

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

Church Mutual Insurance Company,

Case No.: 19-cv-7599

Plaintiff,

v.

Triad Senior Living, Inc., and Angela Webster,

**CHURCH MUTUAL INSURANCE
COMPANY'S COMPLAINT FOR
DECLARATORY JUDGMENT AND
DEMAND FOR JURY TRIAL**

Defendants.

Plaintiff Church Mutual Insurance Company (Church Mutual) for its Complaint for Declaratory Judgment states as follows:

Nature of the Action

1. This is an action brought under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202. Church Mutual seeks a determination of the parties' rights and obligations under insurance policies issued by Church Mutual with respect to the lawsuit captioned *Angela Webster, individually and on behalf of all others similarly situated v. Triad Senior Living, Inc.*, Circuit Court of Cook County, Illinois, Chancery Division, Case No. 2019CH10787, filed September 18, 2019 (the underlying lawsuit). A copy of the complaint in the underlying lawsuit is attached as **Exhibit 1**.

Parties

2. Plaintiff Church Mutual is a Wisconsin citizen incorporated under the laws of the State of Wisconsin with its principal place of business in Wisconsin.

3. Based on information and belief, Defendant Triad Senior Living, Inc. (Triad) is a Texas citizen incorporated under the laws of the State of Texas with its principal place of business in Oklahoma. Triad is seeking coverage under insurance policies that Church Mutual issued.

4. Based on information and belief, Defendant Angela Webster is a resident and citizen of Illinois, and is the plaintiff in the underlying lawsuit.

Jurisdiction and Venue

5. This Court has jurisdiction over this action under 28 U.S.C. § 1332(a)(1), because the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs, and is a dispute between citizens of different states.

6. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to this action took place in this District.

The Underlying Lawsuit

7. This action addresses insurance coverage for the underlying lawsuit brought as a class action by Webster against Triad for alleged violations of the Illinois Biometric Information Privacy Act (BIPA), 740 Ill. Comp. Stat. § 14/1, et seq.

8. The underlying lawsuit's complaint alleges that Webster "was jointly employed by Triad and one of its affiliate facilities, Waterford Estates" at the facility located at 17400 Kedzie Ave, Hazel Crest, Illinois 60429, and worked there from September 2013 to November 2014, and unspecified dates in 2017.

9. The complaint alleges that when Triad "or one of its affiliated facilities hires an employee, including Plaintiff, he or she is enrolled in an employee database shared and

maintained by and between Defendant and the affiliate facilities to monitor the time worked by hourly employees,” and employees “are required to have their fingerprints scanned to enroll them in its employee database(s).”

10. The complaint alleges that “all hourly employees at [Triad’s] affiliate facilities are required to use their fingerprint to clock-in and clock-out for attendance purposes.” And it asserts that “[a]s a condition of employment, Webster *was required* to scan her fingerprint so [Triad] could use it as an authentication method to track her time.”

11. The complaint alleges that Triad discloses employee “fingerprint data to at least one third-party vendor for payroll purposes, and likely others.”

12. The complaint seeks certification of a class exceeding 50 individuals consisting of:

All individuals working for [Triad] or any of its affiliated facilities in the State of Illinois who had their fingerprints collected, captured, received, obtained, maintained, stored, or disclosed by [Triad] during the applicable statutory period.

13. The complaint asserts 3 causes of action, all violations of BIPA. The first cause of action is for violation of BIPA, 740 Ill. Comp. Stat. § 14/15(a), for “Failure to Institute, Maintain and Adhere to a Written, Publicly-Available Retention Schedule,” alleging that Triad violated BIPA by failing “to publish a publicly available retention schedule or guidelines for permanently destroying biometric identifiers and biometric information,” by lacking such retention schedules and guidelines, and failing to adhere to such guidelines as required by BIPA.

