage cases raising similar issues pending in Washington state or federal courts include the following:

- *Kemper Holdings, LLC v. American International Group UK Limited T/A Lex-London et al.*, Wash.

Super. Ct., King Cty., Case No. 20-2-15992-1 (A-46–55);

- *Angel Of The Winds Casino et al. v. Affiliated F M Insurance Co.*, Wash. Super. Ct., Snohomish Cty., Case No. 22-2-01335-31 (A-56–58);
- *Tulalip Tribes of Washington et al. v. Lexington Insurance Company et al.*, Wash. Super. Ct. Snohomish Cty., Case No. 20-2-03604-6 (A-59–74) (currently on appeal before the Washington Court of Appeals Division I, Case No. 861158, A-75–79)); and
- *Washington State Convention Center Public Facilities District v. Employers Insurance Company of Wausau*, Wash. W.D., Case No. No. 2:23-cv-1386-BJR (A-82–85) (currently on appeal before the United States Court of Appeals for the Ninth Circuit, Case No. 24-1889, A-86–89).⁵

Beyond these cases, there are likely numerous Washington policyholders holding meritorious COVID-related insurance claims awaiting guidance from the Supreme Court on a threshold issue addressed in this appeal. These claims are likely subject to contractual and/or statutory limitations periods that are running.

⁵ This case was originally filed in state court. *Washington State Convention Center Public Facilities District v. Employers Insurance Company of Wausau*, Wash. Super. Ct., King Cty., Case No. 23-2-14276-4 (A-80–81).

For example, many property and business interruption insurance policies contain time limitations to file suit or bring legal action against insurers. Similarly, the limitations period for a breach-of-contract claim in Washington is six years. RCW 4.16.040. Given that the pandemic commenced in early 2020, the limitations period on such claims may be well over halfway expired.

Moreover, the Supreme Court's resolution of Quest's case—with further guidance on the concept of COVID-induced “loss of functionality” of property—is the logical next step after leaving this issue open in *Hill & Stout* and will further judicial economy and establish uniformity of Washington law, while giving direction to policyholders with pending or unfilled claims.

Granting review of this issue is in the interest of all Washington policyholders currently bringing coverage actions in the state, as well as any future policyholders who wish to secure coverage in Washington courts, even beyond the COVID context. If this Court finds that the opening for “loss of

functionality” in *Hill & Stout* is applicable, these policyholders’ cases have a right to proceed with their claims through discovery.

CONCLUSION

This case meets the criteria for Supreme Court review set forth in RAP 13.4(b)(1) and (4). Quest asks this Court to accept review, reverse the ruling of the Court of Appeals, and remand this case to the trial court for further proceedings.

//

//

//

//

//

//

//

//

//

//

Pursuant to RAP 18.17, I certify that the foregoing
contains 4,870 words.

DATED this 27th day of June, 2024.

Respectfully submitted,

K&L GATES LLP

By: John C. Bjorkman

John C. Bjorkman, WSBA # 13426

Emaan R. Jaber, WSBA # 56990

John M. Sylvester, admitted *pro hac vice*

Carolyn M. Branthoover, admitted *pro hac vice*

925 Fourth Avenue, Suite 2900

Seattle, Washington, 98104

(206) 623-7580

john.bjorkman@klgates.com

emaan.jaber@klgates.com

john.sylvester@klgates.com

carolyn.branthoover@klgates.com

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2024, I arranged for the foregoing document and the attached appendix to be electronically filed with the Clerk of the Court for the Washington State Supreme Court by using the Court's electronic filing system.

Participants in the case who are registered ECF users will be served by the appellate ECF system.

Signature: /s/ John C. Bjorkman

APPENDIX

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

QUEST DIAGNOSTICS,
INCORPORATED,

Appellant,

v.

AIG SPECIALTY INSURANCE
COMPANY, UNDERWRITERS AT
LLOYD'S SYNDICATES NO. KLN
0510 and TMKS 1880, PARTNER
IRELAND INSURANCE
DAC, ENDURANCE AMERICAN
SPECIALTY INSURANCE COMPANY,
STEADFAST INSURANCE
COMPANY, AVIVA INSURANCE LTD.,
XL INSURANCE AMERICA INC., and
ACE AMERICAN INSURANCE
COMPANY,

Respondents.

No. 85285-0-I

DIVISION ONE

UNPUBLISHED OPINION

BOWMAN, J. — Quest Diagnostics Incorporated holds insurance policies with several insurers that cover business interruption losses when direct physical loss or damage to property results in a civil authority order prohibiting access within a five-mile radius of their covered locations. In early 2020, Governor Jay Inslee issued Proclamation No. 20-13,¹ Proclamation No. 20-24,² and

¹ Proclamation by Governor Jay Inslee, No. 20-13 (Wash. Mar. 16, 2020), <https://governor.wa.gov/sites/default/files/proclamations/20-13%20Coronavirus%20Restaurants-Bars%20%28tmp%29.pdf> [<https://perma.cc/ZQL6-P8HW>].

² Proclamation by Governor Jay Inslee, No. 20-24 (Wash. Mar. 19, 2020), <https://governor.wa.gov/sites/default/files/proclamations/20-24%20COVID-19%20non-urgent%20medical%20procedures%20%28tmp%29.pdf> [<https://perma.cc/BM69-Q3MY>].

Proclamation No. 20-25³ as a result of the COVID-19⁴ outbreak, prohibiting nonemergency medical care and ordering citizens to “Stay Home.” Quest sought coverage under the policies’ civil authority provision for alleged business interruption losses suffered as a result of the proclamations. The insurers denied coverage, and Quest sued. The trial court dismissed Quest’s complaint under CR 12(c). Because Quest fails to show that the presence of COVID-19 resulted in physical loss or damage to property causing the governor to issue stay-at-home orders, we affirm.

FACTS

Quest is a national diagnostic testing company that performs laboratory tests for health care providers and other customers. Quest bought a “Global Property Insurance Policy” for coverage from March 16, 2020 to March 16, 2021. Quest’s policy is a “subscription” policy, meaning several insurers shared the risk associated with providing the insurance.⁵ Eight separate insurers subscribed to Quest’s global policy, including AIG Specialty Insurance Company, Certain Underwriters at Lloyd’s London Subscribing to Policy Number PTNAM2004878,⁶ Partner Re Ireland Insurance DAC, Endurance American Specialty Insurance

³ Proclamation by Governor Jay Inslee, No. 20-25 (Wash. Mar. 23, 2020), <https://www.governor.wa.gov/sites/default/files/proclamations/20-25%20Coronavirus%20Stay%20Safe-Stay%20Healthy%20%28tmp%29%20%28002%29.pdf> [https://perma.cc/PJ48-WAEY].

⁴ Coronavirus disease 2019.

⁵ It is called a “subscription” policy because the insurers participate in the policy by “subscribing” to it.

⁶ Named as Underwriters at Lloyd’s Syndicates No. KLN 0510 and TMKS 1880 in the complaint.

Company, Steadfast Insurance Company, Aviva Insurance Ltd., XL Insurance America Incorporated, and ACE American Insurance Company (collectively Insurers). The Insurers each issued Quest a Global Property Insurance Policy (collectively Policies). The Policies are identical except for the policies of Lloyd's and Ireland, which also contain a "microorganism" exclusion.

Clause 5 of the Policies says that the Insurers cover "all risk of **direct** physical loss or damage to property . . . except as hereinafter excluded." Clause 7 explains that this includes coverage for:

A. Real and Personal Property

All real and personal property while such property is located anywhere within the territorial limits of this policy

B. Business Interruption - Gross Earnings

1. Loss due to the necessary interruption of business conducted by the Insured, including all interdependencies between or among companies owned or operated by the Insured resulting from loss or damage insured herein and occurring during the term of this policy to real and/or personal property described in Clause 7.A.

C. Business Interruption - Loss of Profits

1. Loss of gross profit as hereinafter defined, resulting from interruption of or interference with the business and caused by loss or damage to real or personal property as described in Clause 7.A of this policy during the term of the policy.

Clause 8 of the Policies “extends” the coverage described in clauses 7.B and 7.C to include:

B. Interruption by Civil or Military Authority

This policy is extended to insure loss sustained during the period not to exceed 30 days when as a result of, direct physical loss or damage not excluded in Clause 6, access to property within [five] miles of the Insured's Location is prohibited by order or action of Civil or Military Authority.

Finally, clause 6 contains a “contaminants or pollutants” exclusion. The Policies do not insure the following:

- F. [L]oss or damage arising out of the dispersal, release or escape of **contaminants** or **pollutants** into or upon land, the atmosphere or any water course or body of water, but not excluding resultant loss or damage from **contaminants** or **pollutants** to insured property caused by or resulting from loss or damage not otherwise excluded.

The Policies define “contaminants or pollutants” as

any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste, which after its release can cause or threaten damage to human health or human welfare or causes or threatens damage, deterioration, loss of value, marketability or loss of use to property insured hereunder, including, but not limited to, bacteria, virus, or hazardous substances.

In early 2020, to help curtail the spread of COVID-19, Governor Inslee issued several proclamations limiting business activities in Washington.

Proclamation No. 20-13 prohibited people from gathering in public venues for entertainment, recreational, or food service purposes. Proclamation No. 20-24 prohibited all hospitals, ambulatory surgery centers, and dental, orthodontic, and endodontic offices from providing nonemergency health care services. And

Proclamation No. 20-25 prohibited people from leaving their home or attending social gatherings and allowed only essential businesses to operate.

On April 13, 2020, Quest timely notified the Insurers of a claim for coverage for business income losses resulting from the COVID-19 pandemic. Quest claimed the Policies' civil authority provision in clause 8.B covered its losses because COVID-19 damaged properties within a five-mile radius of its facilities in Washington, resulting in the Governor's proclamations restricting access to those properties and Quest's covered locations. In 2021, Quest gave the Insurers copies of the governor's proclamations, a more detailed explanation of its claim, and a schedule of its claimed losses. On September 20, 2021, the Insurers denied Quest's claim, explaining that the COVID-19 pandemic did not cause any physical loss or damage to property and, even if it had, the contaminants or pollutants exclusion precluded coverage.

On January 28, 2022, Quest sued the Insurers, seeking a declaratory judgment that the Policies cover its "losses resulting from the interruption of its business by civil authority orders." It also alleged breach of contract. Quest alleged:

Given that, beginning in early 2020, a significant percentage of the [United States] population carried the coronavirus at any given time, it was statistically certain or near-certain that the coronavirus was present in the communities of every major metropolitan area in the country by April 2020, and thus the coronavirus was present on property located in those areas, physically altering those properties and causing them to become physically uninhabitable, unsafe, and unfit for their normal and intended uses, thereby resulting in physical loss or damage to property, as well as causing substantial damage to human health and human welfare.

. . . Quest is afforded coverage under the Policies for business income loss resulting from the civil authority orders applicable to King County.

On January 23, 2023, the Insurers jointly moved for judgment on the pleadings under CR 12(c). The Insurers argued that Quest’s complaint failed to show direct physical loss or damage to property under the Policies’ civil authority provision. And, even if Quest could show such loss or damage, the contaminants or pollutants exclusion applied.⁷ The trial court granted the Insurers’ joint motion and dismissed Quest’s complaint.

Quest appeals.

ANALYSIS

Quest argues that the trial court erred by dismissing its claims under CR 12(c). It contends it need not show loss or damage to “property” under the civil authority clause of the Policies and, in any event, its complaint sufficiently alleges that COVID-19 caused direct physical loss or damage to property, resulting in the governor’s proclamations.

Under CR 12(c), after the pleadings are closed, any party may move for judgment on the pleadings. We treat a CR 12(c) motion for judgment on the pleadings “ ‘identically to a CR 12(b)(6) motion’ ” to dismiss⁸ and review the trial court’s decision de novo. *Wash. Trucking Ass’ns v. Emp’t Sec. Dep’t*, 188 Wn.2d 198, 207, 393 P.3d 761 (2017) (quoting *P.E. Sys., LLC v. CPI Corp.*, 176 Wn.2d

⁷ Insurers Lloyd’s and Ireland moved separately under CR 12(c), arguing that its policies’ microorganism exclusion also precluded coverage.

⁸ CR 12(b)(6) governs motions to dismiss for failure to state a claim on which a court can grant relief.

198, 203, 289 P.3d 638 (2012)). “Dismissal under either subsection is ‘appropriate only when it appears beyond doubt’ that the plaintiff cannot prove any set of facts that ‘would justify recovery.’ ” *Id.* (quoting *San Juan County v. No New Gas Tax*, 160 Wn.2d 141, 164, 157 P.3d 831 (2007)). To this end, “[a]ll facts alleged in the complaint are taken as true, and we may consider hypothetical facts supporting the plaintiff’s claim.” *FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc.*, 180 Wn.2d 954, 962-63, 331 P.3d 29 (2014).

We examine hypothetical facts as the “ ‘conceptual backdrop’ ” against which we consider a challenge to legal sufficiency. *Gorman v. Garlock, Inc.*, 155 Wn.2d 198, 214, 118 P.3d 311 (2005)⁹ (quoting *Bravo v. Dolsen Cos.*, 125 Wn.2d 745, 750, 888 P.2d 147 (1995)). Any hypothetical situation conceivably raised by the complaint defeats the motion if it is legally sufficient to support the plaintiff’s claim. *Id.* But if a plaintiff’s claim remains legally insufficient after considering the facts in the complaint and any proffered hypotheticals, we will affirm dismissal. *Id.* at 215.

We liberally construe insurance policies to provide coverage wherever possible. *Bordeaux, Inc. v. Am. Safety Ins. Co.*, 145 Wn. App. 687, 694, 186 P.3d 1188 (2008). “A determination of coverage involves two steps: first, ‘[t]he insured must show the loss falls within the scope of the policy’s insured losses.’ ” *Moeller v. Farmers Ins. Co. of Wash.*, 173 Wn.2d 264, 272, 267 P.3d 998 (2011)¹⁰ (quoting *McDonald v. State Farm Fire & Cas. Co.*, 119 Wn.2d 724, 731,

⁹ Internal quotation marks omitted.

¹⁰ Alteration in original.

837 P.2d 1000 (1992)). “Then, in order to avoid coverage, the insurer must ‘show the loss is excluded by specific policy language.’ ” *Id.* (quoting *McDonald*, 119 Wn.2d at 731).

A. Physical Loss or Damage to Property

Quest argues the plain language of the Policies’ civil authority provision extends coverage beyond physical loss or damage to “property.” According to Quest, the provision more broadly extends coverage to “something else,” including loss or damage to “human health or human welfare.” We disagree.

Construction of an insurance policy is a question of law. *Queen City Farms, Inc. v. Cent. Nat’l Ins. Co. of Omaha*, 126 Wn.2d 50, 65, 882 P.2d 703 (1994). We examine the policy “to determine whether under the plain meaning of the contract there is coverage.” *Kitsap County v. Allstate Ins. Co.*, 136 Wn.2d 567, 576, 964 P.2d 1173 (1998). To give effect to every clause in an insurance policy, we construe the policy as a whole and give “ ‘a fair, reasonable, and sensible construction’ ” to its terms. *Bordeaux*, 145 Wn. App. at 693¹¹ (quoting *Kitsap County*, 136 Wn.2d at 575). When the language of an insurance policy is clear and unambiguous, we must enforce the contract as written. *Cook v. Evanson*, 83 Wn. App. 149, 152, 920 P.2d 1223 (1996). An ambiguity exists if the policy language is susceptible to two reasonable but different interpretations. *Id.* We resolve any ambiguity in an insurance contract against the insurer. *Queen City Farms*, 126 Wn.2d at 83.

¹¹ Internal quotation marks omitted.

Viewing the Policies as a whole, the plain language shows coverage for losses associated with the loss of or damage to only property. First, the Policies are “Global Property” policies. And clause 5 of the Policies defines the scope of coverage as insuring against all risk of “**direct** physical loss or damage to property” except as otherwise excluded. Clause 6 then describes those circumstances under which the Policies will not cover loss or damage to “property.”

Clause 7.A reiterates that the Policies insure all “real and personal property” while such property is located anywhere within the territorial limits of the Policies. Clauses 7.B and 7.C then describe business interruption coverage for lost earnings and lost profits caused by loss or damage to the insured’s “property.” And clause 8 extends the business interruption coverage under clauses 7.B and 7.C to certain losses caused by loss or damage to “property” other than the insured’s. Finally, clause 9 of the Policies defines the scope of loss covered under the civil authority provision. It says that the “length of time for which loss may be claimed,” or the “period of recovery,” will commence “with the date of such loss or damage” and shall not exceed the time required to “rebuild, repair, or replace the property that has been destroyed or damaged.”

Still, Quest argues that the Policies’ definition of “contaminants or pollutants” shows that the Insurers intended to extend the civil authority provision coverage to loss or damage to human health or welfare. As stated, that definition includes

any solid, liquid, gaseous or thermal irritant or contaminant, . . .
which after its release can cause or threaten damage to human

health or human welfare or causes or threatens damage, deterioration, loss of value, marketability or loss of use to property insured hereunder.

But this definition is isolated and applies only in the context of a policy exclusion.

Under clause 6.F of the Policies, coverage is excluded if a defined contaminant or pollutant causes loss or damage to “property.” Quest points to no provision in the policy adopting the definition as an extension of the scope of coverage beyond loss or damage to property.

B. Sufficiency of Quest’s Complaint

Quest argues that even if it must show physical loss or damage to property to recover under the civil authority provision of the Policies, its complaint sufficiently alleges that COVID-19 caused such loss. Citing *Hill & Stout, PLLC v. Mutual of Enumclaw Insurance Co.*, 200 Wn.2d 208, 515 P.3d 525 (2022), the Insurers argue that the facts in Quest’s complaint are insufficient. We agree with the Insurers.

In *Hill & Stout*, the insureds operated two dental practices covered by an insurance policy for “ ‘direct physical loss of or damage to [the] Covered Propert[ies].’ ” 200 Wn.2d at 213. The insureds argued that under a “ ‘loss of functionality’ ” theory, the policy covered their COVID-19-related business income losses because Proclamation No. 20-24 “ ‘physically deprived’ ” them of the use of their property. *Id.* at 220. Our Supreme Court disagreed, noting that loss of functionality requires “some *physical* effect on the property.” *Id.* at 223-24. The court recognized that “there are likely cases in which there is no physical *alteration* to the property but there is a direct physical loss under a

theory of loss of functionality. However, this case is not one of them.” *Id.* at 221.

And it found no loss of functionality because

there was no alleged imminent danger to the property, no contamination with a problematic substance, and nothing that *physically* prevented use of the property or rendered it useless; nor were the dental offices rendered unsafe or uninhabitable because of a dangerous physical condition. Accordingly, the [p]roclamation did not *physically* cause a loss of functionality of the property because it continued to be functional.

Id. at 221-22. In essence, the insureds could not use the property in the way that they wanted, but that alleged loss is not “physical.” *Id.* at 220.

Here, Quest claimed coverage under the Policies’ civil authority provision. Under that provision, Quest must show that as a result of “direct physical loss or damage” to property, an order of civil authority prohibited access within five miles of its covered location. Quest alleged that the presence of COVID-19 “physically alter[ed]” properties near its facilities, causing them to become “physically uninhabitable, unsafe, and unfit” for their intended uses, resulting in the issuance of the governor’s proclamations and Quest’s business income losses.

