

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Crum & Forster Specialty Insurance Company

(b) County of Residence of First Listed Plaintiff Morris
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Michael T. McDonnell, III, Esq., KUTAK ROCK LLP, 100
N. 18th St., Ste 1920, Phila., PA 19103, (215) 299-4384

DEFENDANTS

Turning Points For Children CUA 10, LLC, Turning Points
For Children and Public Health Management Corporation
County of Residence of First Listed Defendant Philadelphia
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Anthony R. Twardowski, Esq., Zarwin Baum, 2005 Market
St., 16th Fl., Phila., PA 19103, (267) 765-9621

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input checked="" type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § § 1332 (a), 1391(b)
Brief description of cause:
Declaratory Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

03/22/2023

Michael T. McDonnell, III

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. **(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. **Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 305 Madison Avenue, Morristown, NJ 07960
 Address of Defendant: 415 South 15th Street, Philadelphia, PA 19146
 Place of Accident, Incident or Transaction: Philadelphia PA 19146

RELATED CASE, IF ANY:

Case Number: 200501077 Judge: Daniel J. Anders Date Terminated: _____

Civil cases are deemed related when **Yes** is answered to any of the following questions:

- | | | |
|--|---|--|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case ☒ **is** / ☐ **is not** related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 03/22/2023 *Michael T. McDonnell* 60111
 Attorney-at-Law / Pro Se Plaintiff Attorney I.D. # (if applicable)

CIVIL: (Place a ✓ in one category only)

A. Federal Question Cases:

- ☐ 1. Indemnity Contract, Marine Contract, and All Other Contracts
- ☐ 2. FELA
- ☐ 3. Jones Act-Personal Injury
- ☐ 4. Antitrust
- ☐ 5. Patent
- ☐ 6. Labor-Management Relations
- ☐ 7. Civil Rights
- ☐ 8. Habeas Corpus
- ☐ 9. Securities Act(s) Cases
- ☐ 10. Social Security Review Cases
- ☐ 11. All other Federal Question Cases

(Please specify): _____

B. Diversity Jurisdiction Cases:

- ☒ 1. Insurance Contract and Other Contracts
- ☐ 2. Airplane Personal Injury
- ☐ 3. Assault, Defamation
- ☐ 4. Marine Personal Injury
- ☐ 5. Motor Vehicle Personal Injury
- ☐ 6. Other Personal Injury (Please specify): _____
- ☐ 7. Products Liability
- ☐ 8. Products Liability – Asbestos
- ☐ 9. All other Diversity Cases

(Please specify): _____

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, _____, counsel of record or pro se plaintiff, do hereby certify:

☐ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:

☐ Relief other than monetary damages is sought.

DATE: _____ Sign here if applicable
 Attorney-at-Law / Pro Se Plaintiff Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

CRUM & FORSTER SPECIALTY
INSURANCE COMPANY,

Plaintiff,

v.

Case No.

TURNING POINTS FOR CHILDREN CUA
10, LLC,

TURNING POINTS FOR CHILDREN, and

PUBLIC HEALTH
MANAGEMENT CORPORATION,

Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Crum & Forster Specialty Insurance Company (“CFSIC”), by and through its counsel, Kutak Rock LLP, allege as follows for their Complaint for Declaratory Judgment against Defendants Turning Points for Children CUA 10, LLC (“CUA10”), Turning Points for Children (“Turning Points”), and Public Health Management Corporation (“PHMC” and together with CUA10 and Turning Points, “Turning Point Defendants” and “Insureds”):

PARTIES, JURISDICTION, AND VENUE

1. CFSIC is a Delaware corporation with its with a statutory home office in Delaware and a main administrative office in New Jersey.

2. CUA10 is a Pennsylvania limited liability company with its principal place of business at 415 South 15th Street, Philadelphia, Pennsylvania 19146.

3. Turning Points is a Pennsylvania nonprofit corporation with its principal place of business at 145 South 15th Street, Philadelphia, Pennsylvania 19146. Upon information and belief, Turning Points is a member or managing member of CUA10.