14. The second cause of action is for violation of BIPA, 740 Ill. Comp. Stat. § 14/5(b), for “Failure to Obtain Informed Written Consent and Release Before Obtaining Biometric Identifiers or Information,” alleging that Triad “systematically and automatically

collected, used, stored and disseminated Plaintiff's and the Class's biometric identifiers and/or biometric information without first obtaining the written release required by" BIPA.

15. The third cause of action is for violation of BIPA, 740 Ill. Comp. Stat. § 14/15(d), for "Disclosure of Biometric Identifiers and Information Before Obtaining Consent," alleging that by "disclosing, redisclosing, or otherwise disseminating Plaintiff's and the Class's biometric identifiers and biometric information as described herein, [Triad] violated Plaintiff's and the Class's rights to privacy in their biometric identifiers and/or biometric information as set forth in BIPA."

16. The complaint seeks declaratory relief, asking for a declaration that Triad violated BIPA; an award of statutory damages of \$5,000 for each intentional and/or reckless BIPA violation, or \$1,000 for each negligent BIPA violation; injunctive relief to require Triad to collect, store, use, destroy, and disseminate biometric identifiers and/or biometric information in compliance with BIPA; and attorney fees, costs, and interest.

Insurance Policies

17. Church Mutual issued two multi-peril insurance policies to Affordable Community Housing Trust Epsilon Inc. and Triad:

A. Multi-peril policy number 0330018-02-188536 (policy period 03/21/19 to 03/21/20) (2019-2020 Policy). A certified copy of the 2019-2020 Policy is attached as **Exhibit 2**.

B. Multi-peril policy number 0330018-02-098770 (policy period 03/21/18 to 03/21/19) (2018-2019 Policy). A certified copy of the 2018-2019 Policy is attached as **Exhibit 3**.

The 2018-2019 Policy's original Declarations Page lists the named insured as "Affordable Community Housing Trust Alpha Inc" along with "Triad Senior Living Inc". By an endorsement

issued 9/27/18 with an endorsement effective date of 3/21/18, the named insured was amended to “Affordable Community Housing Trust Epsilon Inc”. By endorsement issued 1/9/19 with an endorsement effective date of 1/2/19, the named insured was amended adding Triad Senior Living Inc.

18. Church Mutual issued two umbrella insurance policies to Affordable Community Housing Trust Epsilon Inc. (collectively, Umbrella Policies):

A. Umbrella policy number 0330018-81-188538 (policy period 03/21/19 to 03/21/20) (2019-2020 Umbrella Policy). A certified copy of the 2019-2020 Umbrella Policy is attached as **Exhibit 4**.

B. Umbrella policy number 0330018-81-098772 (policy period 03/21/18 to 03/21/19) (2018-2019 Umbrella Policy). A certified copy of the 2018-2019 Umbrella Policy is attached as **Exhibit 5**.¹

EPL Coverage

19. The 2019-2020 Policy and the 2018-2019 Policy contain Employment Practices Liability Coverage (EPL Coverage). Because the EPL Coverage is claims-made coverage, and the underlying lawsuit was filed on September 18, 2019, only the 2019-2020 Policy’s EPL Coverage is potentially relevant.

20. The EPL Coverage has an aggregate limit of insurance of \$1,000,000, subject to a \$5,000 retention.

21. The 2019-2020 Policy states on top of page one of Form A 520 (1-17) of the

¹ The 2018-2019 Policy, 2019-2020 Policy, 2018-2019 Umbrella Policy, and 2019-2020 Umbrella Policy are referred to collectively as the “Policies.”

EPL Coverage that the only relevant coverage under the 2019-2020 Policy is the EPL Coverage: “Except for the insurance provided by this coverage form, the policy to which this coverage form is attached does not apply to any claim or ‘suit’ seeking damages arising out of any ‘wrongful employment practice’.”

22. The EPL Coverage states that Church Mutual will pay for “‘loss’ arising from any claim or claims because of injury arising out of a ‘wrongful employment practice’ to which this insurance applies,” but has “no duty to defend the insured against any ‘suit’ seeking payment for ‘loss’ to which this insurance does not apply.”