But, like the insureds in *Hill & Stout*, Quest’s allegations do not show that the presence of COVID-19 caused direct imminent danger to property or physically rendered property useless, uninhabitable, or unsafe because of a dangerous physical condition. Nor does Quest show that the governor entered the proclamations in response to any dangerous physical conditions resulting from damage to property rather than out of concern for public health and safety. Indeed, the governor’s proclamations declare that he issued the orders “to curtail

the spread of the COVID-19 pandemic in Washington State and protect our most vulnerable populations.”¹²

Our conclusion that the presence of COVID-19 does not amount to direct physical loss or damage to property aligns with state and federal decisions nationwide rejecting the same argument. See *Wash. State Convention Ctr. Pub. Facilities Dist. v. Emps. Ins. Co. of Wausau*, No. 2:23-CV-1386-BJR, 2024 WL 810692, at *6 (W.D. Wash. Feb. 27, 2024) (court order) (“[N]othing ‘physically prevented use of the property or rendered it useless[.]’ . . . Plaintiff had access to the Convention Center throughout the relevant time-period. Thus, as the Washington Supreme Court has already stated, ‘[T]he loss of use due to [Governor Inslee’s] [p]roclamations did not trigger coverage.’ ”)¹³ (quoting *Hill & Stout*, 200 Wn.2d at 225); *Brandywine Valley Premier Hosp. Grp. v. Fireman’s Fund Ins. Co.*, No. 22-2221, 2023 WL 5044991, at *5 (E.D. Pa. Aug. 8, 2023) (court order) (“Although physical particles of the COVID-19 virus may have come into contact with [the] insured property, there is no direct causal relationship between that contact and [the insured]’s business loss.”); *Cajun Conti LLC v. Certain Underwriters at Lloyd’s, London*, 359 So.3d 922, 929 (La. 2023)

¹² Proclamation No. 20-13; see also Proclamation No. 20-24. Quest argues the governor issued the proclamations to protect loss to private property by recognizing that the COVID-19 pandemic “remains a public disaster affecting life, health, *property* or the public peace.” Proclamation Nos. 20-13, 20-24, 20-25 (emphasis added). But that language does not explain why the governor issued the orders. Instead, it cites the basis for the governor’s authority to prohibit activity under his state emergency powers. See RCW 43.06.220(1)(h) (after proclaiming a state of emergency, the governor may “issue an order prohibiting . . . [s]uch other activities as he or she reasonably believes should be prohibited to help preserve and maintain life, health, property or the public peace”).

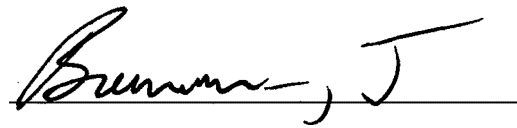
¹³ Fourth alteration in original.

(“COVID-19 did not cause damage or loss that was physical in nature”);

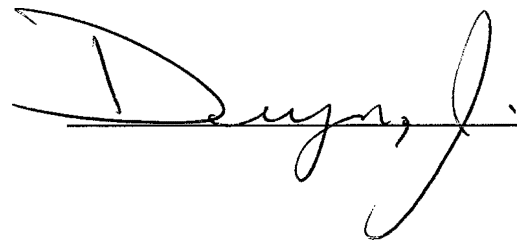
Tapestry, Inc. v. Factory Mut. Ins. Co., 482 Md. 223, 251, 286 A.3d 1044 (2022)

(“the presence of [c]oronavirus in the air and on surfaces at [plaintiff]’s properties did not cause ‘physical loss or damage’ as that phrase is used in the [p]olicies”).

Because Quest fails to show that the presence of COVID-19 resulted in direct physical loss or damage to property causing the governor to issue stay-at-home orders, we affirm the trial court’s order dismissing its complaint under CR 12(c).¹⁴

A handwritten signature in cursive script, appearing to read "Benjamin J.", written over a horizontal line.

WE CONCUR:

A handwritten signature in cursive script, appearing to read "Chang, J.", written over a horizontal line.A handwritten signature in cursive script, appearing to read "Dwyer, J.", written over a horizontal line.

¹⁴ Because we conclude that Quest does not show direct physical loss or damage to property, we do not address the Insurers’ arguments that Quest’s losses are excluded by the pollutants or contaminants exclusion or the microorganism exclusion in the Policies.

FILED
2024 JAN 04 03:16 PM
KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE #: 22-2-15472-1 SEA

THE HONORABLE DAVID WHEDBEE
Hearing Date: December 15, 2023
With Oral Argument

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

THE BOARD OF REGENTS OF THE
UNIVERSITY OF WASHINGTON,

Plaintiff,

v.

EMPLOYERS INSURANCE COMPANY
OF WAUSAU, A LIBERTY MUTUAL
COMPANY,

Defendant.

No. 22-2-15472-1 SEA

AMENDED ORDER DENYING
DEFENDANT'S CR 12(B)(6) MOTION
TO DISMISS

This matter comes before the Court on Defendant Employers Insurance Company of Wausau's ("Insurer") CR 12(b)(6) Motion to Dismiss. The Court has considered the Motion and related supporting materials, Plaintiff The Board of Regents of the University of Washington's Opposition to the Motion and related supporting materials, and the Insurer's Reply and any related supporting materials, in addition to relevant records in the court file and the parties' oral arguments on December 15, 2023.

Based on that review, the Court finds and concludes as follows:

AMENDED ORDER DENYING INSURER'S
MOTION TO DISMISS - 1

Judge David Whedbee
King County Superior Court
516 - Third Avenue, E-201
Seattle, Washington 98104

1. Defendant Employers Insurance Company of Wausau (“Insurer”) issued to Plaintiff The Board of Regents of the University of Washington (“UW”), during the relevant period, five insurance policies: Policy YAC-L9L-469720-039 to UWMC (“UWMC Policy”); Policy YAC-L9L-469720-029 to NWH (“NWH Policy”); Policy YAC-L9L-469720-049 to HMC (“HMC Policy”); Policy YAC-L9L-450425-020 to UW Husky Stadium UMHC (“Husky Stadium Policy”); and Policy YAC-L9L-450425-030 to UW Athletics Facilities (“Athletics Facilities Policy”).
2. Collectively, these Policies provide UW with over \$2 billion in coverage where applicable. In pertinent part, the Policies all include an agreement that the Insurer would cover “property, as described in [each] Policy, against all risks of direct and physical loss or damage, except as hereinafter excluded or limited, while located as described in this Policy.” *See, e.g.*, Dkt. 11 (First Amended Complaint), Ex. 1 (UWMC Policy).
3. All five Policies contain various exclusions, including one that precludes coverage for “[c]ontamination, and any cost due to contamination including the inability to use or occupy property or any cost of making property safe or suitable for use or occupancy, except as provided elsewhere in this policy” and “unless directly resulting from a covered loss.” Dkt. 28, Ex. A at 25.
4. These Policies also contain two pertinent endorsements: a “Communicable Disease Decontamination Cost Endorsement” (“Decontamination endorsement”) and an endorsement for “Time Element Losses Due To Contamination By Communicable Disease” (Time Element Losses endorsement”). *See* discussion below.
5. The parties dispute whether these Policies cover losses sustained as the result of the outbreak of the COVID-19 pandemic—by which they mean the SARS-CoV-2 virus, its variants and the coronavirus disease—that purportedly caused UW to close or limit access

1 to its healthcare facilities (e.g., the UW Medical Center and Harborview Medical Center),
2 Husky Stadium, and UW's Athletic Facilities in 2020 and thereafter, by government order
3 and otherwise.
4

5
6
7 6. The Insurer takes the position that Washington courts and other state and federal courts
8 have rejected such claims because litigants such as UW here cannot demonstrate any
9 "direct and physical loss or damage" to property (including real property defined as
10 "buildings and other structures" or personal property defined as "furniture, fixtures,
11 machinery, . . . [m]aterials, [and] supplies"). See Dkt. 27 at 2-3, 6-7. UW counters that its
12 First Amended Complaint ("FAC") alleges, specifically and explicitly, direct and physical
13 loss and damage to property, with extensive citations to scientific studies to support its
14 allegations, which should be sufficient to survive a motion under CR 12(b)(6). Dkt. 37 at
15 2.
16
17

18
19
20
21
22
23
24
25 7. The parties also dispute whether the "Contamination" exclusion applies. The Insurer
26 argues, *inter alia*, that even if the Court accepted UW's coverage interpretation, UW has
27 "pleaded itself right into the Contamination exclusion." UW resists this reading, claiming
28 that the amendatory "Communicable Disease" endorsements set against the
29 Contamination exclusion either encompass at least some of the factual scenarios here so
30 as to warrant coverage or create ambiguities that must be construed against the Insurer in
31 favor of coverage at the pleading stage.
32
33

34
35
36
37
38
39 8. Dismissal under CR 12 is "appropriate only when it appears beyond doubt that the plaintiff
40 cannot prove any set of facts that "would justify recovery." *Washington Trucking*
41 *Associations v. State Emp. Sec. Dep't.*, 188 Wn.2d 198, 207, 393 P.3d 761, 766 (2017)
42 (internal quotation marks omitted). "All facts alleged in the complaint are taken as true,
43 and [courts] may consider hypothetical facts supporting the plaintiff's claim." *FutureSelect*
44
45
46
47

1 *Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc.*, 180 Wn.2d 954, 962, 331 P.3d 29,
2 34 (2014).
3
4

5 9. Washington courts follow a policy of construing coverage provisions liberally in favor of
6 coverage, *Bordeaux, Inc. v. Am. Safety Ins. Co.*, Wn. App. 687, 694 (2008), and mandating
7 that exclusionary provisions must be construed narrowly. *Stuart v. Am. States Ins. Co.*,
8 134 Wn.2d 814, 818-19 (1998).
9
10

11
12 10. In support of their competing positions, both parties rely on *Hill & Stout, PLLC v. Mutual*
13 *of Enumclaw Insurance Company*, 200 Wn.2d 208, 515 P.3d 525 (2022), a landmark case
14 of insurance policy interpretation as applied to claims arising during the COVID era.
15
16

17 11. In *Hill & Stout*, two dentists heeded government orders issued to “curtail the spread of
18 COVID-19 . . . [which] prohibit[ed] nonemergency dental care,” and in early 2020 closed
19 their business. 200 Wn.2d at 211. The dentists tendered a claim to their insurer for lost
20 income suffered due to “direct physical loss of or damage to” their property. *Id.* at 211-
21 212. A unanimous Supreme Court of Washington sided with the insurer, holding that
22 “‘physical loss of ... property’ is a property that has been physically destroyed or that one
23 is deprived of in that the property is no longer physically in their possession,” *id.* at 219,
24 and that the dentists’
25

26 claim for loss of intended use and loss of business income is not a physical
27 loss of property. HS was still able to physically use the property at issue.
28 The property was in HS’s possession, the property was still functional and
29 able to be used, and HS was not prevented from entering the property.
30

31 *Id.* at 220.
32
33

34 12. In a long discussion in dicta, *Hill & Stout* also entertained potential claims under a “loss
35 of functionality” test. *See* 200 Wn.2d at 220-225. Under this theory, a plaintiff might plead
36 that an event like the COVID-19 pandemic caused “imminent danger to the property,”
37
38
39
40
41
42
43
44
45
46
47

1 “contamination with a problematic substance,” or an event “that physically prevented use
2 of the property or rendered it useless” or “rendered [the property] unsafe or uninhabitable
3 because of a dangerous physical condition.” *Id.* at 221-222; accord *Seattle Tunnel*
4 *Partners v. Great Lakes Reinsurance (UK) PLC*, 200 Wn.2d 315, 339, 516 P.3d 796, 809
5 (2022) (loss of functionality test may apply where “deprivation, dispossession, or injury.
6 . . [is] physical,” which “means the loss must have a material existence, be tangible, or be
7 perceptible by the senses”).
8
9
10
11
12
13

14 13. *Hill & Stout* rejected any claim by the dentists under this theory, based on an analysis by
15 Judge Barbara Rothstein, that “[w]hile there may be some flexibility to a physical
16 alteration requirement under a loss of functionality test, even under a loss of functionality
17 test there must be some *physical* effect on the property that is not found in the present
18 case.” 200 Wn.2d at 223-224 (emphasis in original) (citing *Nguyen v. Travelers Cas. Ins.*
19 *Co. of Am.*, 541 F. Supp.3d 1200 (W.D. Wash. 2021)).
20
21
22
23
24
25
26

27 14. No sooner did *Hill & Stout* raise the possibility of the “loss of functionality” test, did the
28 court also appear to doubt its viability as applied to situations related to the COVID-19
29 pandemic: “As Judge Rothstein notes, it appears that the strong, if not unanimous,
30 consensus around the country is that COVID-19 and related government closures do not
31 amount to ‘direct physical loss of property.’” 200 Wn.2d at 224 (citing also *Verveine Corp.*
32 *v. Strathmore Ins. Co.*, 489 Mass. 534, 184 N.E.3d 1266, 1275-76 (2022) (collecting cases
33 and applying similar insurance law structure to Washington, to hold “the COVID-19
34 orders standing alone cannot possibly constitute ‘direct physical loss of or damage to’
35 property, for the same reason that loss of legal title or other government restrictions cannot
36 themselves physically alter property”). That said, the loss of functionality test in *Hill &*
37 *Stout* remains valid and binding on this Court.
38
39
40
41
42
43
44
45
46
47

UW may establish coverage under the “direct physical loss or damage” to property provision as alleged in the FAC.

15. UW seizes on the loss of functionality theory, claiming that the test on its face applies to the extensive allegations in its FAC. The Insurer counters, as in *Hill & Stout*, that UW cannot demonstrate that anything “physical” effected the UW properties in question (such as its medical and sports facilities) so as to trigger coverage even under this theory. As examples at oral argument, the Insurer argued that even if aerosols carrying the COVID-19 virus permeated the atmosphere of a UW building or settled as “fomites” on the surfaces inside UW buildings, UW was never deprived of possession or use of those properties. And, the Insurer claims, in no event was there any “physical” damage because at most UW was forced to ventilate those indoor spaces and clean those surfaces, without any necessary physical impact on or change to the property.
16. The fundamental flaw in this argument, as stressed by UW, is that it runs counter to the actual allegations in the FAC. These detailed allegations do describe how the SARS-CoV-2 virus can physically effect and transform both indoor environments and physical surfaces, with extensive quotations and other references to existing scientific data and related studies. *See, e.g.*, Dkt. 11, ¶¶ 39, 47, 50, 54-55, 65-72, 73-74. Even if invisible, or detectible only through magnification, the depicted effects on the air and hard surfaces have a “material existence” are “tangible, or [are] perceptible by the senses.” *Seattle Tunnel Partners*, 200 Wn.2d at 339; *see also Hill & Stout*, 200 Wn.2d at 221 (recognizing “coverage for vandalism for the residue and vapors from a methamphetamine lab in a rental property [may apply] even though it caused ‘no visible damage’”) (quoting *Graff v. Allstate Ins. Co.*, 113 Wn. App. 799, 806, 54 P.3d 1266 (2002)); *see also Huntington Ingalls Indus., Inc. v. Ace Am. Ins. Co.*, 2022 VT 45, ¶ 41, 287 A.3d 515, 533–34 (Vt.

1 2022) (crediting “loss of functionality” theory because the “process of the virus ‘adhering’
2 to surfaces caused ‘detrimental physical effects’ that ‘altered and impaired the functioning
3 of the tangible, material dimensions’ of the property,” and “property cannot function for
4 its intended purpose and insured’s business has had to operate at a reduced capacity”).
5
6

7
8
9 17. UW pleaded a lengthy set of such factual allegations against the “loss of functionality”
10 test factors recognized under *Hill & Stout*. See *id.*, e.g., ¶¶ 75-78. UW urges that these
11 allegations are sufficient to survive a CR 12 motion, and that the Insurer’s arguments
12 against coverage rest on facts not in the record or on characterizations of the factual
13 allegations in the Insurer’s favor, both of which are improper at the pleading stage. The
14 Court agrees.
15
16

17
18
19
20
21 18. Noting that dismissals under Cr 12(b)(6) should be granted “only sparingly and with care,”
22 *Bravo v. Dolsen Companies*, 125 Wn.2d 745, 750, 888 P.2d 147, 151 (1995), the Court
23 finds that the FAC, replete with detailed allegations about the SARS-CoV-2 virus’s effect
24 on the physical aspects of UW’s property and citations to supporting scientific data, is
25 sufficient to withstand the Insurer’s motion to dismiss at the pleading stage. See
26 *Huntington Ingalls*, 2022 VT at ¶ 42 (CR 12 dismissal improper where “statements in the
27 complaint adequately allege that the virus physically altered property in insured’s
28 shipyards when it adhered to surfaces,” in part because “allegations involve more than just
29 a government order interfering with insured’s use of its property”).
30
31

32
33
34
35
36
37
38
39 19. Later in litigation, the Insurer might come forth with studies that debunk UW’s scientific
40 studies or otherwise prove more persuasive so as to preclude coverage as applied to the
41 facts. In this procedural posture, however, the Insurer’s positions rest on arguments or
42 facts not in the record, which the Court cannot accept as true over the FAC’s allegations.
43
44
45
46
47

1 20. The Court finds that at least some of the FAC's allegations, accepted here as true, set forth
2 a plausible claim for coverage against the loss of functionality test factors discussed in
3
4 *Hill & Stout*.
5

6
7 **The "Contamination" exclusion does not necessarily bar all coverage.**
8

9
10 21. Even if the Policies might extend coverage per the "direct and physical loss or damage"
11 to property provision and loss of functionality test, the Insurer may rightfully deny
12 coverage where UW's claims fall under an exclusion.
13

14
15 22. Here, the Insurer claims that UW's claims fall squarely within the "Contamination"
16 exclusion, and are not rescued by the "Communicable Disease" endorsements. UW argues
17 that read together, these provisions permit coverage or create ambiguities that preclude
18 the Court finding as a matter of law that the Insurer rightfully denied coverage.
19

20
21 23. "[I]f the policy language is clear and unambiguous, we must enforce it as written; we may
22 not modify it or create ambiguity where none exists. . . . Language in an insurance
23 contract is ambiguous if, on its face, it is fairly susceptible to two different but reasonable
24 interpretations." *Seattle Tunnel Partners*, 200 Wn. 2d at 321.
25

26
27 24. As noted, the exclusion at issue precludes coverage for "[c]ontamination, and any cost due
28 to contamination including the inability to use or occupy property or any cost of making
29 property safe or suitable for use or occupancy, *except as provided elsewhere in this policy*"
30 and "unless directly resulting from a covered loss." Dkt. 11, Ex. A at 21 (emphasis added);
31 *see also* Dkt. 28, Ex. A at 24-25.
32

33
34 25. The Policies define "contamination" as "[any] condition of property that results from a
35 contaminant," and "contaminant" explicitly includes "[a]ny virus, [or] disease causing
36 illness causing agent." *E.g.*, Dkt. 28, Ex. A at 57.
37
38
39
40
41
42
43
44
45
46
47

1 26. These Policies also contain two pertinent endorsements. The “Communicable Disease
2
3 Decontamination Cost Endorsement” provides for coverage as follows:
4

5 If your covered property at a covered location shown on the Schedule of
6 this endorsement is contaminated by a communicable disease as the direct
7 result of a covered loss, and there is in force at the time of that covered loss
8 a law or ordinance that requires you to decontaminate that covered property
9 as a result of this contamination by communicable disease

10
11 *See, e.g.*, Dkt. 11, Ex. A at 42; *see also* Dkt. 28, Ex. A at 62, 76, and 88. Under subsection
12 (d), the endorsement defines “communicable disease” as “a viral or bacterial organism
13 that is capable of inducing disease, illness, physical distress or death.” Dkt. 28, Ex. A at
14
15 76.
16
17

18 27. The endorsement for “Time Element Losses Due To Contamination By Communicable
19 Disease” provides for coverage as follows:
20
21

22
23 If your covered property at a covered location is contaminated by a
24 communicable disease as the direct result of a covered loss, and there is in
25 force at the time of that covered loss a law or ordinance that requires you to
26 suspend your operations on account of that contamination, we will pay the
27 actual loss of GROSS PROFIT or GROSS EARNINGS you sustain due to
28 the necessary suspension of your normal operations at that covered location
29 because it is either partially or totally closed by order of authority described
30 in b.

31 Dkt. 28, Ex. A at 88. Under subsection (b), this endorsement states in pertinent part that
32 the “sole determinant of disease contamination of a magnitude great enough to either
33 partially or totally close your normal operations will be either the . . . National Center for
34 Disease Control or [t]he governmental authority having jurisdiction over your operations
35 that relate to health and hygiene standards necessary to protect the general public.” *Id.*
36
37

38 28. Under subsection (c), the Time Element Loss endorsement sets forth a limitation on
39 liability. Dkt. 28, Ex. A at 88.
40
41
42
43
44
45
46
47

1 29. Like the definitional section of the “Decontamination” endorsement, subsection (d) of the
2 “Time Element Loss” endorsement defines “communicable disease” as “a viral or
3 bacterial organism that is capable of inducing disease, illness, physical distress or death.”
4
5 Dkt. 28, Ex. A at 88.
6
7

8
9 *The “Time Element Losses” endorsement defeats application of the*
10 *“Contamination” exclusion.*
11

12 30. UW claims under the “Communicable Disease” endorsements that the SARS-CoV-2
13 virus, which allegedly can physically damage property by settling on hard surfaces as
14 “fomites” or by permeating indoor air spaces as “aerosols,” is the covered loss that causes
15 COVID-19 (the communicable disease). Dkt. 37 at 25. In the alternative, UW contends
16 this exclusion at minimum creates an ambiguity as applied to “communicable diseases.”
17
18 *Id.* The Insurer relies on several out-of-state and federal precedents, published and
19 unpublished, for its position that courts have rejected coverage, based on the same or
20 similar exclusions as featured in the Wausau Policies here. *See* Dkt. 27 at 21-24; Dkt. 43
21 at 4-5.
22
23

24 31. The Court finds the precedents cited by the Insurer are materially distinguishable because
25 they did not consider the “Communicable Disease” amendatory endorsements present here
26 or are otherwise dissimilar. The Insurer mischaracterizes the existing persuasive case
27 authority as a monolith that bars coverages categorically. In fact the case law consists of
28 a patchwork of cases that arose under different insurance policies—with varying
29 exclusionary provisions, or with distinct amendatory endorsements or no endorsements at
30 all—not necessarily in the same procedural postures, under insurance law regimens unique
31 to each state outside Washington, and often assuming coverage for “direct and physical
32 damage or loss” to property claims that the Insurer here insists are untenable. As canvassed
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

below, the cases cited by the Insurer do not necessarily foreclose UW's claims under these particular Policies.