4. PHMC is a Pennsylvania nonprofit corporation with its principal place of business at 1500 Market Street, Suite 1500, Philadelphia, Pennsylvania 19102. Upon information and belief, PHMC is the sole shareholder of Turning Points.

5. The Court has jurisdiction over this case pursuant to 28 U.S.C. § 1332(a)(1) because complete diversity exists between Plaintiff and Defendants, and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because the Complaint seeks a declaration involving construction of an insurance policy issued in Pennsylvania to CUA10 and for which Turning Points and PHMC are additional insureds. The underlying risks insured and which give rise to potential liability are often located in this District.

7. All necessary and indispensable parties have been joined in the matter.

GENERAL ALLEGATIONS

I. The Underlying Suit

8. On or about May 18, 2020, William A. Calandra, Esquire (Administrator) in his capacity as Administrator of the Estate of Z.S, a deceased minor (“Decedent”), filed Plaintiff’s Complaint in the Philadelphia County Court of Common Pleas in a case styled in the case styled *William A. Calandra, Administrator v. Turning Points for Children*, et al., Case No. 200501077 (the “Underlying Suit”). A copy of the Complaint filed in the Underlying Suit is attached as Exhibit 1.

9. On June 16, 2021, William A. Calandra, Esquire (“Administrator”), in his capacity as Administrator of the Estate of Z.S., a deceased minor (“Decedent”), filed *Plaintiff’s First*

Amended Complaint [“Complaint” or “Compl.”] in the Philadelphia County Court of Common Pleas in the case styled *William A. Calandra, Administrator v. Turning Points for Children, et al.*, Case No. 200501077 (the “Underlying Suit”). A copy of the Complaint filed in the Underlying Suit is attached as Exhibit 2.

10. In the Complaint, the Administrator asserts claims against the defendants (the “Claims”), including the Turning Point Defendants, for (1) wrongful death and (2) survival. Claimant alleges that but for the acts and omissions of the defendants, including the Turning Point Defendants, Decedent would not have died on November 3, 2019.

11. The Administrator’s claims against the Turning Point Defendants are based upon, among other things, the following factual allegations in the Complaint:

a. On August 14, 2015, the City of Philadelphia Department of Human Services, Children and Youth Division (“DHS”) received a General Protective Services (“GPS”) report stating that Decedent’s mother, J.S., tested positive for the chemical THC during prenatal treatment and at the birth of Decedent.

b. On August 15, 2015, a DHS social worker visited Decedent and her mother, who disclosed that her children were staying with a family friend, Samiya Brown (“Brown”).

c. On August 17, 2015, a DHS social worker visited the home of Brown, and Brown stated that Decedent and her mother would be staying at Brown’s home so that she could assist with taking care of Decedent. Brown further stated that some of J.S.’s children had been in her physical care at the home, though there was no formal custody arrangement made.

d. On or about September 12, 2017, Wordsworth CUA 10, LLC, predecessor to CUA10, was retained by DHS to provide CUA case management services to J.S.'s children based on allegations that J.S.'s home was unsafe.

e. During a DHS visit on September 16, 2017, Brown reported that she was caring for Decedent and that Decedent's mother did not live in the home but that she still visited Decedent to take her to doctor appointments.

f. On October 3, 2017, CUA 10 caseworker Breanne Wilson visited Decedent's siblings at their kinship foster home. One of the siblings mentioned missing Decedent and that Decedent lived with Brown.

g. Breanne Wilson continued to provide case management services to Decedent's siblings for the next 15 months.

h. On December 19, 2018, the Turning Points Defendants are alleged to have closed professional services to the children of J.S. based on the understanding that some of Decedent's siblings were reunified with their mother (J.S.).

i. The Turning Points Defendants allegedly closed professional services without appropriately assessing the safety of Decedent, without documenting a call with Brown, and without documenting a phone call with respect to Decedent and her safety.

j. On October 30, 2019, DHS received a Child Protective Services report that Brown claimed Decedent had fallen out of a second story window of Brown's home. Brown claimed that she was doing CPR at the scene, and she eventually called 911 for emergency medical services to take Decedent to the hospital.

k. Decedent was taken to Children's Hospital of Philadelphia, which treated her and determined that her injuries were not consistent with the story provided by Brown.