23. The EPL Coverage defines “wrongful employment practice,” in relevant part, as “any actual or alleged ... [e]mployment related ... invasion of privacy.”

24. The EPL Coverage defines “loss” as “damages, monetary settlement amounts, and ‘defense expenses’ incurred in the defense of a claim or ‘suit’. ‘Loss’ does not include fines, taxes, penalties, nonmonetary damages, injunctive relief, or declaratory relief.”

25. The EPL Coverage’s insuring agreement also contains a Retroactive Date provision, stating that the coverage applies to “loss” because of injury only if “[t]he ‘wrongful employment practice’ did not occur before the Retroactive Date, if any, shown in the Declarations Page or after the end of the policy period.” The 2019-2020 Policy’s Declarations Page correspondingly provides that EPL Coverage “does not apply to injury that arises out of a ‘wrongful employment practice’ which occurs before the retroactive date ... shown below”:
03/21/10.

26. The EPL Coverage contains the following exclusions:

2. Exclusions

This insurance does not apply to:

* * *

d. Violation of Laws Applicable to Employers

Any claim based on, attributable to, or arising out of:

- (1) The Employee Retirement Income Security Act of 1974, Public Law 93-406, and any amendments to that law;
- (2) Any state, local, common, or federal law that is similar to Public Law 93-406 or
- (3) Any claim based on, attributable to, or arising out of any violation of any insured's responsibilities or duties required by any other federal, state, or local statutes, rules, or regulations, and any rules or regulations promulgated therefor or amendments thereto. However this exclusion does not apply to: Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, the Age Discrimination in Employment Act, the Equal Pay Act, the Pregnancy Discrimination Act of 1978, the Immigration Reform and Control Act of 1986, the Family and Medical Leave Act of 1993, and the Genetic Information Nondiscrimination Act of 2008 or to any rules or regulations promulgated under any of the foregoing and amendments thereto or any similar provisions of any federal, state, or local law.
- (4) This exclusion also applies to any rules or regulations promulgated under any of the foregoing and amendments thereto or any similar provisions of any federal, state, or local law.

* * *

j. Dishonest, Criminal or Fraudulent Acts

Any claim based on, attributable to, or arising out of any actual or alleged dishonest, criminal, or fraudulent acts, or the willful failure to comply with any law or any governmental or administrative order, or regulation relating to employment practices by or with the insured's consent. Willful means acting with intentional or reckless disregard of such laws or employment related orders or regulations.

DOT Coverage and AED Coverage

27. The 2019-2020 Policy and the 2018-2019 Policy contain Directors, Officers

and Trustees Liability Coverage (DOT Coverage) and Affiliated Entity Dispute Legal Defense Coverage (AED Coverage). Because the DOT Coverage and AED Coverage are claims-made coverages, and the underlying lawsuit was filed on September 18, 2019, only the 2019-2020 Policy's DOT Coverage and AED Coverage are potentially relevant.

28. The DOT Coverage has an aggregate limit of insurance of \$1,000,000, subject to a \$1,000 retention.

29. The DOT Coverage's insuring agreement contains a Retroactive Date provision stating that the coverage applies to "loss" because of injury only if "[t]he 'wrongful act' did not occur before the Retroactive Date, if any, shown in the Declarations Page or after the end of the policy period." The Declarations Page correspondingly provides that DOT Coverage "does not apply to injury that arises out of a 'wrongful act' which occurs before the retroactive date ... shown below": 10/13/18.

30. The DOT Coverage contains the following exclusions:

3. Exclusions

This insurance does not apply to:

g. Directors, Officers and Trustees

Any claim:

* * *

(3) Based on, attributable to, or arising out of any:

* * *

(e) Willful violation of any statute or regulation.

* * *

except to the extent that you may be required or permitted by law and duly enacted charter or bylaw to indemnify your "Directors, Officers and Trustees."