32. In *AECOM v. Zurich American Insurance Company*, the Ninth Circuit precluded coverage because “the very thing that AECOM claims triggers coverage—the ‘presence’ of a ‘virus’ and the resulting ‘condition of property’ due to that presence—constitutes ‘Contamination’ under the plain language of the Contamination exclusion.” No. 22-55092, 2023 WL 1281675, *1 (9th Cir. Jan. 31, 2023) (unpublished). The Insurer highlights this general principle, yet in *AECOM* there was no discussion of any endorsements except one that applied to Louisiana, which the Ninth Circuit validated without crediting the insured’s claim that the whole policy was ambiguous. *Id.* at *2; *see also Palomar Health v. Am. Guarantee & Liab. Ins. Co.*, No. 21-56073, 2022 WL 3006356, at *1 (9th Cir. July 28, 2022) (“Although each policy contains an amendatory endorsement that removes the word ‘virus’ from the exclusion, those special endorsements apply only to property in Louisiana. *Because Palomar does not allege any loss or harm to property in Louisiana, the contamination exclusion applies.*” (emphasis added) (unpublished); *see also Lindenwood Female Coll. v. Zurich Am. Ins. Co.*, 61 F.4th 572, 575 (8th Cir. 2023) (reaching same result because “it would simply make no sense to define a contamination exclusion with express reference to viral contamination in the main body of the policy only to wholly eliminate that same exclusion nationwide in later endorsement that references an individual state”); *Greenwood Racing Inc. v. Am. Guarantee & Liab. Ins. Co.*, No. CV 21-1682, 2022 WL 4133295, at *6 (E.D. Pa. Sept. 12, 2022) (same) (unpublished).

33. In *HT-Seattle Owner, LLC v. American Guarantee and Liability Insurance Company*, the Ninth Circuit similarly rejected a coverage claim per the “contamination exclusion” where

1 “contaminant” did not include “virus” in the exclusion itself, but a definition of
2 “contaminant” that expressly encompassed “virus” did appear in the “Louisiana
3 Amendatory Endorsement for “Decontamination Costs.” No. 21-35916, 2023 WL
4 3562996, *2 (9th Cir. May 19, 2023) (unpublished). *HT-Seattle Owner* held the Louisiana
5 Endorsement “does not apply to claims arising in Washington.”
6
7
8
9

10 34. Unlike *AECOM, Palomar Health, HT-Seattle Owner, Lindenwood Female Collage, and*
11 *Greenwood Racing*, the “Communicable Disease” amendatory endorsements here apply
12 generally and are not restricted to particular states. If anything, these cases tacitly
13 acknowledge that courts may indeed find coverage per applicable endorsement provisions
14 in spite of an otherwise broad “Contamination” exclusion.
15
16
17
18
19

20 35. In *TP Racing LLLP v. American Home Assurance Company*, the Ninth Circuit upheld the
21 application of a “contaminant exclusion,” which, as here, included “virus” in its definition.
22 No. 21-16910, 2023 WL 3750395, *1 (9th Cir. June 1, 2023) (“Even assuming arguendo
23 that the presence of Covid particles on qualifying premises constitutes ‘direct physical loss
24 or damage,’ we conclude that the Contaminant Exclusion bars coverage on such a
25 theory.”) (unpublished). Yet *TPP Racing* entailed no analysis of endorsements at all.
26
27
28
29
30
31

32 36. In *Out West Restaurant Group, Inc. v. Affiliated FM Insurance Company*, the Ninth
33 Circuit considered the insured’s argument, similar to UW’s here, that the policy there
34 featured a “communicable disease” provision that conflicted with “contamination
35 exclusion” defined to include “‘virus [or] disease causing or illness causing agent, fungus,
36 mold or mildew.’” No. 21-15585, 2022 WL 4007998, *2 (9th Cir. Sept. 2, 2022)
37 (unpublished). *Out West Restaurant* resolved the purported conflict in this way: “The
38 contamination exclusion bars coverage under the direct physical loss or damage provisions
39 for damage caused by the presence of a virus,” and the “communicable disease” provision
40
41
42
43
44
45
46
47

1 addressed a subset of scenarios where “access to [the insured property] is limited,
2 restricted or prohibited by . . . order of an authorized governmental agency regulating or
3 as [a] result of such presence of communicable disease; or . . . a decision of an Officer of
4 the Insured as a result of such presence of communicable disease.” *Id.*
5
6
7
8

9 37. In contrast to *Out West Restaurant*, the exclusion here is limited to where there is no
10 “covered loss,” *i.e.*, “direct and physical damage or loss” to the property “except as
11 provided elsewhere in this policy” and “unless directly resulting from a covered loss.”
12 Dkt. 28, Ex. A at 88. As discussed above, the Court finds UW as the insured has adequately
13 pleaded a “direct and physical damage or loss.” The Time Element Losses endorsement
14 corresponds to the clause “except as provided elsewhere in this policy.” And that
15 endorsement, under subsection (c), defines “communicable disease” as “a viral or bacterial
16 organism that is capable of inducing disease, illness, physical distress or death.” Dkt. 28,
17 Ex. A at 88. This affirmative provision of coverage provides a subset of covered losses as
18 an exception to the broad exclusion of losses that fall under the Contamination exclusion.
19 *See Out West Restaurant*, 2022 WL 4007998, at *2 (“An insurance policy may exclude
20 coverage for particular injuries or damages in certain specified circumstances while
21 providing coverage in other circumstances.”) (quoting *Julian v. Hartford Underwriters*
22 *Ins. Co.*, 110 P.3d 903, 910 (Cal. 2005)).
23
24
25
26
27
28
29
30
31
32
33
34
35

36 38. The Insurer argues that the “Sixth, Seventh, and Eighth Circuits recently held that
37 substantively identical contamination exclusions preclude coverage for business losses
38 alleged to have been caused by the presence of the COVID-19 virus on covered property.”
39 Dkt. 27 at 22. This characterization is not accurate because the cited cases in question
40 involve the interplay between a “contamination exclusion” and “Time Element
41 *Exclusions*” (emphasis added), which is dissimilar to the *endorsements* here. *See Dana*
42
43
44
45
46
47

1 *Inc. v. Zurich Am. Ins. Co.*, No. 21-4150, 2022 WL 2452381, at *1, *3 (6th Cir. July 6,
2 2022) (“Despite this clear language, Dana contends the contamination exclusion does not
3 apply to the time element section. In support, it points to other exclusions that discuss time
4 element loss.”). *Dana* is irrelevant because here there is an amendatory endorsement that
5 limits coverage for time losses stemming from the outbreak of a communicable disease,
6 whereas *Dana* simply rejected the insured’s argument that language in different
7 exclusionary provisions created ambiguity.
8

9
10
11
12
13
14
15 39. In *Froedtert Health, Incorporated. v. Factory Mutual Insurance Company*, the Seventh
16 Circuit elucidated the interplay between general coverage provisions, broad exclusions,
17 and “Additional Coverages,” similar to the “Communicable Disease” endorsements here:
18

19
20
21 The policy’s general coverage is limited by accompanying exclusions,
22 including the broad exclusion for contamination losses. In a later section, the
23 policy then affords certain specified Additional Coverages, including for
24 communicable disease response costs. That additional coverage is just that—
25 additional coverage. It would not exist if it was not expressly delineated in the
26 Additional Coverages section of the policy.
27

28 69 F.4th 466, 472–73 (7th Cir. 2023). *Froedtert Health* also highlighted that the
29 “Additional Coverages” provisions did not conflict with the Contamination Exclusion
30 because it functioned as limitation of coverage:
31

32
33
34 Had COVID-19 losses constituted losses not already excluded by the broad
35 contamination exclusion, the additional coverage for communicable disease
36 response would have provided no new coverage. The \$1 million sublimit for
37 communicable disease response costs further reinforces this view. The parties
38 contemplated coverage for the exact losses that Factory Mutual covered here—
39 but they limited coverage to \$1 million, a fraction of the broader \$2 billion limit
40 under the policy's general coverage provision.
41

42 *Id.* at 472.

43
44 40. Here, the Time Element Losses endorsement (like the Decontamination endorsement)
45 contains a limitation of liability in subsection (c). *See* Dkt. 28, Ex. A at 12, 88 (“The most
46
47

1 we will pay for this TIME ELEMENT COVERAGE AND LIMITATION in any one
2 occurrence is the LIMIT OF LIABILITY specified in the LIMITS OF LIABILITY
3 TABLE,” *i.e.*, \$10,000,000). To the extent COVID-19 is a communicable disease that
4 related to a law or ordinance that required UW to suspend its operations on account of
5 COVID-19, the Policy through this endorsement allows for coverage, but imposes a limit
6 on liability of \$10 million “per occurrence,” on claims UW might make for lost gross
7 profits; it does not necessarily conflict with the “Contamination” exclusion. *See Carilion*
8 *Clinic v. Am. Guarantee & Liab. Ins. Co.*, No. 7:21-CV-00168, 2022 WL 16973256, *7
9 (W.D. Va. Nov. 16, 2022) (“[R]eading the terms consistently, the Interruption by
10 Communicable Disease Special Coverage is best understood as a limited exception to the
11 Contamination Exclusion.”) (unpublished).

- 22 41. UW contends that the “Contamination” exclusion, when applied to this endorsement, may
23 create an ambiguity “because it purports to exclude ‘any condition of property that results
24 from’ a ‘virus’ or ‘disease causing or illness causing agent,’ without specifically excluding
25 ‘communicable disease’ while—at the same time—providing coverage for a
26 communicable disease whose presence renders property unsafe to use.” Dkt. 37 at 25.
27
28 42. UW is correct that the respective definitional sections for “contaminant” and
29 “communicable disease” are in tension. Yet when one reads the “Communicable Disease”
30 endorsements as a “limitation of liability” applicable only under certain narrow
31 circumstances, that is not in conflict with the broad exclusion for “contaminants”
32 (including a “virus”) arising in circumstances outside the endorsement’s scope.¹
33
34
35
36
37
38
39
40
41
42

43 ¹ Several cases cited by Insurer stand for this precise proposition (*see* Dkt. 37 at 23; Dkt. 37
44 at 4), and support a claim of limited coverage. *See Monarch Casino & Resort, Inc. v. Affiliated FM*
45 *Ins. Co.*, No. 20-CV-1470, 2021 WL 4260785, *4 (D. Colo. Sept. 17, 2021), *aff’d*, 85 F.4th 1034
46 (10th Cir. 2023) (“While Plaintiff may be entitled to limited coverage under the Communicable
47 Disease exemptions, Plaintiff’s request for coverage for the full amount of the losses it has incurred

1 43. Notwithstanding the maze of cases cited by the Insurer, UW has demonstrated a path to
2 coverage. To recap, UW has pleaded detailed allegations of direct and physical damage or
3 loss to property, namely that the SARS-CoV-2 virus physically altered real and personal
4 property through the presence of aerosols suspended in interior environments or as viral
5 particulate settled as “fomites” on hard surfaces within covered property. Further, the FAC
6 cites extensive scientific data and literature that support UW’s factual contentions. These
7 detailed, supported allegations are more than “conclusory,” as the Insurer argues. They set
8 forth a covered loss under the “loss of functionality” test under *Hill v. Stout*, consistent
9 with *Huntington Ingalls* (the Vermont precedent) and other cases discussed above that
10 assumed a plaintiff might adequately plead the presence of COVID particulate as a form
11 of physical damage or loss. *Compare Aspen Lodging Grp., LLC v. Affiliated FM Ins. Co.*,
12 No. 21-35472, 2023 WL 3562998, *1 (9th Cir. May 19, 2023) (“Although the policy’s
13 Communicable Disease provision provides coverage even without physical loss or
14 damage, it requires the actual presence of COVID-19, *which Aspen does not allege.*”) (emphasis added). Here, in contrast to *Aspen Lodging*, UW extensively alleges the actual
15 presence of COVID-19 as a communicable disease.²

16 in connection with the COVID-19 pandemic is barred by the Contamination Exclusion.”)
17 (unpublished); *Carilion Clinic, supra*; *Rockhurst Univ. v. Factory Mut. Ins. Co.*, 582 F. Supp.3d 633,
18 640 (W.D. Mo. 2022) (“Reading the policy as a whole, there is no language prohibiting the
19 possibility that Plaintiffs may recover under the communicable disease provisions and
20 simultaneously not recover under provisions subject to the contamination exclusion for a particular
21 occurrence.”).

22 ² The fact that UW pleaded specific allegations in support of its claim under the “direct and
23 physical damage or loss” provision, and that there is a “communicable disease” amendatory
24 endorsement, distinguishes this case from many cases the Insurer inaccurately argues are apt (Dkt.
25 37 at 22-23). See *One Grp. Hospitality, Inc. v. Employers Ins. Co. of Wausau*, 632 F. Supp.3d 962,
26 974 (W.D. Mo. 2022) (no specific allegation of harm to property and no discussion of
27 endorsements); *Chef’s Warehouse, Inc. v. Liberty Mut. Ins. Co.*, No. 20-cv-04825-KPF, 2022 WL
28 3097093, *8-9 (S.D.N.Y. May 2, 2022) (no discussion of endorsements) (unpublished); *OTG Mgmt.*
29 *PHL LLC v. Emps. Ins. Co. of Wausau*, 557 F. Supp.3d 556, 565-566 (D.N.J. 2021) (no discussion of

1 44. As to the Contamination and other exclusions, these are qualified by the clause “unless
2 otherwise stated in this Policy.” Dkt. 28, Ex. A at 22. As discussed above, the
3 “Communicable Disease” endorsements are amendatory, and act as exceptions to these
4 exclusions and a limitation on any liability that might attach under the endorsements. UW
5 construes its claim in the FAC that SARS-CoV-2 is the virus that physically affects the
6 property and COVID-19 is the communicable disease that may result from exposure to
7 this virus. Although the Insurer argues that COVID-19 cannot be both “cause and effect,”
8 that is an argument for another day, when the Insurer might marshal evidence that support
9 its contention. At this stage, just as the Court must reject the Insurer’s characterization of
10 the allegations that COVID-19 cannot physically alter property because one might simply
11 wipe it away, the Court must similarly reject the Insurer’s claim about “cause and effect”
12 because it runs counter to UW’s factual allegations. As pleaded, the nature and function
13 of the SARS-CoV-2 virus qualifies as covered loss because it results in physical damage
14 or loss to property, and the COVID-19 condition that may arise directly from this covered
15 loss is the “communicable disease” that triggers the endorsement under the operational
16 definition as “a viral or bacterial organism that is capable of inducing disease, illness,
17 physical distress or death.” Dkt. 28, Ex. A at 88.

18 45. Once the “Time Element Losses” endorsement is at play because of contamination of a
19 “communicable disease,” coverage may attach where “there is in force at the time of that

20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

endorsements, but similar to here allowing “for debris removal and decontamination costs resulting from a covered loss” because “[e]xclusion refers to specific forms of contamination which are expressly covered by the Policy”); *Ascent Hosp. Mgmt. Co., LLC v. Emps. Ins. Co. of Wausau*, 537 F. Supp.3d 1282, 1288 (N.D. Ala. 2021) (only where no allegations to the contrary are discussed assuming “viral contamination does not constitute direct physical loss or damage or amount to harm to property that requires repair or replacement”), *aff’d*, No. 21-11924, 2022 WL 130722 (11th Cir. Jan. 14, 2022); *Creative Artists Agency, LLC v. Affiliated FM Ins. Co.*, No. 22-1-cv-08314-ABG, 2022 WL 3097371, *7 (C.D. Cal. July 27, 2022) (no specific allegations under loss of functionality test or discussion of endorsements) (unpublished).

1 covered loss a law or ordinance that requires you to suspend your operations on account
2 of that contamination.” Dkt. 28, Ex. A at 88. Here, the Insurer concedes that Governor
3 Enslee’s emergency proclamations qualify as a “law” or “ordinance.”³ Dkt. 27 at 24. UW’s
4 allegations specifically cite Governor Jay Inslee’s “state of emergency” proclamations
5 (which are also attached to the FAC), in which he invoked authority of the Washington
6 State Department of Health and “exercise[ed] [his] emergency powers under RCW
7 43.06.220 by prohibiting certain activities,” such as limiting public gathering,
8 Washingtonians’ ability to leave their homes, and access to nonemergency medical care.
9 See Dkt. 11, ¶¶ 79-95, Exs. 7-13. These allegations also meet the endorsement criteria that
10 Governor Inslee’s orders stem from “[t]he governmental authority having jurisdiction over
11 your operations that relate to health and hygiene standards necessary to protect the general
12 public,” and that he had authority to “determine[e] that the “disease contamination was
13 “of magnitude great enough to [warrant] either partially or totally close [UW’s] normal
14 operations.” Dkt. 28, Ex. A at 88.

15
16
17
18
19
20
21
22
23
24
25
26
27
28
29 46. The Court finds that the Time Element Losses endorsement may establish coverage based
30 on pleaded facts that the Court must accept as true at this stage.

31
32
33 *The “Decontamination” endorsement doesn’t apply on its face.*

34
35 47. As to the “Decontamination” endorsement, UW has failed to identify any “law or
36 ordinance that require[d] [UW] to decontaminate” its affected properties in force at the
37 time of the COVID-19 pandemic. See Dkt. 28, Ex. A at 76. At most, UW’s allegations
38
39
40

41
42 ³ The Insurer attempts to block application of the Time Element Losses endorsement by
43 citing exclusions that purport to preclude coverage for “[l]oss or damage from enforcement of any
44 law or ordinance,” including those “[r]egulating the . . . loss . . . of any property.” See Dkt. 27 at 24
45 (citing Dkt. 28, Ex. A at 22). The obvious defect in this argument is that this exclusion, like the
46 “Contamination” exclusion, is modified by the critical clause “except as otherwise provided in this
47 Policy.” The Communicable Disease” provision for Time Element Losses is the amendatory
endorsement that falls within the exception.

