



behalf of Houston Casualty Company (UK Branch), Chubb Underwriting Agencies Limited for and on behalf of Syndicate 2488, Talbot Underwriting Ltd for and on behalf of Lloyd's Underwriter Syndicate No. 1183 TAL, and Lloyd's Syndicate 1886 Subscribing to Policy B0180PG1902776's<sup>1</sup> (collectively, "Defendants") Traditional Motion for Summary Judgment ("Motion"). After considering the Motion, any responses and replies, the applicable law, and the pleadings and competent evidence on file, the Court deems the Motion to have merit and finds that it should be GRANTED in part and DENIED in part.

~~Plaintiff Baylor College of Medicine ("BCM") brought this action against Defendants, alleging that it suffered losses arising out of the COVID-19 pandemic that are covered under the terms and conditions of the commercial property insurance policies issued by Defendants. Defendants filed their Traditional Motion for Summary Judgment on all of BCM's claims, asserting that COVID-19 does not cause "direct physical loss of or damage to property," the threshold requirement to coverage under their commercial property insurance policies, and even if BCM could establish this prerequisite to coverage, the policies contain certain exclusions that preclude coverage for any loss or damage arising out of COVID-19.~~

The Court finds that a question of fact exists as to whether COVID-19, if present, caused direct physical loss of or damage to BCM's insured property. The Court further finds that any loss or damage caused by, resulting from, contributed to, or made worse by COVID-19 falls within the scope of the Pollution and Contamination Exclusion Endorsement No. 15 contained in the policy issued by Defendant XL Insurance America, Inc. and the Pollution and Contamination Exclusion Endorsement No. 18 contained in the policy issued by Defendant ACE American Insurance

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<sup>1</sup> Previously misnamed as Lloyd's Underwriter Syndicate No. 1886 QBE and QBE European Operations PLC.

~~Company, which define “Contaminants or Pollutants,” in relevant part, 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 . . . virus.”~~

Accordingly, it is ORDERED, ADJUDGED and DECREED that Defendants’ Traditional Motion for Summary Judgment is GRANTED in its entirety as to Defendants XL Insurance America, Inc. and ACE American Insurance Company, and that all of Plaintiff’s claims and causes of action against Defendants XL Insurance America, Inc. and ACE American Insurance Company are dismissed WITH PREJUDICE.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that that Defendants’ Traditional Motion for Summary Judgment is DENIED as to Defendants Lloyd’s Syndicate 1967 subscribing to policy B0180PG1922227, Sompo International for and on behalf of Endurance Worldwide Insurance Ltd., Neon Lloyd’s of London Syndicate No. 2468, Unicorn Underwriting Limited, HCC International Insurance Company PLC for and on behalf of Houston Casualty Company (UK Branch), Chubb Underwriting Agencies Limited for and on behalf of Syndicate 2488, Talbot Underwriting Ltd for and on behalf of Lloyd’s Underwriter Syndicate No. 1183 TAL, and Lloyd’s Syndicate 1886 Subscribing to Policy B0180PG1902776.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all costs of Court and attorneys’ fees shall be taxed to the party incurring same.

\_\_\_\_\_  
DATE

Signed:   
12/15/2021  
\_\_\_\_\_  
PRESIDING JUDGE

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