* * *

m. Employee

Any claim based on, attributable to, or arising out of injury to an employee of any insured arising out of employment by any insured This exclusion applies whether any insured is liable as an employer or in any other capacity, and to any obligation to share damages with or repay or reimburse someone else for any "loss."

n. Employment

Any claim based on, attributable to, or arising out of refusal to employ, termination of employment, coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination, or any other employment-related practices, policies, acts, errors, or omissions. This exclusion applies whether any insured is liable as an employer or in any other capacity, and to any obligation to share damages with or repay or reimburse someone else for any "loss."

31. The DOT Coverage contains the following definitions:

H. DEFINITIONS

* * *

7. "Directors, Officers and Trustees" means any of your past, present, or future directors; officers; trustees; clergy; wardens; deacons; elders; or members of duly elected, appointed, or constituted governing bodies, but only while acting solely and exclusively for the Named Insured

8. "Loss" means damages, monetary settlement amounts, and "defense expenses" incurred in the defense of a claim or "suit." "Loss" does not include civil or criminal fines or penalties imposed by law, punitive or exemplary damages, the multiplied portion of multiplied damages, taxes, matters that are uninsurable pursuant to applicable law, non-monetary damages, injunctive relief, or declaratory relief.

* * *

15. "Wrongful act" means, with respect to your "Directors, Officers and Trustees":

a. Any actual or alleged:

(1) Error or misstatement,

(2) Misleading statement,

- (3) Neglect or breach of duty, or
- (4) Act or omission,

in the discharge of their duties for you as a Director, Officer and Trustee.

- b. Any other matter claimed against your “Directors, Officers and Trustees” solely and exclusively as your “Directors, Officers and Trustees”.

32. The 2019-2020 Policy’s AED Coverage has an Each Wrongful Act limit of insurance of \$25,000, and an aggregate limit of insurance of \$50,000.

33. The 2019-2020 Policy’s AED Coverage contains the following provisions:

**AFFILIATED ENTITY DISPUTE LEGAL DEFENSE COVERAGE
ENDORSEMENT**

This endorsement modifies the insurance provided under the following:

Directors, Officers and Trustees Liability Coverage Form

B. AFFILIATED ENTITY DISPUTE LEGAL DEFENSE COVERAGE

Except for the insurance provided by this Affiliated Entity Dispute Legal Defense Coverage Endorsement, and subject to all terms, conditions, definitions, exclusions, and all other provisions in the Directors, Officers and Trustees Liability Coverage Form, this policy does not apply to, nor do we have any duty to defend, any claim or “suit” arising out of or resulting from any actual or alleged “Affiliated Entity Dispute.”

* * *

D. ADDITIONAL DEFINITIONS

* * *

2. “Affiliated Entity Dispute” means any “suit” arising out of, resulting from, or involving any allegation or claim made against an insured by or on behalf of any actual or alleged “Affiliated Entity” that arises out of one or more of the following:

- a. Ownership, title, control, or use or return of real or personal property, donations, or financial assets;

- b. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling, or premises that a person occupies;
- c. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products, or services;
- d. Access to financial or other records;
- e. The authority or control over business affairs of an insured;
- f. The appointment or election of "Directors, Officers and Trustees" or other positions;
- g. The interpretation or application of articles of incorporation, charters, association agreements, constitutions, bylaws, or other governing documents, or any amendments thereto;
- h. Ecclesiastical, doctrinal, religious, or philosophical teachings, beliefs, practices, or policies.

However, "Affiliated Entity Dispute" does not include any claim or claims seeking monetary damages made against an insured by an employee, member, or volunteer of the Named Insured who is not a "Director, Officer and Trustee."

* * *

Senior Living Facility Professional Liability Coverage

34. The 2019-2020 Policy and the 2018-2019 Policy contain Senior Living Facility Professional Liability Coverage, whose insuring agreement states that it applies to injury "caused by a 'professional health care incident'" and the "'professional health care incident' occurs during the policy period."