1 cover Governor Jay Inslee's "state of emergency" proclamations, where, as noted above,
2 he limited public gatherings, Washingtonians' ability to leave their homes, and access to
3 nonemergency medical care. See Dkt. 11, ¶¶ 79-95, Exs. 7-13. Yet none of these
4 proclamations required decontamination. Thus UW falls short of pleading that its claims
5 fall under the "Decontamination" amendatory endorsement.
6
7
8
9

10 48. UW has demonstrated that its allegations, as pleaded in the FAC, track at least one path to
11 coverage as canvassed above, which is sufficient to defeat the Insurer's motion to dismiss.
12 The extent to which the bulk of UW's coverage claims succeed or fail will hinge on
13 supported or proven facts that correspond to applicable coverage provisions, and do not
14 fall within any applicable exclusions, as to be determined in future proceedings.
15
16
17
18
19

20 49. The Court likewise finds any dismissal of Plaintiff's bad faith claims is premature. As may
21 later be appropriate, resolution of this issue will await potential future motion practice
22 based on evidence on the (un)reasonableness and other circumstances that informed the
23 Insurer's decision to deny coverage.
24
25
26
27

28 50. The Court finds the Insurer's other arguments unavailing.
29

30 51. For the foregoing reasons, Defendant's motion to dismiss is DENIED.
31

32 52. This Amended Order supersedes the previous order issued on January 3, 2024, and
33 corrects a typographical error.
34
35
36
37

38 SO ORDERED this 4th day of January, 2024.
39
40
41
42
43
44
45
46
47



JUDGE DAVID WHEDBEE

King County Superior Court
Judicial Electronic Signature Page

Case Number: 22-2-15472-1
Case Title: THE BOARD OF REGENTS OF THE UNIVERSITY OF
WASHINGTON VS EMPLOYERS INSURANCE COMPANY OF
WAUSAU
Document Title: ORDER RE AMENDED ORDER RE MTN TO DISMISS
Signed By: David Whedbee
Date: January 04, 2024



Judge: David Whedbee

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: 4A79FC7FE3435E4EC7925F60A46017F6402F4C24
Certificate effective date: 9/12/2019 12:21:51 PM
Certificate expiry date: 9/12/2024 12:21:51 PM
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="David Whedbee:
dhYRF5RJ6RGNd0+3jC1lQQ=="

22-2-15472-1, THE BOARD OF REGENTS OF THE UNIVERSITY OF WASHINGTON VS EMPLOYERS INSURANCE COMPANY OF WAUSAU

WA Superior - King

KING

This case was retrieved on **06/27/2024**

Header

Case Number: 22-2-15472-1

Date Filed: 09/23/2022

Date Full Case Retrieved: 06/27/2024

Status: Unknown

Misc: (3) Commercial; Civil

Summary

Cause: Commercial

Status Description: Discretionary Review

Participants

Litigants

THE BOARD OF REGENTS OF THE UNIVERSITY OF WASHINGTON

Plaintiff

EMPLOYERS INSURANCE COMPANY OF WAUSAU

Defendant

Attorneys

Fisher, J CamilleDavis, James Matthew
Description Unavailable

Talmadge, Philip AlbertKiess, Jared
Description Unavailable

Calendar

ImposedDate	Description	DueDate	Completed
	Type- Trial Date;Official- Judge Whedbee (Courtroom E201)	12/02/2024 09:00 AM	
	Type- Trial Date;Official- Whedbee	03/25/2024 09:00 AM	
	Type- Motion w/o Oral Argument	03/20/2024 08:30 AM	DEF MOTION TO CERTIFY & MOTION
	Type- Motion w/o Oral Argument;Official- Whedbee	02/02/2024 09:00 AM	MOTION FOR PARTIAL CLARIFICATI
	Type- Motion Hearing - SMJHRG	12/15/2023 10:00 AM	DEF EMPLOYERS INS CO OF WAUSAU
	Type- Motion Hearing	10/13/2023 09:00 AM	DEF EMPLOYERS INS CO OF WAUSAU
	Type- Trial Date;Official- Whedbee	09/25/2023 09:00 AM	
	Type- Motion w/o Oral Argument	08/30/2023 08:30 AM	LIMITED ADMISSION
	Filing Statement of Arbitrability	03/03/2023	

22-2-15472-1, THE BOARD OF REGENTS OF THE UNIVERSITY OF WASHINGTON VS EMPLOYERS
INSURANCE COMPANY OF WAUSAU

ImposedDate	Description	DueDate	Completed
	Confirmation of Joinder if not subject to Arbitration	03/03/2023	
	Hearing Motions to Change Case Assignment Area	03/17/2023	
	Joint Confirmation of Trial Readiness	09/05/2023	
	Exchange Witness & Exhibit Lists & Documentary Exhibits	09/05/2023	
	Engaging in Alternative Dispute Resolution	08/28/2023	
	Discovery Cutoff	08/07/2023	
	Joint Statement of Evidence	09/18/2023	
	Disclosure of Possible Additional Witnesses	06/05/2023	
	Disclosure of Possible Primary Witnesses	04/24/2023	
	Trial Briefs, Proposed Findings of Fact and Conclusions of Law	09/18/2023	
	Hearing Dispositive Pretrial Motions	09/11/2023	
	Change in Trial Date	06/20/2023	
	Trial Date	12/02/2024	
	DEADLINE for Jury Demand	06/20/2023	

Proceedings

Date	#	Proceeding Text	Details
09/23/2022	1	Commercial Complaint	EntryCode: CMPCOM
09/23/2022	3	Case Information Cover Sheet	EntryCode: CICS
09/23/2022	2	ORSCS- Order Setting Case Schedule - Civil	EntryCode: ORSCS
09/23/2022	4	Summons	EntryCode: SM
09/23/2022	5	Demand for Jury - 12 Person	EntryCode: DMJY12
10/11/2022	7	Notice of Appearance	EntryCode: NTAPR
10/11/2022	8	Affidavit / Declaration / Certificate of eService	EntryCode: AFSRES
10/13/2022	9	Faulty Document Notice	EntryCode: FAULTY
10/13/2022	10	Affidavit / Declaration / Certificate Of Service - Served	EntryCode: AFSRS
10/20/2022	11	Amended Complaint	EntryCode: AMCPT
10/31/2022	12	Notice of Filing Petition for Removal to U.S. District Court	EntryCode: NTFPR
08/16/2023	13	Notice of Hearing - LIMITED ADMISSION	EntryCode: NTHG
08/16/2023	14	Motion - FOR LIMITED ADMISSION /JARED KIESS	EntryCode: MT
08/16/2023	15	Affidavit / Declaration / Certificate of eService	EntryCode: AFSRES

22-2-15472-1, THE BOARD OF REGENTS OF THE UNIVERSITY OF WASHINGTON VS EMPLOYERS
INSURANCE COMPANY OF WAUSAU

Date	#	Proceeding Text	Details
08/16/2023	16	Notice of Hearing - LIMITED ADMISSION	EntryCode: NTHG
08/16/2023	17	Motion - FOR LIMITED ADMISSION /JARED KIESS	EntryCode: MT
08/16/2023	18	Affidavit / Declaration / Certificate of eService	EntryCode: AFSRES
08/16/2023	19	Notice of Hearing - LIMITED ADMISSION	EntryCode: NTHG
08/16/2023	20	Motion - FOR LIMITED ADMISSION /JARED KIESS	EntryCode: MT
08/16/2023	21	Affidavit / Declaration / Certificate of eService	EntryCode: AFSRES
08/21/2023	22	Notice of Remand From US District Court	EntryCode: NTRMND
08/22/2023	23	Remand Letter from Clerk	EntryCode: RLTR
08/23/2023	24	Order Extending - DEFENDANTS DEADLINE TO ANSWER & SET BRIEFING SCHEDULE/STIPULATED	EntryCode: OREXT
08/23/2023	25	Order Amending Case Schedule	EntryCode: ORACS
08/24/2023	26	Notice of Hearing - DEFENDANT MOTION TO DISMISS	EntryCode: NTHG
08/24/2023	27	Motion to Dismiss	EntryCode: MTDSM
08/24/2023	28	Declaration - OF JARED KIESS	EntryCode: DCLR
08/24/2023	29	Affidavit / Declaration / Certificate of eService	EntryCode: AFSRES
09/05/2023	30	Order Appointing Pro Hac Vice - MELISSA M D'ALELIO	EntryCode: ORAPHV
09/05/2023	31	Order Appointing Pro Hac Vice - JARED F KIESS	EntryCode: ORAPHV
09/05/2023	32	Order Appointing Pro Hac Vice - ELIZABETH A REIDY	EntryCode: ORAPHV
09/06/2023	33	Notice of Withdrawal of Attorney	EntryCode: NTWDA
09/18/2023	34	Order Extending - PLAINTIFF DEADLINE & SET REMAINING BRIEFING & HEARING SCHEDULE/STIPULATED	EntryCode: OREXT
09/19/2023	35	Notice of Hearing - MOTION TO DISMISS	EntryCode: NTHG
09/19/2023	36	Affidavit / Declaration / Certificate of eService	EntryCode: AFSRES
09/28/2023	37	Objection / Opposition - TO DEFENDANT'S MOTION TO DISMISS	EntryCode: OB
10/11/2023	38	Order Extending - DEADLINE TO FILE REPLY	EntryCode: OREXT
11/01/2023	39	Motion to Continue - JOINT MT TO CONTINUE TRIAL DATE AND ENTER	EntryCode: MTC

22-2-15472-1, THE BOARD OF REGENTS OF THE UNIVERSITY OF WASHINGTON VS EMPLOYERS
INSURANCE COMPANY OF WAUSAU

Date	#	Proceeding Text	Details
		PROPOSED AMENDED CASE SCHEDULE ORDER	
11/07/2023	40	Order Amending Case Schedule	EntryCode: ORACS
11/07/2023	41	Order Amending Case Schedule	EntryCode: ORACS
11/07/2023	42	Affidavit / Declaration / Certificate of eService	EntryCode: AFSRES
11/16/2023	43	Reply - IN SUPPORT OF MOTION TO DISMISS	EntryCode: RPY
11/16/2023	44	Affidavit / Declaration / Certificate of eService	EntryCode: AFSRES
12/15/2023	45	Minutes Summary judgment	EntryCode: MINS
01/03/2024	46	Order Denying Motion / Petition - TO DISMISS	EntryCode: ORDYMT
01/03/2024	47	Affidavit / Declaration / Certificate of eService	EntryCode: AFSRES
01/04/2024	48	Order Denying Motion / Petition - DEFENDANTS MOTION TO DISMISS/AMENDED	EntryCode: ORDYMT
01/04/2024	49	Affidavit / Declaration / Certificate of eService	EntryCode: AFSRES
01/16/2024	50	Notice of Hearing - MOTION FOR PARTIAL CLARIFICATION OR RECONSIDERATION OF ORDER ON DEFENDANTS MOTION TO DISMISS	EntryCode: NTHG
01/16/2024	51	Motion - FOR PARTIAL CLARIFICATION OR RECONSIDERATION OF ORDER ON DEFENDANT'S MOTION TO DISMISS	EntryCode: MT
01/16/2024	52	Affidavit / Declaration / Certificate of eService	EntryCode: AFSRES
01/29/2024	53	Response - TO DEFENDANTS MOTION FOR PARTIAL CLARIFICATION OR RECONSIDERATION OF ORDER ON DEFENDANTS MOTION TO DISMISS	EntryCode: RSP
02/05/2024	54	Order on Motion for Reconsideration	EntryCode: ORMRC
02/05/2024	55	Affidavit / Declaration / Certificate of eService	EntryCode: AFSRES
02/05/2024	56	Order on Motion for Reconsideration	EntryCode: ORMRC
02/12/2024	57	Response - AND PARTIAL OPPOSITION	EntryCode: RSP
02/16/2024	58	Reply - IN SUPPORT OF ITS MOTION FOR PARTIAL CLARIFICATION OR RECONSIDERATION	EntryCode: RPY
02/16/2024	59	Affidavit / Declaration / Certificate of eService	EntryCode: AFSRES
02/27/2024	60	Order on Motion for Reconsideration - GRANTING & DENYING IN PART/DEFENDANT MOTION	EntryCode: ORMRC

22-2-15472-1, THE BOARD OF REGENTS OF THE UNIVERSITY OF WASHINGTON VS EMPLOYERS
INSURANCE COMPANY OF WAUSAU

Date	#	Proceeding Text	Details
02/27/2024	61	Affidavit / Declaration / Certificate of eService	EntryCode: AFSRES
03/06/2024	62	Notice of Hearing - DEF MOTION TO CERTIFY & MOTION TO STAY	EntryCode: NTHG
03/06/2024	63	Motion - TO CERTIFY ISSUES FOR DISCRETIONARY REVIEW	EntryCode: MT
03/06/2024	64	Affidavit / Declaration / Certificate of eService	EntryCode: AFSRES
03/14/2024	65	Objection / Opposition - TO DEFENDANT'S MOTION TO CERTIFY ISSUES FOR DISCRETIONARY REVIEW UNDER RAP 3.4(b)(4) AND MOTION TO STAY	EntryCode: OB
03/18/2024	66	Reply - IN SUPPORT OF ITS MOTION TO CERTIFY ISSUES FOR DISCRETIONARY REVIEW	EntryCode: RPY
03/18/2024	67	Affidavit / Declaration / Certificate of eService	EntryCode: AFSRES
03/27/2024	68	Order for Stay of Proceedings - PENDING DISCRETIONARY REVIEW AND CERTIFYING ISSUES /NO REVIEW DATE GIVEN	EntryCode: ORSP
03/27/2024	69	Affidavit / Declaration / Certificate of eService	EntryCode: AFSRES
03/28/2024	70	Notice of Discretionary Review to Court of Appeals	EntryCode: NTDRCA
03/28/2024	71	Affidavit / Declaration / Certificate of eService	EntryCode: AFSRES
03/29/2024	72	Notice of Association of Counsel	EntryCode: NTASCC
03/29/2024	73	Affidavit / Declaration / Certificate of eService	EntryCode: AFSRES

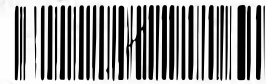
Copyright © LexisNexis CourtLink, Inc. All Rights Reserved.

*** THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY ***

End of Document

FILED
SEP 13 2023
JILL E. WHELCHER
WHITMAN COUNTY CLERK

21-2-00095-38
OR 48
Order
15207899



DAILED this 13th day of September, 2023.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHITMAN

WASHINGTON STATE UNIVERSITY,

Plaintiff,

v.

FACTORY MUTUAL INSURANCE
COMPANY, a Rhode Island corporation,

Defendant.

No.: 21-2-00095-38

ORDER GRANTING DEFENDANT'S CR
12(C) MOTION FOR JUDGEMENT ON
THE PLEADINGS

CLERK'S ACTION REQUIRED

Defendant Factory Mutual Insurance Company filed a CR 12(C) Motion for
Judgment on the Pleadings. The Court heard the oral argument of counsel on the Motion and
considered the following documents submitted in favor of and in opposition to it:

1. Defendant Factory Mutual Insurance Company's CR 12(C) Motion for Judgment
on the Pleadings;
2. Declaration of Matthew Sekits In Support of Defendant Factory Mutual Insurance
Company's Motion for Judgment on the Pleadings, and attached Exhibits A
through G;
3. Plaintiffs' Opposition to Defendant Factory Mutual Insurance Company's CR
12(C) Motion for Judgment on the Pleadings; and

ORDER GRANTING DEFENDANT'S CR 12(C) MOTION PAGE 1
FOR JUDGEMENT ON THE PLEADINGS

ORIGINAL

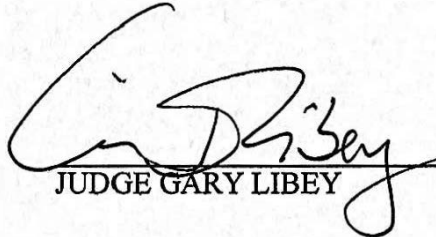
Bullivant|Houser|Bailey PC
925 Fourth Avenue, Suite 3800
Seattle, Washington 98104
Telephone: 206.292.8930

1 4. Defendant Factory Mutual Insurance Company's Reply In Support of CR 12(c)

2 Motion for Judgment on the Pleadings.

3 Based upon these documents and the oral argument of counsel, the Court hereby
4 GRANTS the Motion and DISMISSES Plaintiff's Second Amended Complaint, in its
5 entirety, with prejudice.

6 DATED this 13th day of September, 2023.

7
8
9
10 
11 JUDGE GARY LIBEY

12 PRESENTED BY:

13 BULLIVANT HOUSER BAILEY PC

14
15 By /s/ Matthew J. Sekits

16 Matthew J. Sekits, WSBA #26175
17 E-mail: matthew.sekits@bullivant.com
18 Owen R. Mooney, WSBA #45779
19 E-mail: owen.mooney@bullivant.com
20 Tarin A. Schalow, WSBA # 60047
21 E-mail: tarin.schalow@bullivant.com

22 Attorneys for Defendant Factory Mutual
23 Insurance Company
24
25
26

**21-2-00095-3, WASHINGTON STATE UNIVERSITY VS FACTORY MUTUAL
INSURANCE COMPANY**

WA Superior - Whitman

WHITMAN

This case was retrieved on **06/27/2024**

Header

Case Number: 21-2-00095-3

Date Filed: 07/02/2021

Date Full Case Retrieved: 06/27/2024

Status: Open

Misc: (3) Commercial; Civil

Summary

Cause: Commercial

Status Description: Active

Status Date: 2021-07-02

Participants

Litigants

WASHINGTON STATE UNIVERSITY

Plaintiff

FACTORY MUTUAL INSURANCE COMPANY

Defendant

Attorneys

--- Unassociated Attorneys ---

ESLER, BRIAN WILLIAM

Attorney

22168

FANDEL, KENT MICHAEL

Attorney

16281

GHOSH, MONICA

Attorney

56589

HALL, RYAN CHRISTOPHER

Attorney

56793

MOONEY, OWEN RICHARD

Attorney

45779

ROW, SETH H

Attorney

32905

SCHALOW, TARIN

Attorney

60047

SEKITS, MATTHEW J

Attorney

26175

Proceedings

Date	#	Proceeding Text	Details
06/04/2024	00070	TRANSMITTAL LETTER COPY FILED	EntryCode: TRLC
05/31/2024	00069	DESIGNATION OF CLERK'S PAPERS	EntryCode: DSGCKP
02/02/2024	00068	NOTICE OF WITHDRAWAL OF ATTORNEY	EntryCode: NTWDA
12/12/2023	00067	PERFECTION NOTICE FROM COURT OF APPEALS	EntryCode: PNCA
12/11/2023	00066	ORDER	EntryCode: OR
10/26/2023	00065	TRANSMITTAL LETTER COPY FILED	EntryCode: TRLC
10/26/2023	00064	TRANSMITTAL LETTER COPY FILED	EntryCode: TRLC
10/26/2023	00063	TRANSMITTAL LETTER COPY FILED	EntryCode: TRLC
10/26/2023	00062	TRANSMITTAL LETTER COPY FILED	EntryCode: TRLC
10/26/2023	00061	TRANSMITTAL LETTER COPY FILED	EntryCode: TRLC
10/26/2023	00060	TRANSMITTAL LETTER COPY FILED	EntryCode: TRLC
10/18/2023	00059	DESIGNATION OF CLERK'S PAPERS	EntryCode: DSGCKP
09/21/2023	00058	PERFECTION NOTICE FROM COURT OF APPEALS	EntryCode: PNCA
09/18/2023	00057	TRANSMITTAL LETTER COPY FILED	EntryCode: TRLC

21-2-00095-3, WASHINGTON STATE UNIVERSITY VS FACTORY MUTUAL INSURANCE COMPANY

Date	#	Proceeding Text	Details
09/18/2023	00056	NOTICE OF APPEAL TO SUPREME COURT	EntryCode: NTASC
09/13/2023	00055	ORDER	EntryCode: OR
09/13/2023	00054	MOTION HEARING	EntryCode: MTHRG
09/08/2023	00053	REPLY	EntryCode: RPY
09/05/2023	00052	AFFIDAVIT IN OPPOSITION	EntryCode: AFOP
08/16/2023	00051	PRAECIPE	EntryCode: PRC
08/15/2023	00050	DECLARATION	EntryCode: DCLR
08/15/2023	00049	MOTION	EntryCode: MT
08/09/2023	00048	ORDER	EntryCode: OR
08/09/2023	00047	ORDER	EntryCode: OR
08/09/2023	00046	MOTION HEARING	EntryCode: MTHRG
08/04/2023	00045	REPLY	EntryCode: RPY
08/02/2023	00044	DECLARATION	EntryCode: DCLR
08/02/2023	00043	DECLARATION	EntryCode: DCLR
08/02/2023	00042	OBJECTION / OPPOSITION	EntryCode: OB
07/31/2023	00041	COMMENT ENTRY	EntryCode: NOTE
07/31/2023	00040	NOTICE OF HEARING	EntryCode: NTHG
07/26/2023	00039	COMMENT ENTRY	EntryCode: NOTE
07/26/2023	00038	NOTICE OF HEARING	EntryCode: NTHG
07/26/2023	00037	MOTION	EntryCode: MT
07/26/2023	00036	ANSWER AND AFFIRMATIVE DEFENSE	EntryCode: ANAFDF
07/24/2023	00035	ORDER	EntryCode: OR
07/24/2023	00034	ORDER	EntryCode: OR
07/21/2023	00033	MOTION	EntryCode: MT
07/21/2023	00032	DECLARATION	EntryCode: DCLR
07/21/2023	00031	MOTION TO COMPEL	EntryCode: MTCM
05/11/2023	00030	NOTICE OF ABSENCE/UNAVAILABILITY	EntryCode: NTAB
03/30/2023	00029	ANSWER AND AFFIRMATIVE DEFENSE	EntryCode:

21-2-00095-3, WASHINGTON STATE UNIVERSITY VS FACTORY MUTUAL INSURANCE COMPANY

Date	#	Proceeding Text	Details
			ANAFDF
12/22/2022	00028	AMENDED COMPLAINT	EntryCode: AMCPT
12/19/2022	00027	AMENDED COMPLAINT	EntryCode: AMCPT
12/19/2022	00026	ORDER	EntryCode: OR
12/19/2022	00025	MOTION	EntryCode: MT
12/16/2022	00024	PROPOSED ORDER/FINDINGS	EntryCode: PROR
12/16/2022	00023	MOTION	EntryCode: MT
11/07/2022	00022	NOTICE OF ASSOCIATION OF COUNSEL	EntryCode: NTASCC
11/02/2022	00021	EMAIL/S	EntryCode: EMAIL
10/10/2022	00020	NOTICE OF APPEARANCE	EntryCode: NTAPR
09/07/2022	00019	JOINT STATUS REPORT	EntryCode: JSR
07/29/2022	00018	JOINT STATUS REPORT	EntryCode: JSR
03/22/2022	00017	MOTION	EntryCode: MT
03/22/2022	00016	ORDER FOR STAY OF PROCEEDINGS	EntryCode: ORSP
03/14/2022	00015	Notice Striking Hearing	EntryCode: NTSK
02/11/2022	00014	COMMENT ENTRY	EntryCode: NOTE
02/11/2022	00013	NOTICE OF HEARING	EntryCode: NTHG
01/18/2022	00012	COMMENT ENTRY	EntryCode: NOTE
01/18/2022	00011	NOTE FOR MOTION DOCKET	EntryCode: NTMTDK
12/03/2021	00010	ANSWER AND AFFIRMATIVE DEFENSE	EntryCode: ANAFDF
11/19/2021	00009	NOTICE OF APPEARANCE	EntryCode: NTAPR
10/29/2021	00008	ORDER OF REMAND	EntryCode: ORRMD
08/13/2021	00007	NOTICE	EntryCode: NT
08/03/2021	00006	ACCEPTANCE OF SERVICE	EntryCode: ACSR
07/02/2021	00005	COMPLAINT	EntryCode: CMP
07/02/2021	00004	SUMMONS	EntryCode: SM
07/02/2021	00003	CASE INFORMAITON COVER SHEET	EntryCode: CICS

The data or information provided is based on information obtained from the Washington State courts. The Administrative Office of the Courts and the Washington Courts: 1) Do not warrant that the information is accurate or

21-2-00095-3, WASHINGTON STATE UNIVERSITY VS FACTORY MUTUAL INSURANCE COMPANY

complete except for court purposes; 2) Make no representations regarding the identity of any persons whose names appear in the Index; 3) Deny liability for any damages resulting from the release or use of the data or information. The user should verify the information by personally consulting the "official" record reposing at the court of record; and 4) Not all information provided by AOC is being made available in the report.