The medical staff determined that Decedent had severe and extensive injuries, which were indicative of child abuse and chronic, severe medical neglect.

l. As a result of her injuries, Decedent allegedly sustained brain injury and cardiac arrest. She died on November 3, 2019, at the age of four years.

m. On November 4, 2019, Brown was arrested and charged with various crimes related to Decedent's death, including endangering the welfare of children, corruption of minors, making a false report, and tampering with evidence.

12. The Administrator seeks compensatory and punitive damages in excess of all available insurance coverage, as described below in the next section.

II. The CUA10 Insurance Tower

13. CUA10 was one of two named insureds under a policy of insurance issued by Scottsdale Insurance Company, identified by policy number OPS1585285 ("Scottsdale Policy"), and affording professional liability insurance coverage for the period from April 14, 2020, to April 14, 2021 (the "Policy Period"), up to a limit of \$1 million per occurrence and \$3 million in the aggregate, and subject to all other policy terms, conditions, provisions, and exclusions. A true copy of Scottsdale's Primary Policy is attached as Exhibit 3. Upon information and belief, Turning Points and PHMC are additional insureds by endorsement in the Scottsdale Policy.

14. CUA10 was also insured under an Excess Liability Policy issued by Beazley USA Services, Inc., on behalf of Syndicates 2623/623 at Lloyd's, and identified by policy number W22BE4200301 ("Beazley Excess Policy"). A true copy of the Beazley Excess Policy is attached as Exhibit 4. Turning Points and PHMC are additional insureds under the Beazley Excess Policy. The Beazley Excess Policy affords excess insurance coverage for the Policy Period up to a limit of \$5 million in excess of underlying insurance, which includes the Scottsdale Policy, subject to a \$5 million aggregate and all other policy terms, conditions, provisions, and exclusions. Upon

information and belief, this Beazley Excess Policy is impaired to the extent of \$1,000,000 from a prior judicial settlement and the available applicable policy limits are \$4,000,000 per occurrence, \$4,000,000 aggregate.

15. CUA10 was also insured under an Excess Liability Policy issued by CFSIC, identified by policy number SEO-108114 ("CFSIC Excess Policy"). A true copy of the CFSIC Excess Policy is attached as Exhibit 5. Turning Points and PHMC are additional insureds under the CFSIC Excess Policy. The CFSIC Excess Policy affords excess insurance coverage up to a limit of \$5 million in excess of underlying insurance, which includes the Scottsdale Policy and the Beazley Excess Policy, subject to a \$5,000,000 aggregate and all other policy terms, conditions, provisions, and exclusions.

16. The Insureds seek professional liability coverage for their alleged wrongful acts under the CUA Tower from CFSIC.

III. The CFSIC Excess Policy Coverage Dispute

17. The Insuring Agreement for the CFSIC Excess Policy provides, in pertinent part, as follows:

SECTION I – COVERAGES

1. Insuring Agreement

a. We will pay on behalf of the insured the "ultimate net loss" in excess of the "retained limit" because of "injury or damage" to which this insurance applies.

We will have the right and duty to defend the insured against any "suit" seeking damages for such "injury or damage" when the "retained limit" has been paid in full. When we have no duty to defend, we will have the right to defend, or to associate in the defense of, the insured against any "suit" seeking damages for "injury or damage".

However, we will have no duty to defend the insured against any "suit" seeking damages for which insurance under this Policy does not apply.

At our discretion, we may investigate any "event" that may involve this insurance and settle any resultant claim or "suit".