35. The Senior Living Facility Professional Liability Coverage has an Each Claim limit of insurance of \$1,000,000, and an aggregate limit of insurance of \$3,000,000.

36. The Senior Living Facility Professional Liability Coverage contains the following definitions:

F. DEFINITIONS

5. “Professional health care incident” means:
- a. Any act, error, omission or failure:
 - (1) In the furnishing of “professional health care services.” This includes furnishing of food, beverages, medications or appliances in connection with such services;
 - (2) In the handling of deceased human bodies;
 - (3) Arising out of service by any persons as members of a formal accreditation, standards review or similar board of the Named Insured or as a person who executes the duties of such board.
 - b. Failure to comply with any right of a resident under any state or federal law regulating you as a resident health care facility.
 - c. Failure to protect any resident from undue influence by an insured when such undue influence is to the personal detriment of the resident.
- * * *
7. “Professional health care services” means your professional medical, nursing, cosmetic, social, and similar professional services that relate to the care of your residents.

37. The Senior Living Facility Professional Liability Coverage contains the following exclusion:

2. Exclusions.

This insurance does not apply to:

* * *

- e. Injury to:

- (1) An employee of the insured arising out of and in the course of employment by the insured

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity;”

* * *

General Liability Coverage

38. The 2019-2020 Policy and the 2018-2019 Policy also contain General Liability Coverage (GL Coverage), which includes (1) Bodily Injury and Property Damage Liability Coverage and (2) Personal and Advertising Injury Liability Coverage.

39. The Bodily Injury and Property Damage Liability Coverage has an Each Occurrence Limit of \$1,000,000, and an aggregate limit of \$3,000,000.

40. The Bodily Injury and Property Damage Liability Coverage’s insuring agreement states that Church Mutual “will pay those sums that the insured becomes legally obligated to pay as damages because of ‘bodily injury’ or ‘property damage’ to which this insurance applies,” but Church Mutual has “no duty to defend the insured against any ‘suit’ seeking damages for ‘bodily injury’ or ‘property damage’ to which this insurance does not apply.”

41. The Bodily Injury and Property Damage Liability Coverage’s insuring agreement also states that it applies only if the “bodily injury” or “property damage” is caused by an “occurrence,” and the “bodily injury” or “property damage” occurs during the policy period.

42. The Bodily Injury and Property Damage Liability Coverage defines “bodily injury” as “bodily injury, sickness, or disease sustained by a person, including death resulting

from any of these at any time”; it defines “property damage” as “[p]hysical injury to tangible property, including all resulting loss of use of that property” or “[l]oss of use of tangible property that is not physically injured”; and it defines “occurrence” as “an accident, including continuous or repeated exposure to substantially the same general harmful conditions.”

43. The Bodily Injury and Property Damage Liability Coverage contains the following exclusions:

2. Exclusions.

This insurance does not apply to:

a. “Bodily injury” or “property damage” expected or intended from the standpoint of the insured....

* * *

e. “Bodily injury” to

(1) An “employee” of the insured arising out of and in the course of:

(a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured’s business

This Exclusion applies:

(1) Whether the insured may be liable as an employer or in any other capacity;

f. “Bodily injury” or “property damage” that arises out of any:

* * *

(3) Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination, sexual misconduct, or other employment-related practices, policies, acts, or omissions;

(4) Consequential “bodily injury” as a result of f.(1), f.(2), or f.(3) above.

This exclusion applies whether the insured is liable either as an employer or in any other capacity

44. The Personal and Advertising Injury Liability Coverage has a limit of insurance of \$1,000,000.

45. The Personal and Advertising Injury Liability Coverage's insuring agreement states that Church Mutual "will pay those sums that the insured becomes legally obligated to pay as damages because of 'personal injury' or 'advertising injury' to which this insurance applies," but there is "no duty to defend the insured against any 'suit' seeking damages for 'personal injury' or 'advertising injury' to which this insurance does not apply."