Copyright © LexisNexis CourtLink, Inc. All Rights Reserved.

*** THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY ***

End of Document

20-2-15992-1, KEMPER HOLDINGS VS AMERICAN INTL GROUP UK LTD TA LEX LONDON ET AL

WA Superior - King

KING

This case was retrieved on 06/25/2024

Header

Case Number: 20-2-15992-1

Date Filed: 10/30/2020

Date Full Case Retrieved: 06/25/2024

Status: Open

Misc: (3) Commercial; Civil

Summary

Cause: Commercial

Status Description: Active

Participants

Litigants

KEMPER HOLDINGS

Plaintiff

AMERICAN GUARANTEE & LIABILITY INS CO

Defendant

AMERICAN INTL GROUP UK LTD TA LEX LONDON

Defendant

CONTINENTAL CASUALTY CO

Defendant

LIBERTY MUTUAL FIRE INS CO

Defendant

XL INS AMERICA INC

Defendant

Attorneys

Gellert, Nicholas PeterDavis, James MatthewFisher,
Description Unavailable

Kumar, HariBrown, Michael MackenzieDenton, Stephan
Description Unavailable

SchoeggI, David MartinRoesch, Benjamin JerauldBake
Description Unavailable

Todaro, Anthony
Description Unavailable

Kiess, Jared
Description Unavailable

Kiess, Jared
Description Unavailable

Calendar

ImposedDate	Description	DueDate	Completed
	Type- Trial Date;Official- Judge Crisalli (Courtroom 3A)	02/18/2025 09:00 AM	
	Type- Trial Date;Official- WilliamsCrisalli	09/09/2024 09:00 AM	
	Type- Trial Date;Official- WilliamsCrisalli	12/11/2023 09:00 AM	
	Type- Motion Hearing	11/17/2023 02:00 PM	DEF AMERICAN GUARANTEE MOTION
	Type- Trial Date;Official- Williams	08/07/2023 08:30 AM	
	Type- Trial Date;Official- Williams	04/24/2023 08:30 AM	

20-2-15992-1, KEMPER HOLDINGS VS AMERICAN INTL GROUP UK LTD TA LEX LONDON ET AL

ImposedDate	Description	DueDate	Completed
	Type- Motion w/o Oral Argument	04/14/2023 08:30 AM	ENTRY OF FINAL JUDGMENT
	Type- Motion w/o Oral Argument	03/29/2023 08:30 AM	ENTRY OF FINAL JUDGMENT
	Type- Motion w/o Oral Argument	01/12/2023 08:30 AM	MOTION FOR RECONSIDERATION
	Type- Motion w/o Oral Argument	11/23/2022 08:30 AM	RECONSIDERATION
	Type- Trial Date;Official- O'Donnell.PoydrasWilliams	04/04/2022 09:00 AM	
	Type- Motion w/o Oral Argument	02/23/2022 08:30 AM	MOTION TO STAY CASE AND CHANGE
	Type- Motion Hearing - MTHRG	12/10/2021 10:00 AM	JUDGMENT ON PLEADINGS
	Type- Motion w/o Oral Argument;Official- Poydras	12/08/2021 08:30 AM	MOTION FOR PRO HAC VICE ADMISS
	Type- Trial Date;Official- O'Donnell.Poydras	11/01/2021 09:00 AM	
	Type- Motion w/o Oral Argument	10/15/2021 08:30 AM	LIMITED ADMISSION
	Type- Motion w/o Oral Argument	06/16/2021 08:30 AM	LIMITED ADMISSION
	Type- Motion w/o Oral Argument	06/11/2021 08:30 AM	LIMITED ADMISSION
	Type- Motion w/o Oral Argument	05/28/2021 08:30 AM	PRO HAC VICE
	Type- Motion w/o Oral Argument	05/06/2021 08:30 AM	AMEND COMPLAINT
	Type- Motion w/o Oral Argument	12/11/2020 09:00 AM	LTD ADMISSION
	Filing Statement of Arbitrability	04/09/2021	
	Confirmation of Joinder if not subject to Arbitration	04/09/2021	
	Hearing Motions to Change Case Assignment Area	04/23/2021	
	Joint Confirmation of Trial Readiness	10/11/2021	
	Exchange Witness & Exhibit Lists & Documentary Exhibits	10/11/2021	
	Engaging in Alternative Dispute Resolution	10/04/2021	
	Discovery Cutoff	09/13/2021	
	Joint Statement of Evidence	10/25/2021	
	Disclosure of Possible Additional Witnesses	07/12/2021	
	Disclosure of Possible Primary Witnesses	06/01/2021	
	Trial Briefs, Proposed Findings of Fact and Conclusions of Law	10/25/2021	
	Hearing Dispositive Pretrial Motions	10/18/2021	
	Change in Trial Date	07/26/2021	
	Trial Date	12/11/2023	
	DEADLINE for Jury Demand	07/26/2021	

Proceedings

Date	#	Proceeding Text	Details
------	---	-----------------	---------

20-2-15992-1, KEMPER HOLDINGS VS AMERICAN INTL GROUP UK LTD TA LEX LONDON ET AL

Date	#	Proceeding Text	Details
10/30/2020	1	Commercial Complaint	EntryCode: CMPCOM
10/30/2020	3	Case Information Cover Sheet	EntryCode: CICS
10/30/2020	2	ORSCS- Order Setting Case Schedule - Civil	EntryCode: ORSCS
10/30/2020	4	Summons	EntryCode: SM
10/30/2020	5	Summons	EntryCode: SM
10/30/2020	6	Summons	EntryCode: SM
10/30/2020	7	Summons	EntryCode: SM
10/30/2020	8	Summons	EntryCode: SM
11/18/2020	9	Acceptance of Service	EntryCode: ACSR
11/18/2020	10	Acceptance of Service	EntryCode: ACSR
11/30/2020	11	Amended Complaint	EntryCode: AMCPT
11/30/2020	12	Amended Summons	EntryCode: AMSM
11/30/2020	13	Amended Summons	EntryCode: AMSM
11/30/2020	14	Amended Summons	EntryCode: AMSM
11/30/2020	15	Amended Summons	EntryCode: AMSM
11/30/2020	16	Amended Summons	EntryCode: AMSM
11/30/2020	17	Notice of Hearing	EntryCode: NTHG
11/30/2020	18	Motion - FOR LIMITED ADMISSION /GELLERT	EntryCode: MT
12/08/2020	19	Notice of Appearance	EntryCode: NTAPR
12/08/2020	20	Affidavit / Declaration / Certificate Of Service	EntryCode: AFSR
12/08/2020	21	Notice of Filing Petition for Removal to U.S. District Court	EntryCode: NTFPR
12/08/2020	22	Affidavit / Declaration / Certificate Of Service	EntryCode: AFSR
12/18/2020	23	Order Appointing Pro Hac Vice - BRADLEY H DLATT	EntryCode: ORAPHV
03/19/2021	24	Notice of Remand From US District Court	EntryCode: NTRMND
04/09/2021	25	Confirmation of Joinder	EntryCode: CJ
04/09/2021	26	Notice of Limited Appearance	EntryCode: NTLAP
04/09/2021	27	Affidavit / Declaration / Certificate Of Service - Served	EntryCode: AFSRS

20-2-15992-1, KEMPER HOLDINGS VS AMERICAN INTL GROUP UK LTD TA LEX LONDON ET AL

Date	#	Proceeding Text	Details
04/27/2021	28	Notice of Hearing	EntryCode: NTHG
04/27/2021	29	Motion - FOR FILE SECOND AMENDED COMPLAINT	EntryCode: MT
05/04/2021	30	Notice - JOINT DISCOVERY PLAN	EntryCode: NT
05/05/2021	31	Order Amending Case Schedule	EntryCode: ORACS
05/13/2021	32	Notice of Hearing	EntryCode: NTHG
05/13/2021	33	Affidavit / Declaration / Certificate Of Service - Served	EntryCode: AFSRS
05/13/2021	34	Motion - FOR LIMITED ADMISSION	EntryCode: MT
05/13/2021	35	Affidavit / Declaration / Certificate Of Service - Served	EntryCode: AFSRS
05/13/2021	36	Notice of Hearing	EntryCode: NTHG
05/13/2021	37	Affidavit / Declaration / Certificate Of Service - Served	EntryCode: AFSRS
05/13/2021	38	Motion - FOR LIMITED ADMISSION	EntryCode: MT
05/13/2021	39	Affidavit / Declaration / Certificate Of Service - Served	EntryCode: AFSRS
05/13/2021	40	Notice of Hearing	EntryCode: NTHG
05/13/2021	41	Affidavit / Declaration / Certificate Of Service - Served	EntryCode: AFSRS
05/13/2021	42	Motion - FOR LIMITED ADMISSION	EntryCode: MT
05/13/2021	43	Affidavit / Declaration / Certificate Of Service - Served	EntryCode: AFSRS
05/13/2021	44	Notice of Hearing	EntryCode: NTHG
05/13/2021	45	Affidavit / Declaration / Certificate Of Service - Served	EntryCode: AFSRS
05/13/2021	46	Motion - FOR LIMITED ADMISSION	EntryCode: MT
05/13/2021	47	Affidavit / Declaration / Certificate Of Service - Served	EntryCode: AFSRS
05/14/2021	48	Order Granting Leave to Amend - SECOND AMENDED COMPLAINT INSTANTER	EntryCode: ORGLA
05/24/2021	49	Motion - FOR LIMITED ADMISSION	EntryCode: MT
05/24/2021	50	Notice of Hearing - MOTION FOR PRO HAC VICE ADMISSION - PETER E KANARIS	EntryCode: NTHG
05/24/2021	51	Proposed Order / Findings - PROPOSED ORDER FOR LIMITED ADMISSION PURSUANT TO APR 8(B) RE PETER E KANARIS	EntryCode: PROR

20-2-15992-1, KEMPER HOLDINGS VS AMERICAN INTL GROUP UK LTD TA LEX LONDON ET AL

Date	#	Proceeding Text	Details
05/24/2021	52	Motion - FOR LIMITED ADMISSION	EntryCode: MT
05/24/2021	53	Motion - FOR LIMITED ADMISSION	EntryCode: MT
05/27/2021	54	Notice of Hearing	EntryCode: NTHG
05/27/2021	55	Motion - FOR LIMITED ADMISSION	EntryCode: MT
05/27/2021	56	Affidavit / Declaration / Certificate Of Service - Served	EntryCode: AFSRS
05/27/2021	57	Notice of Hearing	EntryCode: NTHG
05/27/2021	58	Motion and Affidavit / Declaration - FOR LIMITED ADMISSION	EntryCode: MTAF
05/27/2021	59	Affidavit / Declaration / Certificate Of Service - Served	EntryCode: AFSRS
06/03/2021	60	Notice of Hearing - LIMITED ADMISSION	EntryCode: NTHG
06/03/2021	61	Motion - FOR LIMITED ADMISSION /M MCCORMACK	EntryCode: MT
06/03/2021	62	Notice of Hearing - LIMITED ADMISSION	EntryCode: NTHG
06/03/2021	63	Motion - FOR LIMITED ADMISSION /M MCCORMACK	EntryCode: MT
06/04/2021	64	Stipulation	EntryCode: STP
06/04/2021	65	Notice - OF FILING	EntryCode: NT
06/14/2021	66	Order Appointing Pro Hac Vice - EILEEN KING BOWER	EntryCode: ORAPHV
06/14/2021	67	Order Appointing Pro Hac Vice - ALEXANDER ROSS	EntryCode: ORAPHV
06/14/2021	68	Answer and Affirmative Defense - OF CERT DEF	EntryCode: ANAFDF
06/14/2021	69	Answer and Affirmative Defense - OF CERT DEF	EntryCode: ANAFDF
06/14/2021	70	Affidavit / Declaration / Certificate Of Service - Served	EntryCode: AFSRS
06/14/2021	71	Answer and Affirmative Defense	EntryCode: ANAFDF
06/14/2021	72	Affidavit / Declaration / Certificate Of Service - Served	EntryCode: AFSRS
06/14/2021	73	Answer - TO AMENDED COMPLAINT	EntryCode: AN
06/14/2021	74	Answer and Affirmative Defense - OF CERT DEF	EntryCode: ANAFDF
06/14/2021	75	Affidavit / Declaration / Certificate Of Service - Served	EntryCode: AFSRS
06/15/2021	76	Answer and Affirmative Defense - OF CERT	EntryCode:

20-2-15992-1, KEMPER HOLDINGS VS AMERICAN INTL GROUP UK LTD TA LEX LONDON ET AL

Date	#	Proceeding Text	Details
		DEF	ANAFDF
06/15/2021	77	Affidavit / Declaration / Certificate Of Service - Served	EntryCode: AFSRS
06/16/2021	78	Answer and Affirmative Defense - OF CERT DEF	EntryCode: ANAFDF
06/16/2021	79	Order Appointing Pro Hac Vice - LIMITED ADMISSION	EntryCode: ORAPHV
06/16/2021	80	Order Appointing Pro Hac Vice - LIMITED ADMISSION	EntryCode: ORAPHV
07/13/2021	81	Order for Change of Judge	EntryCode: ORCJ
08/30/2021	82	Notice of Hearing	EntryCode: NTHG
08/30/2021	83	Affidavit / Declaration / Certificate Of Service - Served - REGARDING ELECTRONIC SERVICE	EntryCode: AFSRS
09/01/2021	84	Order of Continuance - JUDGMENT	EntryCode: ORCNT
09/24/2021	85	Motion to Dismiss - OF CERT DEF	EntryCode: MTDSM
09/24/2021	86	Affidavit / Declaration / Certificate Of Service - Served	EntryCode: AFSRS
10/01/2021	87	Notice of Hearing	EntryCode: NTHG
10/01/2021	88	Motion - FOR LIMITED ADMISSION	EntryCode: MT
10/01/2021	89	Affidavit / Declaration / Certificate Of Service - Served	EntryCode: AFSRS
10/01/2021	90	Notice of Hearing	EntryCode: NTHG
10/01/2021	91	Motion - FOR LIMITED ADMISSION	EntryCode: MT
10/01/2021	92	Affidavit / Declaration / Certificate Of Service - Served	EntryCode: AFSRS
10/11/2021	93	Notice of Hearing	EntryCode: NTHG
10/19/2021	94	Motion for Summary Judgment	EntryCode: MTSMJG
10/19/2021	95	Declaration - ARTICLE	EntryCode: DCLR
10/19/2021	96	Declaration - PHILLIP SCOTT	EntryCode: DCLR
10/20/2021	97	Order Appointing Pro Hac Vice - THOMAS J LLOYD	EntryCode: ORAPHV
10/25/2021	98	Notice of Withdrawal and Substitution Of Counsel	EntryCode: NTWSUB
10/25/2021	99	Notice of Withdrawal and Substitution Of Counsel	EntryCode: NTWSUB
10/27/2021	100	Stipulation	EntryCode: STP

20-2-15992-1, KEMPER HOLDINGS VS AMERICAN INTL GROUP UK LTD TA LEX LONDON ET AL

Date	#	Proceeding Text	Details
10/27/2021	101	Affidavit / Declaration / Certificate Of Service - Served	EntryCode: AFSRS
11/03/2021	102	Objection / Opposition	EntryCode: OB
11/03/2021	103	Declaration - OF NICHOLAS GELLERT IN SUPPORT OF OPPOSITION	EntryCode: DCLR
11/17/2021	104	Agreed Order - RE DISCOVERY STAY AND CASE SCHEDULE	EntryCode: AGOR
11/18/2021	105	Objection / Opposition - OF ALL DEFENDANTS TO CROSS MOTION	EntryCode: OB
11/18/2021	106	Declaration - LIANNA BASH	EntryCode: DCLR
11/18/2021	107	Affidavit / Declaration / Certificate Of Service - Served	EntryCode: AFSRS
11/19/2021	108	Reply - FOR PARTIAL JUDGMENT /DEFENDANTS	EntryCode: RPY
11/19/2021	109	Affidavit / Declaration / Certificate Of Service - Served	EntryCode: AFSRS
11/23/2021	110	Notice of Hearing	EntryCode: NTHG
11/23/2021	111	Motion - FOR LIMITED ADMISSION	EntryCode: MT
11/23/2021	112	Affidavit / Declaration / Certificate Of Service - Served	EntryCode: AFSRS
11/23/2021	113	Notice of Hearing	EntryCode: NTHG
11/23/2021	114	Motion - FOR LIMTIED ADMISSION	EntryCode: MT
11/23/2021	115	Affidavit / Declaration / Certificate Of Service - Served	EntryCode: AFSRS
11/23/2021	116	Notice of Hearing	EntryCode: NTHG
11/23/2021	117	Motion - FOR LIMITED ADMISSION	EntryCode: MT
11/23/2021	118	Affidavit / Declaration / Certificate Of Service - Served	EntryCode: AFSRS
11/23/2021	119	Notice of Hearing	EntryCode: NTHG
11/23/2021	120	Motion - FOR LIMITED ADMISSION	EntryCode: MT
11/23/2021	121	Affidavit / Declaration / Certificate Of Service - Served	EntryCode: AFSRS
12/01/2021	122	Order for Change of Judge	EntryCode: ORCJ
12/03/2021	123	Reply - FOR PARTIAL SUMMARY JUDGMENT	EntryCode: RPY
12/06/2021	124	Order Appointing Pro Hac Vice - DAVID GODWIN	EntryCode: ORAPHV
12/10/2021	126	Minutes Motion hearing	EntryCode:

20-2-15992-1, KEMPER HOLDINGS VS AMERICAN INTL GROUP UK LTD TA LEX LONDON ET AL

Date	#	Proceeding Text	Details
			MINS
12/13/2021	125	Order Granting Motion / Petition - CR 12(C) MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS AND DENYING IN PART AND CONTINUING IN PART PLAINTIFF'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT	EntryCode: ORGMT
12/16/2021	127	Order Granting Motion / Petition	EntryCode: ORGMT
12/16/2021	128	Order Granting Motion / Petition	EntryCode: ORGMT
12/16/2021	129	Order Granting Motion / Petition	EntryCode: ORGMT
12/16/2021	130	Order Granting Motion / Petition	EntryCode: ORGMT
12/28/2021	131	Jury Demand Received - Twelve - 250.00	EntryCode: \$JDR12
12/28/2021	132	Affidavit / Declaration / Certificate Of Service - Served	EntryCode: AFSRS
01/03/2022	133	Demand for Jury - 12 Person	EntryCode: DMJY12
01/03/2022	134	Demand for Jury - 12 Person	EntryCode: DMJY12
01/03/2022	135	Demand for Jury - 12 Person	EntryCode: DMJY12
02/18/2022	136	Motion to Change Trial Date - JOINT	EntryCode: MTCTD
02/18/2022	137	Affidavit / Declaration / Certificate Of Service - Served	EntryCode: AFSRS
02/18/2022	138	Notice of Hearing	EntryCode: NTHG
02/18/2022	139	Affidavit / Declaration / Certificate Of Service - Served	EntryCode: AFSRS
02/23/2022	140	Order of Continuance	EntryCode: ORCNT
02/24/2022	141	Order Amending Case Schedule	EntryCode: ORACS
11/14/2022	142	Notice of Hearing - RECONSIDERATION	EntryCode: NTHG
11/14/2022	143	Motion for Reconsideration	EntryCode: MTRC
11/17/2022	144	Stipulation - REGARDING BRIEFING SCHEDULE ON PLAINTIFFS MOTION FOR RECONSIDERATION	EntryCode: STP
11/17/2022	145	Notice of Hearing	EntryCode: NTHG
11/22/2022	146	Notice - OF PARTIAL SETTLEMENT	EntryCode: NT
11/22/2022	147	Affidavit / Declaration / Certificate of eService	EntryCode: AFSRES
11/30/2022	148	Motion and Affidavit / Declaration - JOINTLY CONTINUE TRIAL DATE AND AMEND CASE SCHEDULE	EntryCode: MTAF

20-2-15992-1, KEMPER HOLDINGS VS AMERICAN INTL GROUP UK LTD TA LEX LONDON ET AL

Date	#	Proceeding Text	Details
12/02/2022	149	Notice of Association of Counsel	EntryCode: NTASCC
12/02/2022	150	Affidavit / Declaration / Certificate of eService	EntryCode: AFSRES
12/13/2022	151	Order Amending Case Schedule	EntryCode: ORACS
12/20/2022	152	Response - TO MOTION FOR RECONSIDERATION /DEFS	EntryCode: RSP
12/20/2022	153	Affidavit / Declaration / Certificate of eService	EntryCode: AFSRES
01/10/2023	154	Reply - IN SUPPORT OF RULE 54(B) MOTION DUE TO A CHANGE IN THE LAW	EntryCode: RPY
01/17/2023	155	Order Denying Motion / Petition - PLAINTIFF'S RULE 54(B) MOTION FOR RECONSIDERATION	EntryCode: ORDYMT
01/17/2023	156	Order Denying Motion / Petition - PLAINTIFF'S RULE 54(B) MOTION FOR RECONSIDERATION	EntryCode: ORDYMT
02/09/2023	157	Protective Order - STIPULATED PROTECTIVE ORDER	EntryCode: PORD
02/16/2023	158	Notice of Withdrawal and Substitution Of Counsel	EntryCode: NTWSUB
02/16/2023	159	Affidavit / Declaration / Certificate of eService	EntryCode: AFSRES
02/28/2023	160	Motion to Change Trial Date - JOINT	EntryCode: MTCTD
02/28/2023	161	Affidavit / Declaration / Certificate of eService	EntryCode: AFSRES
03/01/2023	162	Order for Continuance: Stipulated	EntryCode: ORCNTST
03/02/2023	163	Order Amending Case Schedule	EntryCode: ORACS
03/16/2023	164	Notice of Hearing - ENTRY OF FINAL JUDGMENT	EntryCode: NTHG
03/16/2023	165	Motion - FOR ENTRY OF FINAL JUDGMENT	EntryCode: MT
03/16/2023	166	Declaration - OF JAMES DAIVS IN SUPPORT OF MOTION FOR ENTRY OF FINAL JUDGMENT	EntryCode: DCLR
03/17/2023	167	Notice of Hearing - ENTRY OF FINAL JUDGMENT /AMENDED	EntryCode: NTHG
03/30/2023	168	Objection / Opposition - TO PLAINTIFFS MOTION FOR ENTRY OF FINAL JUDGMENT	EntryCode: OB
03/30/2023	169	Affidavit / Declaration / Certificate of eService	EntryCode: AFSRES
03/30/2023	170	Joinder - IN AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY /DEFS	EntryCode: JN
03/30/2023	171	Affidavit / Declaration / Certificate of eService	EntryCode: AFSRES

20-2-15992-1, KEMPER HOLDINGS VS AMERICAN INTL GROUP UK LTD TA LEX LONDON ET AL

Date	#	Proceeding Text	Details
03/31/2023	172	Notice of Appearance	EntryCode: NTAPR
04/10/2023	173	Notice of Withdrawal and Substitution Of Counsel	EntryCode: NTWSUB
04/10/2023	174	Affidavit / Declaration / Certificate of eService	EntryCode: AFSRES
04/12/2023	175	Reply - ON ITS MOTION FOR ENTRY OF FINAL JUDGMENT AND CERTIFICATION	EntryCode: RPY
04/12/2023	176	Declaration - OF JAMES DAVIS	EntryCode: DCLR
04/17/2023	177	Order Denying Motion / Petition - PLAINTIFF'S MOTION FOR ENTRY OF FINAL JUDGMENT	EntryCode: ORDYMT
06/15/2023	178	Notice of Address Change	EntryCode: NTACA
06/15/2023	179	Affidavit / Declaration / Certificate of eService	EntryCode: AFSRES
08/10/2023	180	Notice of Hearing	EntryCode: NTHG
08/10/2023	181	Affidavit / Declaration / Certificate of eService	EntryCode: AFSRES
08/16/2023	182	Motion to Change Trial Date - SECOND STIPULATED	EntryCode: MTCTD
08/18/2023	183	Order for Continuance of Trial Date - STIPULATED	EntryCode: ORCTD
10/20/2023	184	Email/s - STRIKING SUMMARY JUDGMENT HEARING	EntryCode: EMAIL
01/19/2024	185	Notice of Address Change	EntryCode: NTACA
01/19/2024	186	Affidavit / Declaration / Certificate of eService	EntryCode: AFSRES
04/09/2024	187	Motion to Change Trial Date - THIRD JOINT	EntryCode: MTCTD
04/09/2024	188	Notice of Withdrawal and Substitution Of Counsel	EntryCode: NTWSUB
04/09/2024	189	Affidavit / Declaration / Certificate of eService	EntryCode: AFSRES
04/09/2024	190	Motion to Change Trial Date - THIRD JOINT	EntryCode: MTCTD
04/09/2024	191	Affidavit / Declaration / Certificate of eService	EntryCode: AFSRES
04/11/2024	193	Order for Continuance of Trial Date	EntryCode: ORCTD

Copyright © LexisNexis CourtLink, Inc. All Rights Reserved.

*** THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY ***

End of Document

22-2-01335-2, ANGEL OF THE WINDS CASINO ET AL VS AFFILIATED F M INSURANCE CO

WA Superior - Snohomish
SNOHOMISH

This case was retrieved on 06/25/2024

Header

Case Number: 22-2-01335-2
Date Filed: 03/10/2022
Date Full Case Retrieved: 06/25/2024
Status: Open
Misc: (3) Commercial; Civil

Summary

Cause: Commercial
Status Description: Active
Status Date: 2022-03-10

Participants

Litigants	Attorneys
ANGEL OF THE WINDS CASINO Plaintiff	
STILLAGUAMISH TRIBE OF INDIANS Plaintiff	
AFFILIATED F M INSURANCE CO Defendant	

--- Unassociated Attorneys ---

BENTSON, DANIEL R
Attorney
36825
ESLER, BRIAN WILLIAM
Attorney
22168
HALL, RYAN CHRISTOPHER
Attorney
56793

MATHEWS, CAITLYN

Attorney

60055

MCLEAN, WESTIN THOMAS

Attorney

46462

MOONEY, OWEN RICHARD

Attorney

45779

ROW, SETH H

Attorney

32905

SEKITS, MATTHEW J

Attorney

26175

Proceedings

Date	#	Proceeding Text	Details
04/19/2024	00032	EX-PARTE ACTION WITH ORDER	EntryCode: EXWACT
04/19/2024	00031	ORDER FOR STAY OF PROCEEDINGS	EntryCode: ORSP
04/18/2024	00030	MOTION HEARING	EntryCode: MTHRG
04/12/2024	00029	HEARING STRICKEN - NOT CONFIRMED AND NOT HEARD	EntryCode: HSTKNC
04/12/2024	00028	COMMENT ENTRY	EntryCode: NOTE
04/11/2024	00027	NOTE FOR CALENDAR	EntryCode: NTC
04/05/2024	00026	COMMENT ENTRY	EntryCode: NOTE
04/04/2024	00025	MOTION	EntryCode: MT
04/04/2024	00024	NOTE FOR CALENDAR	EntryCode: NTC
03/19/2024	00023	NOTICE OF WITHDRAWAL AND SUBSTITUTION OF COUNSEL	EntryCode: NTWSUB
07/07/2023	00022	ANSWER	EntryCode: AN
06/27/2023	00021	AMENDED COMPLAINT	EntryCode: AMCPT
06/20/2023	00020	AMENDED COMPLAINT	EntryCode:

22-2-01335-2, ANGEL OF THE WINDS CASINO ET AL VS AFFILIATED F M INSURANCE CO

Date	#	Proceeding Text	Details
			AMCPT
06/20/2023	00019	EX-PARTE ACTION WITH ORDER	EntryCode: EXWACT
06/20/2023	00018	ORDER GRANTING LEAVE TO AMEND	EntryCode: ORGLA
05/16/2023	00017	NOTICE OF WITHDRAWAL AND SUBSTITUTION OF COUNSEL	EntryCode: NTWSUB
04/06/2023	00016	PROPOSED ORDER/FINDINGS	EntryCode: PROR
04/05/2023	00015	MOTION	EntryCode: MT
10/31/2022	00014	REPORT	EntryCode: RPT
10/10/2022	00013	NOTICE OF APPEARANCE	EntryCode: NTAPR
09/07/2022	00012	REPORT	EntryCode: RPT
07/28/2022	00011	REPORT	EntryCode: RPT
06/07/2022	00010	EX-PARTE ACTION WITH ORDER	EntryCode: EXWACT
06/07/2022	00009	ORDER FOR STAY OF PROCEEDINGS	EntryCode: ORSP
05/26/2022	00008	NOTICE	EntryCode: NT
05/02/2022	00007	PROPOSED ORDER/FINDINGS	EntryCode: PROR
05/02/2022	00006	MOTION	EntryCode: MT
04/27/2022	00005	SUMMONS	EntryCode: SM
04/27/2022	00004	ACCEPTANCE OF SERVICE	EntryCode: ACSR
03/17/2022	00003	NOTICE OF APPEARANCE	EntryCode: NTAPR
03/10/2022	00002	CASE INFORMAITON COVER SHEET	EntryCode: CICS
03/10/2022	00001	COMPLAINT	EntryCode: CMP

The data or information provided is based on information obtained from the Washington State courts. The Administrative Office of the Courts and the Washington Courts: 1) Do not warrant that the information is accurate or complete except for court purposes; 2) Make no representations regarding the identity of any persons whose names appear in the Index; 3) Deny liability for any damages resulting from the release or use of the data or information. The user should verify the information by personally consulting the "official" record reposing at the court of record; and 4) Not all information provided by AOC is being made available in the report.

Copyright © LexisNexis CourtLink, Inc. All Rights Reserved.

*** THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY ***

End of Document

861158, Tulalip Tribes of Washington et ano, Appellants v. Lexington Insurance Company et al, Respondents

WA Court Of Appeals - Division I

DIVISION I

This case was retrieved on 06/27/2024

Header

Case Number: 861158

Date Filed: 12/20/2023

Date Full Case Retrieved: 06/27/2024

Status: Open

Misc: (12) Notice of Appeal; Appeal

Summary

Date Received: 12/21/2023

Filing Fee: Paid

Internal Case Notes: Sealed Notes

Participants

Litigants

Tulalip Gaming Organization

Appellant

Attorneys

Seth H Row

Appellant

32905

Stoel Rives LLP

760 SW 9th Ave Ste 3000

503-294-9401 Ext. 2318_

seth.row@stoel.com

CityStateZip: Portland OR 97205-2587

Kent Michael Fandel

Appellant

16281

Miller Nash LLP

605 5th Ave S Ste 900

206-777-7472

Michael.Fandel@millernash.com

CityStateZip: Seattle WA 98104-3865

Fax: 206-340-9599

James Fredrick Johnson

Appellant

45750

Attorney at Law

605 5th Ave S Ste 900

206-624-8400

James.Johnson@millernash.com

CityStateZip: Seattle WA 98104-3865

861158, Tulalip Tribes of Washington et al, Appellants v. Lexington Insurance Company et al, Respondents

Litigants

Tulalip Tribes of Washington
Appellant

Attorneys

Brian William Esler
Appellant
22168
Miller Nash LLP
605 5th Ave S, Ste 900
206-777-7415
brian.esler@millernash.com
CityStateZip: Seattle WA 98104
Fax: 206-340-9599

Bradford James Fulton
Appellant
18036
Quick Law Group PLLC
1621 114th Ave SE Ste 223
425-576-8150 Ext. 106__
brad@quicklawgrouppllc.com
CityStateZip: Bellevue WA 98004-6905
Fax: 206-694-2587

Seth H Row
Appellant
32905
Stoel Rives LLP
760 SW 9th Ave Ste 3000
503-294-9401 Ext. 2318_
seth.row@stoel.com
CityStateZip: Portland OR 97205-2587

Kent Michael Fandel
Appellant
16281
Miller Nash LLP
605 5th Ave S Ste 900
206-777-7472
Michael.Fandel@millernash.com
CityStateZip: Seattle WA 98104-3865
Fax: 206-340-9599

James Fredrick Johnson
Appellant
45750
Attorney at Law
605 5th Ave S Ste 900
206-624-8400
James.Johnson@millernash.com
CityStateZip: Seattle WA 98104-3865

Brian William Esler
Appellant
22168
Miller Nash LLP
605 5th Ave S, Ste 900
206-777-7415
brian.esler@millernash.com
CityStateZip: Seattle WA 98104
Fax: 206-340-9599

Bradford James Fulton
Appellant
18036

861158, Tulalip Tribes of Washington et al, Appellants v. Lexington Insurance Company et al, Respondents

Litigants

Alliant Specialty Insurance Services, Inc.
Respondent

Alliant Specialty Services, Inc.
Respondent

Allied World National Assurance Co.
Respondent

Allied World National Assurance Co.
Respondent

Arch Specialty Insurance Co.
Respondent

Attorneys

Quick Law Group PLLC
1621 114th Ave SE Ste 223
425-576-8150 Ext. 106____
brad@quicklawgrouppllc.com
CityStateZip: Bellevue WA 98004-6905
Fax: 206-694-2587

William Frank Knowles
Respondent
17212
Cozen O'Connor
999 3rd Ave Ste 1900
206-340-1000
wknowles@cozen.com
CityStateZip: Seattle WA 98104-4028
Fax: 206-621-8783

William Frank Knowles
Respondent
17212
Cozen O'Connor
999 3rd Ave Ste 1900
206-340-1000
wknowles@cozen.com
CityStateZip: Seattle WA 98104-4028
Fax: 206-621-8783

Michael Edward Ricketts
Respondent
09387
Gordon Thomas Honeywell LLP
520 Pike St Ste 1515
206-676-7500
mricketts@gth-law.com
CityStateZip: Seattle WA 98101-4044
Fax: 206-676-7575

Sarah Mohkamkar
Respondent
81957
3 Greenway Plaza
Suite 1300
281-572-8342
smohkamkar@moundcotton.com
CityStateZip: Houston TX 77046

Ian Leifer
Respondent
56670
Gordon Thomas Honeywell LLP
1201 Pacific Ave Ste 2100
253-620-6545
ileifer@gth-law.com
CityStateZip: Tacoma WA 98402-4314

Michael Edward Ricketts
Respondent
09387
Gordon Thomas Honeywell LLP
520 Pike St Ste 1515
206-676-7500
mricketts@gth-law.com

861158, Tulalip Tribes of Washington et ano, Appellants v. Lexington Insurance Company et al, Respondents

Litigants

Aspen Specialty Insurance Co.
Respondent

Attorneys

CityStateZip: Seattle WA 98101-4044
Fax: 206-676-7575

Bennett Moss
Respondent
81959
901 Main Street
214-742-3000
BMoss@zellelaw.com
CityStateZip: Dallas TX 75202

Kristin Cummings
Respondent
81960
901 Main Street
214-742-3000
kcummings@zellelaw.com
CityStateZip: Dallas TX 75202

Shannon O'Malley
Respondent
81962
901 Main Street
214-742-3000
somalley@zellelaw.com
CityStateZip: Dallas TX 75202

Ian Leifer
Respondent
56670
Gordon Thomas Honeywell LLP
1201 Pacific Ave Ste 2100
253-620-6545
ileifer@gth-law.com
CityStateZip: Tacoma WA 98402-4314
Thomas Lether
Respondent
18089
Lether Law Group
1848 Westlake Ave N Ste 100
206-467-5444
tlether@letherlaw.com
CityStateZip: Seattle WA 98109-8801
Fax: 206-467-5544

Eric Jay Neal
Respondent
31863
Lether Law Group
1848 Westlake Ave N Ste 100
425-443-1852
eneal@letherlaw.com
CityStateZip: Seattle WA 98109-8801
Fax: 206-467-5544

Kevin J Kay
Respondent
34546
Lether Law Group

861158, Tulalip Tribes of Washington et ano, Appellants v. Lexington Insurance Company et al, Respondents

Litigants

Certain Underwriters at Lloyd's
Respondent

Attorneys

1848 Westlake Ave N Ste 100
206-467-5444 Ext. 103___
kkay@letherlaw.com
CityStateZip: Seattle WA 98109-8801
Fax: 206-467-5544

Jason Wayne Anderson
Respondent
30512
Carney Badley Spellman PS
701 5th Ave Ste 3600
206-622-8020
anderson@carneylaw.com
CityStateZip: Seattle WA 98104-7010

Rory Drew Cosgrove
Respondent
48647
Carney Badley Spellman PS
701 5th Ave Ste 3600
206-607-4175
cosgrove@carneylaw.com
CityStateZip: Seattle WA 98104-7010

Amy Churan
Respondent
81953
Robins Kaplan LLP
2121 Avenue of the Stars Suite 2800
310-229-5881
AChuran@RobinsKaplan.com
CityStateZip: Los Angeles CA 90067

Certain Underwriters at Lloyd's London
Respondent

Matthew Stuart Adams
Respondent
18820
Forsberg & Umlauf
901 5th Ave Ste 1400
206-346-3945
madams@forsberg-umlauf.com
CityStateZip: Seattle WA 98164-2047

Robert William Novasky
Respondent
21682
Forsberg & Umlauf, P.S.
1102 Broadway Ste 510
253-572-4200
rnovasky@FoUm.law
CityStateZip: Tacoma WA 98402-3534
Fax: 253-627-8408

Jason Wayne Anderson
Respondent
30512
Carney Badley Spellman PS
701 5th Ave Ste 3600
206-622-8020
anderson@carneylaw.com
CityStateZip: Seattle WA 98104-7010

861158, Tulalip Tribes of Washington et al, Appellants v. Lexington Insurance Company et al, Respondents

Litigants**Attorneys**

Rory Drew Cosgrove
Respondent
48647
Carney Badley Spellman PS
701 5th Ave Ste 3600
206-607-4175
cosgrove@carneylaw.com
CityStateZip: Seattle WA 98104-7010

Matthew Cardosi
Respondent
81954
Robins Kaplan LLP
800 Boylston Street Suite 2500
617-267-2300
MCardosi@RobinsKaplan.com
CityStateZip: Boston MD 02199

Michael Reif
Respondent
81952
Robins Kaplan LLP
800 LaSalle Avenue Suite 2800
612-349-8500
MReif@RobinsKaplan.com
CityStateZip: Minneapolis MN 55402