46. The Personal and Advertising Injury Liability Coverage applies "only if the offense was committed ... during the policy period."

47. The Personal and Advertising Injury Liability Coverage defines "advertising injury" as "Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products, or services;" "Oral or written publication of material that violates a person's right of privacy;" "Misappropriation of advertising ideas or style of doing business;" or "Infringement of copyright, title, or slogan."

48. The Personal and Advertising Injury Liability Coverage defines "personal injury" as "False arrest, detention, or imprisonment;" "Malicious prosecution;" "The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling, or premises that a person occupies, unless such offense is alleged against an insured by an 'Affiliated Entity';" "Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products, or services, unless such

offense is alleged against an insured by an ‘Affiliated Entity’;” or “Oral or written publication of material that violates a person’s right of privacy.”

49. The Personal and Advertising Injury Liability Coverage contains the following exclusions:

2. Exclusions.

This insurance does not apply to:

a. “Personal injury” or “advertising injury”:

* * *

(2) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;

* * *

c. “Personal injury” to:

(1) An employee of the insured if it occurs in the course of employment by the insured;

This exclusion applies where the insured is liable either as an employer or in any other capacity; or there is an obligation to fully or partially reimburse a third party for damages arising out of paragraph c.(1) or c.(2) above.

* * *

e. “Personal injury” that arises out of any:

* * *

(3) Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination, sexual misconduct, or other employment-related practices, policies, acts, or omissions;

(4) Consequential “personal injury” as a result of e.(1), e.(2), or e.(3) above.

This exclusion applies where the insured is liable either as an employer or in any other capacity

50. The 2019-2020 Policy and the 2018-2019 Policy contain the following

exclusions on Form A 2049 (10-16):

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

EXCLUSION – CYBER LIABILITY

This endorsement modifies insurance provided under the General Liability Coverage Part.

* * *

A. EXCLUSION – CYBER LIABILITY

This insurance does not apply to any of the following:

* * *

2. Access or Disclosure of Confidential or Personal Information and Data-Related Liability

a. Damages arising out of:

- (1)** Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, health information, or any other type of nonpublic information;

* * *

- b.** "Personal injury" or "advertising injury" arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information, or any other type of nonpublic information.

* * *

3. Recording and Distribution of Material or Information in Violation of Law

"Bodily injury", "property damage", "personal injury", or "advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

* * *

- d.** Any federal, state, or local statute, ordinance, or regulation, other than the TCPA, CAN-SPAM Act of 2003, or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating, or distribution of material or

information.

4. Knowing Violation of Rights of Another

“Personal injury” or “advertising injury” caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict “personal injury” or “advertising injury”.

* * *

51. The 2019-2020 Policy and the 2018-2019 Policy also contain a Limitation of Coverage to Designated Premises or Project Endorsement on Form A 235 (01-04) with respect to the GL Coverage, which states:

A. LIMITATION OF COVERAGE TO DESIGNATED PREMISES OR PROJECT

1. This insurance applies only to injury for “bodily injury,” “property damage,” “personal injury,” “advertising injury,” ... arising out of:
 - a. The ownership, maintenance, or use of the premises shown in the applicable schedule of the Declarations Page and operations necessary or incidental to those premises; or
 - b. The project shown in the applicable schedule of the Declarations Page.

* * *

Legal Defense Coverage

52. The 2019-2020 Policy and the 2018-2019 Policy also contain Legal Defense Coverage.

53. The Legal Defense Coverage has an Each Defensible Incident limit of insurance of \$5,000, and an aggregate limit of insurance of \$15,000.

54. The Legal Defense Coverage’s insuring agreement states:

A. LEGAL DEFENSE COVERAGE

1. Insuring Agreement

We will pay “defense costs”, incurred by any insured, that result from a “suit” to which this insurance applies. This insurance applies to these “defense costs” only if:

* * *

- b. The “suit” results from a “defensible incident” that occurs during the policy period.