Evanston Insurance Co.
Respondent

Marilee C. Erickson
Respondent
16144
Reed McClure
1215 4th Ave Ste 1700
206-386-7047
merickson@rmlaw.com
CityStateZip: Seattle WA 98161-1087
Fax: 206-223-0152

Hallmark Specialty Insurance Co.
Respondent

Thomas Lether
Respondent
18089
Lether Law Group
1848 Westlake Ave N Ste 100
206-467-5444
tlether@letherlaw.com
CityStateZip: Seattle WA 98109-8801
Fax: 206-467-5544

Eric Jay Neal
Respondent
31863
Lether Law Group
1848 Westlake Ave N Ste 100
425-443-1852
eneal@letherlaw.com
CityStateZip: Seattle WA 98109-8801
Fax: 206-467-5544

Kevin J Kay
Respondent
34546
Lether Law Group
1848 Westlake Ave N Ste 100

861158, Tulalip Tribes of Washington et ano, Appellants v. Lexington Insurance Company et al, Respondents

Litigants

Homeland Insurance Co. of New York
Respondent

Attorneys

206-467-5444 Ext. 103___
kkay@letherlaw.com
CityStateZip: Seattle WA 98109-8801
Fax: 206-467-5544
Michael Edward Ricketts
Respondent
09387
Gordon Thomas Honeywell LLP
520 Pike St Ste 1515
206-676-7500
mricketts@gth-law.com
CityStateZip: Seattle WA 98101-4044
Fax: 206-676-7575

Bennett Moss
Respondent
81959
901 Main Street
214-742-3000
BMoss@zellelaw.com
CityStateZip: Dallas TX 75202

Kristin Cummings
Respondent
81960
901 Main Street
214-742-3000
kcummings@zellelaw.com
CityStateZip: Dallas TX 75202

Shannon O'Malley
Respondent
81962
901 Main Street
214-742-3000
somalley@zellelaw.com
CityStateZip: Dallas TX 75202

Lexington Insurance Co.
Respondent

Gabriel Baker
Respondent
28473
Jensen Morse Baker PLLC
520 Pike St Ste 2375
206-682-1846
gabe.baker@jmblawyers.com
CityStateZip: Seattle WA 98101-4303
Fax: 206-582-5001

Steven Douglas Jensen
Respondent
26495
Jensen Morse Baker PLLC
520 Pike St Ste 2375
206-682-1644
steve.jensen@jmblawyers.com
CityStateZip: Seattle WA 98101-4303

Benjamin Jerauld Roesch
Respondent
39960

861158, Tulalip Tribes of Washington et ano, Appellants v. Lexington Insurance Company et al, Respondents

Litigants**Attorneys**

Jensen Morse Baker PLLC
 520 Pike St Ste 2375
 206-467-1452
 benjamin.roesch@jmblawyers.com
 CityStateZip: Seattle WA 98101-4303

Matthew Hoffman
 Respondent
 81961
 Gibson Dunn and Crutcher LLP
 333 South Grand Avenue
 213-229-7584
 mhoffman@gibsondunn.com
 CityStateZip: Los Angeles CA 90071

Richard Doren
 Respondent
 81963
 Gibson Dunn and Crutcher LLP
 333 South Grand Avenue
 213-229-7038
 rdoren@gibsondunn.com
 CityStateZip: Los Angeles CA 90071

United Policyholders
Amicus Curiae

James Matthew Davis
 Amicus Curiae
 32696
 Perkins Coie LLP
 1201 3rd Ave Ste 4900
 206-359-3671
 jimdavis@perkinscoie.com
 CityStateZip: Seattle WA 98101-3095
 Fax: 206-359-9000

J Camille Fisher
 Amicus Curiae
 41809
 Perkins Coie LLP
 1201 3rd Ave Ste 4900
 206-359-3033
 CFisher@perkinscoie.com
 CityStateZip: Seattle WA 98101-3099

Ximena Velazquez-Arenas
 Amicus Curiae
 61915
 Attorney at Law
 1116 13th Ave
 213-222-3612
 ximena@berkeley.edu
 CityStateZip: Seattle WA 98122-4434

Lower Court

Trial Court: SNOHOMISH COUNTY SUPERIOR COURT
 Trial Court Case Number: 2020360431
 Trial Court Judge: OKRENT, RICHARD T
 Trial Court Judgment Date: 11/30/2023

Proceedings

Date	#	Proceeding Text	Details
12/20/2023			Description Notice of Appeal Action Filed
12/21/2023			Description Case Received and Pending Action Status Changed
12/28/2023			Description Affidavit of Service Participant ESLER, BRIAN WILLIAM - Attorney
12/28/2023			Description Receipt for Filing Fee Action Filed Participant ESLER, BRIAN WILLIAM
12/29/2023			Description Letter Participant ENNIS, LEA - Court Clerk Notes Determine appealability
01/05/2024			Description Notice of Association of Counsel Action Filed Participant ANDERSON, JASON WAYNE
01/05/2024			Description Motion for Out of State Counsel Action Filed Participant ANDERSON, JASON WAYNE Notes Comment: Attorney Michael Reif
01/05/2024			Description Motion for Out of State Counsel Action Filed Participant ANDERSON, JASON WAYNE Notes Comment: Amy Churan
01/05/2024			Description Motion for Out of State Counsel Action Filed Participant ANDERSON, JASON WAYNE Notes Comment: Matthew Cardosi
01/12/2024			Description Other filing

861158, Tulalip Tribes of Washington et ano, Appellants v. Lexington Insurance Company et al, Respondents

Date	#	Proceeding Text	Details
			Participant ESLER, BRIAN WILLIAM Notes Appendix to Statement re Appealability
01/12/2024			Description Other filing Participant ESLER, BRIAN WILLIAM Notes Statement re: Appealability
01/12/2024			Description Letter Participant ENNIS, LEA - Court Clerk Notes Overdue
01/12/2024			Description Letter Participant ENNIS, LEA - Court Clerk Notes Overdue
01/12/2024			Description Letter Participant ENNIS, LEA - Court Clerk Notes Overdue
01/12/2024			Description Letter Participant ENNIS, LEA - Court Clerk Notes Overdue
01/12/2024			Description Letter Participant ENNIS, LEA - Court Clerk Notes Overdue
01/12/2024			Description Letter Participant ENNIS, LEA - Court Clerk Notes Overdue
01/12/2024			Description Letter Participant ENNIS, LEA - Court Clerk Notes Overdue
01/12/2024			Description Letter Participant ENNIS, LEA - Court Clerk Notes Overdue
01/16/2024			Description

861158, Tulalip Tribes of Washington et ano, Appellants v. Lexington Insurance Company et al, Respondents

Date	#	Proceeding Text	Details
			Other filing Participant BAKER, GABRIEL
01/16/2024			Description Other filing Participant KNOWLES, WILLIAM FRANK Notes Statement re: Appealability
01/16/2024			Description Ruling on Motions Participant ENNIS, LEA - Court Clerk Notes Granted.
01/16/2024			Description Ruling on Motions Participant ENNIS, LEA - Court Clerk Notes Granted.
01/16/2024			Description Ruling on Motions Participant ENNIS, LEA - Court Clerk Notes Granted.
01/18/2024			Description Motion for Out of State Counsel Action Filed Participant RICKETTS, MICHAEL EDWARD Notes Comment: Sarah Mohkamkar
01/18/2024			Description Motion for Out of State Counsel Action Filed Participant RICKETTS, MICHAEL EDWARD Notes Comment: Shannon O'Malley
01/18/2024			Description Motion for Out of State Counsel Action Filed Participant RICKETTS, MICHAEL EDWARD Notes Comment: Kristin Cummings
01/18/2024			Description Motion for Out of State Counsel Action Filed Participant RICKETTS, MICHAEL EDWARD Notes Comment: Bennett Moss

861158, Tulalip Tribes of Washington et ano, Appellants v. Lexington Insurance Company et al, Respondents

Date	#	Proceeding Text	Details
01/18/2024			Description Other Participant ERICKSON, MARILEE C. - Attorney Notes P. Bruce Converse will not be appearing
01/19/2024			Description Statement of Arrangements Action Filed Participant ESLER, BRIAN WILLIAM
01/19/2024			Description Report of Proceedings Action Filed Notes Comment: CR Sherilynn McKay Vol. 1: 9/29/23 Hon. Okrent
01/19/2024			Description Record Ready Action Status Changed
01/19/2024			Description Other Participant SNOHOMISH COUNTY SUPERIOR COURT - Superior Court Notes No sub numbers
01/22/2024			Description Ruling on Motions Participant ENNIS, LEA - Court Clerk Notes Granted.
01/22/2024			Description Motion for Out of State Counsel Action Information - not filed Notes Comment: P. Bruce Converse
01/22/2024			Description Letter Participant ROESCH, BENJAMIN JERAULD - Attorney Notes Ryan Appelby will not be participating in appeal
01/22/2024			Description Motion for Out of State Counsel Action Information - not filed Notes Comment: Ryan Appelby
01/22/2024			Description Motion for Out of State Counsel Action Filed

861158, Tulalip Tribes of Washington et ano, Appellants v. Lexington Insurance Company et al, Respondents

Date	#	Proceeding Text	Details
			Participant ROESCH, BENJAMIN JERAULD Notes Comment: Richard Doren
01/22/2024			Description Motion for Out of State Counsel Action Filed Participant ROESCH, BENJAMIN JERAULD Notes Comment: Matthew Hoffman
01/23/2024			Description Other Ruling Participant KANAZAWA, MASAKO - Commissioner Notes On December 20, 2023, Tulalip Tribes of Washington and Tulalip Gaming Organizations (Tulalip) filed a notice of appeal seeking view of (1) an order granting Defendants' Alliant's Motion to Dismiss Under CR 12(b)(6) entered on November 30, 2023; (2) an order granting Defendants' Motion to Dismiss Third Amended Complaint entered on November 30, 2023; and (3) an order granting Defendant Lexington Insurance Company's Motion to Dismiss Third Amended Complaint entered on September 29, 2023. The defendants in the underlying trial court action involved over a dozen insurance companies. Initially, it was unclear whether the orders were final as to all of the defendants in this action, so this Court inquired as to the appealability of the orders. Tulalip has clarified that the trial court issued an order granting Lexington's motion to dismiss on September 29, 2023, but the order failed to address the status of the claims against other defendants who had joined Lexington's motion. In November 2023, the other defendants and Alliant separately moved to dismiss Tulalip's claims. On November 30, 2023, the trial entered orders dismissing all of the defendants who joined Lexington's motion and dismissing Alliant. It appears the trial court has disposed of all the claims as to all the parties. This matter may proceed in this Court.
01/25/2024			Description Ruling on Motions Participant ENNIS, LEA - Court Clerk Notes Granted.
01/25/2024			Description Ruling on Motions Participant ENNIS, LEA - Court Clerk Notes

861158, Tulalip Tribes of Washington et ano, Appellants v. Lexington Insurance Company et al, Respondents

Date	#	Proceeding Text	Details
			Granted.
01/25/2024			Description Ruling on Motions Participant ENNIS, LEA - Court Clerk Notes Granted.
01/25/2024			Description Ruling on Motions Participant ENNIS, LEA - Court Clerk Notes Granted.
01/25/2024			Description Ruling on Motions Participant ENNIS, LEA - Court Clerk Notes Granted.
01/26/2024			Description Designation of Clerks Papers Action Filed Participant ESLER, BRIAN WILLIAM Notes Comment: Filed 1/19/24 but no sub numbers.
02/02/2024			Description Notice of Intent to Withdraw Action Filed Participant ROW, SETH H
02/08/2024			Description Clerk's Papers Participant ESLER, BRIAN WILLIAM - Attorney Notes Vol. 1 pgs. 1-500 Vol. 2 pgs. 501-1000 Vol. 3 pgs. 1001-1500 Vol. 4 Pgs. 1501-1860
03/04/2024			Description Appellants brief Action Filed Participant ESLER, BRIAN WILLIAM Notes Comment: Accept with appendix per Cmsr
03/07/2024			Description Notice of Change of Address Action Filed Participant ROESCH, BENJAMIN JERAULD
03/15/2024			Description Notice of Appearance Action Filed Participant

861158, Tulalip Tribes of Washington et ano, Appellants v. Lexington Insurance Company et al, Respondents

Date	#	Proceeding Text	Details
			LEIFER, IAN
03/15/2024			Description Motion to Extend Time to File Participant ROESCH, BENJAMIN JERAULD - Attorney Notes Requesting to 5/3/24
03/21/2024			Description Motion to Extend Time to File Participant KNOWLES, WILLIAM FRANK - Attorney Notes Requesting to 5/3/24
03/26/2024			Description Ruling on Motions Participant ENNIS, LEA Notes Granted.
03/26/2024			Description Ruling on Motions Participant ENNIS, LEA Notes Granted.
05/03/2024			Description Respondents brief Action Filed Participant KNOWLES, WILLIAM FRANK Notes Comment: Alliant Specialty Insurance Services, Inc. and Alliant Specialty Services, Inc. d/b/a Tribal First saved to web folder
05/03/2024			Description Respondents brief Action Filed Participant ROESCH, BENJAMIN JERAULD Notes Comment: Lexington Insurance Company, Allied World Natl assurance Co., Arch Specialty Ins. Co., Homeland Ins. Co. of NY, Certain Underwriters at Lloyd's, Endurance Worldwide Insurance Limited, Evanston Insurance Co., Hallmark Specialty Ins. Co., Aspen Specialty Ins. Co. saved to web folder
05/03/2024			Description Ready Action Status Changed Notes Comment: screened for conflicts
05/09/2024			Description Letter Participant ENNIS, LEA - Court Clerk

861158, Tulalip Tribes of Washington et ano, Appellants v. Lexington Insurance Company et al, Respondents

Date	#	Proceeding Text	Details
			Notes Reply Brief due date
06/03/2024			Description Appellants Reply brief Action Filed Participant ESLER, BRIAN WILLIAM Notes Comment: saved to web folder 6/4/24
06/10/2024			Description Screened Action Status Changed
06/13/2024			Description Respondent Additional Authorities Action Filed Participant ROESCH, BENJAMIN JERAULD
06/17/2024			Description Motion - Other Participant DAVIS, JAMES MATTHEW - Attorney Notes Leave to File Amicus Brief
06/17/2024			Description Amicus Curiae brief Action Filed Participant DAVIS, JAMES MATTHEW Notes Comment: United Policyholders
06/18/2024			Description Motion - Other Participant DAVIS, JAMES MATTHEW Notes Leave to File Amended Amicus Brief
06/18/2024			Description Amicus Curiae brief Participant DAVIS, JAMES MATTHEW - Attorney Notes Amended

Copyright © LexisNexis CourtLink, Inc. All Rights Reserved.

*** THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY ***

End of Document

**20-2-03604-6, TULALIP TRIBES OF WASHINGTON ET AL VS LEXINGTON
INSURANCE CO ET**

WA Superior - Snohomish

SNOHOMISH

This case was retrieved on **06/27/2024**

Header

Case Number: 20-2-03604-6

Date Filed: 07/10/2020

Date Full Case Retrieved: 06/27/2024

Status: Open

Misc: (3) Commercial; Civil

Summary

Cause: Commercial

Resolution Description: Dismissal Without Trial

Resolution Date: 2023-11-30

Completion Description: Judgment/Order/Decree Filed

Completion Date: 2023-11-30

Status Description: Active

Status Date: 2020-07-10

Participants

Litigants

TULALIP GAMING ORGANIZATION

Plaintiff

TULALIP TRIBES OF WASHINGTON

Plaintiff

ALLIANT INSURANCE SERVICES INC

Defendant

ALLIANT SPECIALTY INSURANCE SERVICES INC

Defendant

ALLIED WORLD NATIONAL ASSURANCE CO

Defendant

ARCH SPECIALTY INSURANCE CO

Defendant

ASPEN SPECIALTY INSURANCE CO

Defendant

ENDURANCE WORLDWIDE INSURANCE

Defendant

EVANSTON INSURANCE CO

Defendant

HALLMARK SPECIALTY INSURANCE CO

Defendant

HOMELAND INSURANCE CO OF NY

Attorneys

Litigants**Attorneys****Defendant**

LEXINGTON INSURANCE CO

Defendant

LEXINGTON INSURANCE CO.

Defendant

LIBERTY MUTUAL FIRE INSURANCE CO

Defendant

LLOYDS SYNDICATES

Defendant

SOMPO INTERNATIONAL

Defendant

SUBSCRIBING UNDERWRITERS AT LLOYDS

DefendantUNDERWRITERS AT LLOYDS ASPEN SPECIALTY
INSURANCE CO**Defendant**

UNDERWRITERS AT LLOYDS SYNDICATE

Defendant**--- Unassociated Attorneys ---**

ADAMS, MATTHEW STUART

Attorney

18820

APPLEBY, RYAN

Attorney

AZIZ, KHALID

Attorney

57409

BAKER, GABRIEL

Attorney

28473

BEAL, RICHARD T.

Attorney

09203

CONVERSE, P BRUCE

Attorney

CUMMINGS, KRISTIN C

Attorney

DOREN, RICHARD

Attorney

DUBOSE, DUSTIN L

Attorney

ERICKSON, MARILEE C.

Attorney

16144

ESLER, BRIAN WILLIAM

Attorney

22168

FANDEL, KENT MICHAEL

Attorney

16281

FULTON, BRADFORD JAMES

Attorney

18036

HOFFMAN, MATTHEW

Attorney

JENSEN, STEVEN DOUGLAS

Attorney

26495

JOHNSON, JAMES FREDRICK

Attorney

45750

KASHIMOTO, KASIE

Attorney

54268

KAY, KEVIN J

Attorney

34546

KNOWLES, WILLIAM FRANK

Attorney

17212

LEATHER, THOMAS

Attorney

18089

MOHKAMKAR, SARAH

Attorney

MORRISON, JAMES RAYMOND

Attorney

43043

MOSS, BENNETT A

Attorney

NEAL, ERIC JAY

Attorney

31863

NOVASKY, ROBERT WILLIAM

Attorney

21682

O'MALLEY, SHANNON M

Attorney

PEPPIN, LOGAN

Attorney

55704

RICKETTS, MICHAEL EDWARD

Attorney

09387

ROESCH, BENJAMIN JERAULD

Attorney

39960

ROW, SETH H

Attorney

32905

SAMUEL, GRISELDA VEGA

Attorney

31683

Proceedings

Date	#	Proceeding Text	Details
03/12/2024	00234	TRANSMITTAL LETTER COPY FILED	EntryCode: TRLC

The data or information provided is based on information obtained from the Washington State courts. The Administrative Office of the Courts and the Washington Courts: 1) Do not warrant that the information is accurate or complete except for court purposes; 2) Make no representations regarding the identity of any persons whose names appear in the Index; 3) Deny liability for any damages resulting from the release or use of the data or information. The user should verify the information by personally consulting the "official" record reposing at the court of record; and 4) Not all information provided by AOC is being made available in the report.

Copyright © LexisNexis CourtLink, Inc. All Rights Reserved.

*** THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY ***

End of Document

**23-2-14276-4, WASHINGTON STATE CONVENTION CENTER PUBLIC
FACILITIES DIST VS EMPLOYERS INSURANCE CO OF WAUSAU**

WA Superior - King

KING

This case was retrieved on **06/27/2024**

Header

Case Number: 23-2-14276-4

Date Filed: 08/02/2023

Date Full Case Retrieved: 06/27/2024

Status: Open

Misc: (3) Commercial; Civil

Summary

Cause: Commercial

Status Description: Active

Participants

Litigants

WASHINGTON STATE CONVENTION CENTER PUBLIC
FACILITIES DIST

Plaintiff

EMPLOYERS INSURANCE CO OF WAUSAU

Defendant

Attorneys

Donovan, Jason R
Description Unavailable

Calendar

ImposedDate	Description	DueDate	Completed
	Type- Trial Date;Official- Judge McDonald (Courtroom E762)	07/29/2024 09:00 AM	
	Filing Statement of Arbitrability	01/10/2024	
	Confirmation of Joinder if not subject to Arbitration	01/10/2024	
	Hearing Motions to Change Case Assignment Area	01/24/2024	
	Joint Confirmation of Trial Readiness	07/08/2024	
	Exchange Witness & Exhibit Lists & Documentary Exhibits	07/08/2024	
	Engaging in Alternative Dispute Resolution	07/01/2024	
	Discovery Cutoff	06/10/2024	
	Joint Statement of Evidence	07/22/2024	
	Disclosure of Possible Additional Witnesses	04/08/2024	
	Disclosure of Possible Primary Witnesses	02/26/2024	
	Trial Briefs, Proposed Findings of Fact and Conclusions of Law	07/22/2024	
	Hearing Dispositive Pretrial Motions	07/15/2024	

23-2-14276-4, WASHINGTON STATE CONVENTION CENTER PUBLIC FACILITIES DIST VS EMPLOYERS
INSURANCE CO OF WAUSAU

ImposedDate	Description	DueDate	Completed
	Change in Trial Date	04/22/2024	
	Trial Date	07/29/2024	
	DEADLINE for Jury Demand	04/22/2024	

Proceedings

Date	#	Proceeding Text	Details
08/02/2023	1	Commercial Complaint	EntryCode: CMPCOM
08/02/2023	3	Case Information Cover Sheet	EntryCode: CICS
08/02/2023	2	ORSCS- Order Setting Case Schedule - Civil	EntryCode: ORSCS
08/02/2023	4	Summons	EntryCode: SM
08/04/2023	5	Affidavit / Declaration / Certificate Of Service - Served	EntryCode: AFSRS
09/07/2023	6	Notice - FILING NOTICE OF REMOVAL	EntryCode: NT

Copyright © LexisNexis CourtLink, Inc. All Rights Reserved.

*** THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY ***

End of Document

**2:23cv1386, Washington State Convention Center Public Facilities District V.
Employers Insurance Company Of Wausau**

US District Court Docket
United States District Court, Washington Western
(Seattle)

This case was retrieved on 06/27/2024

Header

Case Number: 2:23cv1386
Date Filed: 09/07/2023
Assigned To: Judge Barbara J. Rothstein
Nature of Suit: Insurance (110)
Cause: Petition for Removal- Insurance Contract
Lead Docket: None
Other Docket: 9th Circuit Court of Appeals, 24-01889, King
County Superior Court, 23-00002-14276-4 SEA
Jurisdiction: Diversity

Class Code: Closed
Closed: 02/27/2024
Statute: 28:1441
Jury Demand: None
Demand Amount: \$0
NOS Description: Insurance

Participants

Litigants

Washington State Convention Center Public Facilities District
a King County Public Facility District |
Plaintiff

Employers Insurance Company of Wausau
Defendant

Attorneys

Jason R. Donovan
LEAD ATTORNEY;ATTORNEY TO BE NOTICED
FOSTER GARVEY PC (SEA)
1111 3rd Avenue, Ste 3000
Seattle, WA 98101-3299
USA
206-447-4400 Fax: 206-447-9700
Email:J.Donovan@foster.Com

Jared Kiess
LEAD ATTORNEY;ATTORNEY TO BE NOTICED
BULLIVANT HOUSER BAILEY (SEA)
925 Fourth Ave Ste 3800
Seattle, WA 98104-1157
USA
206-292-8930 Email:Jared.Kiess@bullivant.Com

Melissa M D'Alelio
LEAD ATTORNEY;PRO HAC VICE;ATTORNEY TO BE
NOTICED
ROBINS KAPLAN LLP (MA)
800 Boylston St Ste 2500
Boston, MA 02199
USA
617-859-2742 Fax: 617-267-8288
Email:Mdalelio@robinskaplan.Com

Sandra J Badin

Litigants**Attorneys**

LEAD ATTORNEY;PRO HAC VICE;ATTORNEY TO BE NOTICED
 ROBINS KAPLAN LLP (MA)
 800 Boylston St Ste 2500
 Boston, MA 02199
 USA
 617-859-2745 Email:Sbadin@robinskaplan.Com

Tarin Schalow
 LEAD ATTORNEY;ATTORNEY TO BE NOTICED
 BULLIVANT HOUSER BAILEY (SEA)
 925 Fourth Ave Ste 3800
 Seattle, WA 98104-1157
 USA
 206-521-6535 Email:Tschalow@cozen.Com

Proceedings

#	Date	Proceeding Text	Source
1	09/07/2023	NOTICE OF REMOVAL from King County Superior Court, case number 23-2-14276-4-SEA; (Receipt # AWAWDC-8154910) filed by Employers Insurance Company of Wausau. (Attachments: # 1 Civil Cover Sheet, # 2 Complaint, # 3 Exhibit Remaining King County Superior Court filed documents)(Kiess, Jared) (Entered: 09/07/2023)	
2	09/07/2023	VERIFICATION OF STATE COURT RECORDS re 1 Notice of Removal, by Defendant Employers Insurance Company of Wausau (Kiess, Jared) (Entered: 09/07/2023)	
	09/08/2023	U.S. District Judge John C. Coughenour added. (JWC) (Entered: 09/08/2023)	
3	09/08/2023	LETTER from Clerk re receipt of case from King County Superior Court and advising of WAWD case number and judge assignment. (JWC) (Entered: 09/08/2023)	
	09/08/2023	NOTICE: Pursuant to Fed.R.Civ.P 7.1(a)(1), Defendant must file a Corporate Disclosure Statement by 9/15/2023. If applicable, a Diversity Disclosure Statement may be required pursuant to Fed.R.Civ.P 7.1(a)(2). In order to properly notify the Court, use the event Corporate/Diversity Disclosure Statement located in CM/ECF under Other Filings, Other Documents. (JWC) (Entered: 09/08/2023)	
4	09/11/2023	ORDER REGARDING DISCOVERY AND DEPOSITIONS by U.S. District Judge John C. Coughenour. (KMP) (Entered: 09/11/2023)	
5	09/11/2023	MINUTE ORDER SETTING INITIAL CASE MANAGEMENT DATES All counsel and any pro se parties are directed to meet and confer and to provide the Court with a combined Joint Status Report (the Report) by the deadline set below. This meet-and-confer must be a face-to-face meeting or a telephonic conference. If the parties are unable to agree on any part of the Report, they may answer in separate paragraphs; no separate reports are to be filed. In addition to the requirements articulated in FRCP 26(f)(3), the Report must contain the following information: 1. An estimate of the number of days needed for trial; 2. The date by which the case will be ready for trial; and 3. Whether the parties intend to mediate per LCR 39.1 and, if so, when the parties expect to complete mediation.The deadlines below may be extended only by court order. Any request for extension of these deadlines	

2:23cv1386, Washington State Convention Center Public Facilities District V. Employers Insurance Company Of Wausau

#	Date	Proceeding Text	Source
		should be made by email to Courtroom Deputy Clerk Kadya Peter at kadya_peter@wawd.uscourts.gov. The parties who have appeared in this matter must meet and confer before contacting the Court to request an extension. If this case involves claims that are exempt from the requirements of FRCP 26(a) and 26(f), please notify the Courtroom Deputy Clerk. Please note: Initial Disclosures are not to be filed. FRCP 26(f) Conference Deadline is 10/23/2023, Initial Disclosure Deadline is 10/30/2023, Joint Status Report due by 11/6/2023. (KMP) (Entered: 09/11/2023)	
6	09/12/2023	CORPORATE AND DIVERSITY DISCLOSURE STATEMENT identifying Corporate Parent Liberty Mutual Holding Company Inc., Other Affiliate Liberty Mutual Group Inc., Other Affiliate LMHC Massachusetts Holdings Inc. for Employers Insurance Company of Wausau. Filed pursuant to Fed.R.Civ.P 7.1(a)(1) and (2). Filed by Employers Insurance Company of Wausau. (Kiess, Jared) (Entered: 09/12/2023)	
7	09/13/2023	Stipulated MOTION to Extend Answer and Initial Discovery Deadlines, filed by Defendant Employers Insurance Company of Wausau. Noting Date 9/13/2023, (Kiess, Jared) (Entered: 09/13/2023)	
8	09/14/2023	MINUTE ORDER granting Parties' 7 Stipulated MOTION to Extend Answer and Initial Discovery Deadlines. Defendant's deadline to answer complaint if Plaintiff does not file a motion to remand is 10/23/2023. Authorized by U.S. District Judge John C. Coughenour. (SS) (Entered: 09/14/2023)	
9	10/13/2023	APPLICATION OF ATTORNEY Melissa M. DAlelio FOR LEAVE TO APPEAR PRO HAC VICE for Defendant Employers Insurance Company of Wausau (Fee Paid) Receipt No. AWAADC-8200352 (Kiess, Jared) (Entered: 10/13/2023)	
10	10/13/2023	APPLICATION OF ATTORNEY Sandra J. Badin FOR LEAVE TO APPEAR PRO HAC VICE for Defendant Employers Insurance Company of Wausau (Fee Paid) Receipt No. AWAADC-8200363 (Kiess, Jared) (Entered: 10/13/2023)	
11	10/13/2023	ORDER re 9 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Melissa M D'Alelio for Defendant Employers Insurance Company of Wausau by Clerk Ravi Subramanian. No document associated with this docket entry, text only.NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d). (JWC) (Entered: 10/13/2023)	
12	10/13/2023	ORDER re 10 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Sandra J Badin for Defendant Employers Insurance Company of Wausau by Clerk Ravi Subramanian. No document associated with this docket entry, text only.NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d). (JWC) (Entered: 10/13/2023)	
13	10/23/2023	MOTION to Dismiss for Failure to State a Claim , filed by Defendant Employers Insurance Company of Wausau. Oral Argument Requested. (Attachments: # 1 Proposed Order) Noting Date 1/10/2024 12/15/2023, (Kiess, Jared) Modified noting date per Dkt. 16 on 12/11/2023 (KRA). (Entered: 10/23/2023)	
14	10/23/2023	DECLARATION of Jared F. Kiess filed by Defendant Employers Insurance Company of Wausau re 13 MOTION to Dismiss for	

2:23cv1386, Washington State Convention Center Public Facilities District V. Employers Insurance Company
Of Wausau

#	Date	Proceeding Text	Source
		Failure to State a Claim (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F)(Kiess, Jared) (Entered: 10/23/2023)	
15	12/11/2023	Stipulated MOTION Re-Note of Motion to Dismiss and [Proposed] Order, filed by Plaintiff Washington State Convention Center Public Facilities District. Noting Date 12/11/2023, (Donovan, Jason) (Entered: 12/11/2023)	
16	12/11/2023	ORDER granting Parties' 15 Stipulated MOTION Re-note of Motion to Dismiss. Defendant Employers Insurance Company of Wausau's Rule 12(b)(6) Motion to Dismiss (Dkt. No. 13) is re-noted on the Motion Calendar for 1/10/2024. The response and reply deadlines are extended as follows: deadline to file Response is 12/18/2023, deadline to file Reply is 1/10/2024. Signed by U.S. District Judge John C. Coughenour. (KRA) (Entered: 12/11/2023)	
17	12/18/2023	RESPONSE, by Plaintiff Washington State Convention Center Public Facilities District, to 13 MOTION to Dismiss for Failure to State a Claim . (Donovan, Jason) (Entered: 12/18/2023)	
18	01/10/2024	REPLY, filed by Defendant Employers Insurance Company of Wausau, TO RESPONSE to 13 MOTION to Dismiss for Failure to State a Claim (Kiess, Jared) (Entered: 01/10/2024)	
19	01/11/2024	NOTICE of Supplemental Authority re 17 Response to Motion by Plaintiff Washington State Convention Center Public Facilities District (Attachments: # 1 Exhibit A)(Donovan, Jason) (Entered: 01/11/2024)	
	01/31/2024	Case Reassigned to Judge Barbara J. Rothstein for all further proceedings. U.S. District Judge John C. Coughenour is no longer assigned to the case. All future documents filed in this case must bear the cause number 2:23-CV-1386-BJR. (KMP) (Entered: 01/31/2024)	
20	01/31/2024	STANDING ORDER FOR ALL CIVIL CASES by Judge Barbara J. Rothstein. The procedures in this Order supplement, and in some cases, supersede the local rules. The parties are responsible for being familiar with the procedures in this Order. Failure to comply with the procedures may result in sanctions. (NAV) (Entered: 01/31/2024)	
21	02/27/2024	ORDER granting Defendant's 13 Motion to Dismiss for Failure to State a Claim with prejudice. Signed by Judge Barbara J. Rothstein. (SB) (Entered: 02/27/2024)	
22	03/26/2024	NOTICE OF APPEAL to Ninth Circuit (24-1889) re 21 Order on Motion to Dismiss for Failure to State a Claim, Terminated Case by Plaintiff Washington State Convention Center Public Facilities District. \$605, receipt number AWAWDC-8405190 (cc: USCA) (Attachments: # 1 Representation Statement)(Donovan, Jason) Modified on 3/28/2024 to add CCA#. (RE) (Entered: 03/26/2024)	
23	03/28/2024	TIME SCHEDULE ORDER/USCA CASE NUMBER (24-1889) as to 22 Notice of Appeal, filed by Washington State Convention Center Public Facilities District. (RE) (Entered: 03/28/2024)	

Copyright © LexisNexis CourtLink, Inc. All Rights Reserved.

*** THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY ***

End of Document

24-1889, Washington State Convention Center Public Facilities District v.
Employers Insurance Company of Wausau

US Circuit Court of Appeals - 09th Circuit

This case was retrieved on 06/27/2024

Header

Case Number: 24-1889

Date Filed: 03/28/2024

Date Full Case Retrieved: 06/27/2024

Status: Unknown

Misc: (999) Unknown; Appeal

Participants

Litigants

WASHINGTON STATE CONVENTION CENTER PUBLIC
FACILITIES DISTRICT, a King County Public Facility District

Plaintiff - Appellant

Seattle, WA 98101-3299

EMPLOYERS INSURANCE COMPANY OF WAUSAU

Defendant - Appellee

Boston, MA 02199

Attorneys

Additional Case

Additional Case Information

Seattle, Western Washington

Civil-Private

DateFiled: 03/28/2024

Proceedings

Date	#	Proceeding Text	Details
03/28/2024	1	CASE OPENED. A copy of your notice of appeal / petition filed in 2:23-cv-01386-BJR has been received in the Clerk's office of the United States Court of Appeals for the Ninth Circuit. The U.S. Court of Appeals docket number 24-1889 has been assigned to this case. All communications with the court must indicate this Court of Appeals docket number. Please carefully review the docket to ensure the name(s) and contact information are correct. It is your responsibility to alert the court if your contact information changes. Resources Available For more information about case processing and to assist you in preparing your brief, please review the Case Opening	

24-1889, Washington State Convention Center Public Facilities District v. Employers Insurance Company of Wausau

Date	#	Proceeding Text	Details
		Information (for attorneys and pro se litigants) and review the Appellate Practice Guide. Counsel should consider contacting the court's Appellate Mentoring Program for help with the brief and argument. [Entered: 03/28/2024 04:45 PM]	
03/28/2024	2	SCHEDULE NOTICE. Mediation Questionnaire due (Appellant) 4/2/2024, Appeal Opening Brief (No Transcript Due) (Appellant) 5/7/2024, Appeal Answering Brief (No Transcript Due) (Appellee) 6/6/2024. All briefs shall be served and filed pursuant to FRAP 31 and 9th Cir. R. 31-2.1. Failure of the appellant(s) to comply with this briefing schedule will result in automatic dismissal of the appeal. See 9th Cir. R. 42-1. [Entered: 03/28/2024 04:52 PM]	
04/01/2024	4	NOTICE OF APPEARANCE by Sandra Badin for Appellee Employers Insurance Company of Wausau. [Entered: 04/01/2024 10:30 AM]	
04/01/2024	3	NOTICE OF APPEARANCE by Melissa M. D'Alelio for Appellee Employers Insurance Company of Wausau. [Entered: 04/01/2024 10:27 AM]	
04/02/2024	6	MEDIATION CONFERENCE SCHEDULED - DIAL-IN Assessment Conference, 4/15/2024, 10:00 a.m. PACIFIC Time. See order for instructions and details. [Entered: 04/02/2024 02:46 PM]	
04/02/2024	5	MEDIATION QUESTIONNAIRE filed by Appellant Washington State Convention Center Public Facilities District. To submit pertinent confidential information directly to the Circuit Mediators, please email ca09_mediation@ca9.uscourts.gov and include the case name and number in the subject line. Confidential submissions may include any information relevant to mediation of the case and settlement potential, including, but not limited to, settlement history, ongoing or potential settlement discussions, non-litigated party related issues, other pending actions, and timing considerations that may impact mediation efforts. [Entered: 04/02/2024 11:47 AM]	
04/07/2024	7	NOTICE of Transcript Designation filed by Appellant Washington State Convention Center Public Facilities District. [Entered: 04/07/2024 11:20 AM]	
04/15/2024	8	RELEASED FROM MEDIATION (text only). This case is released from the Mediation Program. Counsel are requested to contact the Circuit Mediator should circumstances develop that warrant	

24-1889, Washington State Convention Center Public Facilities District v. Employers Insurance Company of
Wausau

Date	#	Proceeding Text	Details
		settlement discussions. [Entered: 04/15/2024 10:54 AM]	
04/19/2024	9	Streamlined Request for Extension of Time to File Opening Brief for 30 days filed by Appellant Washington State Convention Center Public Facilities District. [Entered: 04/19/2024 01:34 PM]	
04/19/2024	10	ORDER FILED.Streamlined Request for Extension of Time to File Opening Brief for 30 days (DE 9) granted. Amended briefing schedule: Opening Brief Due (Appellant) 6/6/2024, Answering Brief Due (Appellee) 7/8/2024. Optional Reply Brief due 21 days after service of Answering Brief. All briefs shall be served and filed pursuant to FRAP 31 and 9th Cir. R. 31-2.1. [Entered: 04/19/2024 02:09 PM]	
06/06/2024	11	OPENING BRIEF submitted for filing by Appellant Washington State Convention Center Public Facilities District. [Entered: 06/06/2024 01:48 PM]	
06/06/2024	12	EXCERPTS OF RECORD submitted for filing by Appellant Washington State Convention Center Public Facilities District. [Entered: 06/06/2024 01:53 PM]	
06/07/2024	13	ORDER FILED. Opening Brief submitted at DE 11 by Appellant Washington State Convention Center Public Facilities District is filed. Within 7 days of this order, Appellant must file 6 copies of the brief in paper format bound with blue front cover pages. Each copy must include certification at the end that the copy is identical to the electronic version. The excerpts of record submitted at DE 12 by Appellant Washington State Convention Center Public Facilities District are filed. Within 7 days of this order, Appellant must file 3 copies of the excerpts in paper format securely bound on the left side, with white front covers. The paper copies must be sent to the Clerks principal office. [Entered: 06/07/2024 10:40 AM]	
06/12/2024	14	Paper copies (6) of Opening Brief submitted at DE 11 by Appellant Washington State Convention Center Public Facilities Districtreceived. [Entered: 06/12/2024 03:01 PM]	
06/12/2024	15	Paper copies (3) of Excerpts of Record in 3 Volumesand Index Volume submitted at DE 12 by Appellant Washington State Convention Center Public Facilities District received. [Entered: 06/12/2024 03:36 PM]	

24-1889, Washington State Convention Center Public Facilities District v. Employers Insurance Company of
Wausau

End of Document

K & L GATES LLP

June 27, 2024 - 3:31 PM

Filing Petition for Review

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: Case Initiation
Appellate Court Case Title: Quest Diagnostics, Inc., Appellant v. AIG Specialty Insurance Co., et al, Respondent (852850)

The following documents have been uploaded:

- PRV_Petition_for_Review_20240627152114SC287173_8479.pdf
This File Contains:
Petition for Review
The Original File Name was Quest Petition for Review 2024.06.27.pdf

A copy of the uploaded files will be sent to:

- RLindsey@mcnaul.com
- angela@searsinjurylaw.com
- benjamin.roesch@jmblawyers.com
- brett.safford@clydeco.us
- carolyn.branthoover@klgates.com
- cisacke@mcnaul.com
- dmillea@zellelaw.com
- douglas.collodel@clydeco.us
- emaan.jaberi@klgates.com
- gabe.baker@jmblawyers.com
- jared.clapper@clydeco.us
- jhickman@mcnaul.com
- john.sylvester@klgates.com
- kathy.rollins@clydeco.us
- kristin.anderson@bullivant.com
- matthew.sekits@bullivant.com
- mcbrider@lanepowell.com
- meaton@mcnaul.com
- mshutte@zellelaw.com
- patrick.hofer@clydeco.us
- schoeggld@lanepowell.com
- susan.sullivan@clydeco.us

Comments:

Sender Name: John Bjorkman - Email: john.bjorkman@klgates.com
Address:
925 4TH AVE STE 2900
SEATTLE, WA, 98104-1158
Phone: 206-623-7580

Note: The Filing Id is 20240627152114SC287173