No other obligation or liability to perform acts or services is covered.

55. The Legal Defense Coverage defines “defensible incident” as “any acts, omissions or failures of any insured,” but does not include “[a]ny deliberate acts, omissions, or failures for purposes of causing a ‘suit’ to be filed against you.”

56. The Legal Defense Coverage contains the following exclusions:

2. Exclusions

This insurance does not apply:

- a. To any “defense costs” incurred because of:

- (1) “Bodily injury”;

- (2) “Personal injury”;

- (3) “Advertising injury”;

* * *

- (6) “Property damage”;

* * *

- (8) Any class action “suit”;

* * *

- c. To any damages.

* * *

Umbrella Policies

57. The 2020-2019 Umbrella Policy and the 2018-2019 Umbrella Policy contain

the same relevant provisions, and provide excess coverage corresponding to the Bodily Injury and Property Damage Liability Coverage, the Personal and Advertising Injury Liability Coverage, and the Senior Living Facility Professional Liability Coverage in the 2020-2019 Policy and 2018-2019 Policy.

58. The Umbrella Policies have an Each Occurrence limit of insurance of \$5,000,000 for Bodily Injury and Property Damage Liability Coverage, and a general aggregate limit of insurance of \$5,000,000.

59. The Umbrella Policies have a Personal and Advertising limit of insurance of \$5,000,000.

60. The Umbrella Policies have a \$10,000 self-insured retention for each occurrence or offense not covered by underlying insurance.

61. The Umbrella Policies contain the following provisions:

**COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE
LIABILITY COVERAGE**

1. Insuring Agreement.

- a. We will pay on behalf of the insured “ultimate net loss” which the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies. No other obligations or liability to pay sums or perform acts or services is covered unless explicitly provided for under Defense or Supplementary Payments.

This insurance applies to “bodily injury” or “property damage” only if:

- (1) The “bodily injury” or “property damage” occurs during the policy period of this policy; or
- (2) “Underlying insurance” insurance applies to the “bodily

injury” or “property damage” during the policy period of this policy or would apply but for exhaustion of its limits of insurance.

The “bodily injury” or “property damage” must be caused by an “occurrence” that takes place in the “coverage territory.”

* * *

2. Defense.

- a. We will defend “suits” against the insured seeking damages for “bodily injury” or “property damage” to which this insurance applies subject to the following:
- (1) We have the right but not the duty to defend “suits” that are covered by the “underlying insurance.”
 - (2) We have the right and duty to defend “suits” that are not covered by “underlying insurance,” including when the applicable limit of insurance in the “underlying insurance” is exhausted.

However, we will have no duty to defend the insured against any “suits” seeking damages for “bodily injury” or “property damage” to which this insurance does not apply.

* * *

3. Exclusions.

This insurance does not apply to:

- a. “Bodily injury” or “property damage” expected or intended from the standpoint of the insured....

* * *

- d. “Bodily injury” to:

- (1) An “employee” of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured’s business;

* * *

e. “Bodily injury” or “property damage” that arises out of any:

* * *

- (3) Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination, sexual misconduct, or other employment-related practices, policies, acts, or omissions; ...

This Exclusion applies where the insured is liable either as an employer or in any other capacity;

* * *

COVERAGE B. PERSONAL AND ADVERTISING INJURY BODILY INJURY LIABILITY COVERAGE

1. Insuring Agreement.

a. We will pay on behalf of the insured “ultimate net loss” which the insured becomes legally obligated to pay as damages because of “personal injury” or “advertising injury” to which this insurance applies. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Defense or Supplementary Payments.

b. This insurance applies to “personal injury” only if caused by an offense:

- (1) Committed ... during the policy period;

c. This insurance applies to “advertising injury only if caused by an offense committed:

- (1) In the “coverage territory” during the policy period; and
- (2) In the course of advertising your goods, products, or services.

* * *

2. Defense.

a. We will defend “suits” against the insured seeking damages for “personal injury” or “advertising injury” to which this insurance applies subject to the following:

- (1) We have the right but not the duty to defend “suits” that are

covered by the “underlying insurance.”

- (2) We have the right and duty to defend “suits” that are not covered by “underlying insurance,” including when the applicable limit of insurance in the “underlying insurance” is exhausted.

However, we will have no duty to defend the insured against any “suits” seeking damages for “personal injury” or “advertising injury” to which this insurance does not apply.

* * *

3. Exclusions.

This insurance does not apply to:

- a. “Personal injury” or “advertising injury”:

* * *

- (2) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;

* * *

- c. “Personal injury” to:

- (1) An employee of the insured if it occurs in the course of employment by the insured;

* * *

This exclusion applies where the insured is liable either as an employer or in any other capacity;

* * *

- e. “Personal injury” that arises out of any:

* * *

- (3) Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination, sexual misconduct, or other employment-related practices, policies, acts, or omissions; ...

This Exclusion applies where the insured is liable either as an employer or in any other capacity;

62. The Umbrella Policies contain Form UMB 8672 (10-16), which contains the same exclusions from Form A 2049 (10-16) in the General Liability Coverage Form of the 2019-

2020 Policy and the 2018-2019 Policy.

63. The Umbrella Policies also contain Senior Living Facility Professional Liability Coverage that follows form to such coverage in the 2019-2020 Policy and the 2018-2019 Policy:

A. SENIOR LIVING FACILITY PROFESSIONAL LIABILITY

1. With respect to the operation of any Senior Living Facility, this insurance does not apply to any “Professional Health Care Incident” except to the extent that such insurance is provided by “underlying insurance.”

64. The Umbrella Policies’ Senior Living Facility Professional Liability Coverage has an Each Occurrence limit of insurance of \$5,000,000, and a general aggregate limit of insurance of \$5,000,000

65. Church Mutual has denied coverage for Triad under the Policies, and denied any duty to defend and any duty to indemnify with respect to the underlying lawsuit.

Claim for Declaratory Judgment

66. Church Mutual realleges and incorporates herein the preceding paragraphs as though fully set forth in this paragraph.

67. The Policies are subject to all of their terms, conditions, limitations, and exclusions.

68. Based on the policy language and applicable law, there is no coverage under the Policies with respect to the underlying lawsuit. Church Mutual seeks a declaration that there is no coverage under the Policies with respect to the lawsuit, and that Church Mutual has no duty to defend and no duty to indemnify Triad with respect to the lawsuit.

69. An actual and justiciable controversy exists between the parties with respect to the coverage available under the Policies with respect to the underlying lawsuit brought against Triad, whether Church Mutual has any duty to defend and any duty to indemnify with respect to the underlying lawsuit, and the parties' respective rights, duties, and obligations under those Policies regarding the claims in the underlying lawsuit.

70. Based on the foregoing, Church Mutual requests that the Court declare that the Policies do not provide coverage for the underlying lawsuit, and that Church Mutual has no duty to defend or indemnify Triad with respect to the underlying lawsuit.

71. Declaratory relief will resolve the dispute between the parties regarding the issues related to coverage under the Policies for the claims in the underlying lawsuit.

Prayer for Relief

WHEREFORE, Church Mutual requests judgment in its favor as follows:

1. For a declaration that the Policies do not provide coverage for Triad with respect to the underlying lawsuit;
2. For a declaration that Church Mutual has no duty to defend Triad or pay its defense expenses in connection with the underlying lawsuit;
3. For a declaration that Church Mutual has no duty to indemnify Triad or pay any judgment or settlement entered against it in the underlying lawsuit;
4. For all attorney fees and costs incurred herein in pursuing this action; and
5. Any other relief the Court deems just and equitable.

Demand for Jury Trial

Church Mutual demands a jury trial in this action.

Respectfully submitted,

Dated: November 18, 2019

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