But:

(1) The amount we will pay for "ultimate net loss" is limited as described in **SECTION II — LIMITS OF INSURANCE**; and

(2) Our right and duty to defend ends when we have paid the applicable limit of insurance in the payment of judgments or settlements under this Policy. However, if the policy of "controlling underlying insurance" specifies that limits are reduced by defense expenses, our right and duty to defend ends when we have paid the applicable limit of insurance in the payment of defense expenses, judgments, or settlements under this Policy.

b. The insurance under this Policy will follow the same provisions, exclusions, conditions and limitations that are contained in the applicable "controlling underlying insurance", unless otherwise directed by this Policy. To the extent such provisions differ or conflict, the provisions of this Policy will apply. However, the coverage under this Policy will not be broader than that provided by any "underlying insurance".

If any applicable "underlying insurance" does not pay for "ultimate net loss" for any reason other than the exhaustion of its applicable limit of insurance by payment of claims or "suits", then this Policy will not cover such "ultimate net loss".

* * *

e. Any person or entity qualifying as an additional insured under the "controlling underlying insurance" will be an additional insured under this Policy. ...

Additional insured coverage, as provided by this Policy, will not be broader than coverage provided by any "underlying insurance".

(Ex. 5, pp. 5-6, Section I, paragraphs 1.a., 1.b., and 1.e.).

18. The CFSIC Excess Policy's Schedule of Underlying Insurance identifies the "controlling underlying insurance" as the Beazley Excess Policy. (Ex. 5, p. 2).

A. "Immediate" Notice Condition of Claims Made Coverage Was Breached

19. The CFSIC Excess Policy includes the following pertinent condition:

5. Duties in the Event of a Claim, Event, or Suit

a. You must see to it that we are notified as soon as practicable of an "event", regardless of the amount, which may result in a claim under this Policy...

b. If a claim is made or "suit" is brought against any insured, you must:

(1) Immediately record the specifics of the claim or "suit" and the date received; and

(2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or “suit” as soon as practicable.

(Ex. 5, pp. 8-9, Section III, paragraphs 5.a. and 5.b.).

20. The CFSIC Excess Policy defines “event” to mean “an occurrence, offense, accident, act or other event to which the applicable ‘controlling underlying insurance’ applies.” (Ex. 5, p. 11, Section IV, paragraph 2).

21. The foregoing notice provisions are modified by an endorsement entitled “Claims Reporting Endorsement,” (form CFSIC-EX-2500(04/2015)) which requires the insured to provide CFSIC “...immediate written notice of any ‘injury or damage’ of the following types: 1. Death... 6. ‘Event’ which arises from or is related to violent crimes...including but not limited to...mutilation.”

22. CFSIC did not receive notice of the Underlying Suit or the claims described in the Complaint until June 29, 2022, at the earliest. Notice was therefore received approximately two years and eight months after the death of Decedent and the arrest of Brown for murder in early November 2019.

23. Notice was received over two years after the Underlying Suit was first filed against the Turning Point Defendants on May 18, 2020, and over 14 months after expiration of the Policy Period under the CFSIC Excess Policy.

24. Accordingly, the notice given was neither “immediate” nor “as soon as practicable” and therefore failed to satisfy a condition precedent to coverage under the CFSIC Excess Policy.

B. Administrator’s Claims Were Not Made and Reported During the Policy Period, As Required for Claims Made and Reported Professional Liability Coverage.

25. The CFSIC Excess Policy follows form to the Beazley Excess Policy in providing professional liability coverage, in excess of the underlying retained limit. The Beazley Excess Policy, in turn, follows form to the Scottsdale Policy in providing coverage in excess of the

underlying professional liability coverage, which covers Insureds on a claims-made and reported basis.

26. The CFSIC Excess Policy also contains an endorsement that excludes all professional liability coverage with an exception “[o]nly to the extent that coverage is provided in the Underlying Insurance as described in the Schedule of Underlying Insurance.” (Ex. 5, p. 23, Form CFSIC-EX-2569).

27. As a condition to coverage under the Beazley Excess Policy, which is the controlling underlying insurance with respect to the CFSIC Excess Policy, claims must be made and reported during the policy period.

28. The Beazley Excess Policy provides as follows in its Preamble:

SUBJECT TO THE PROVISIONS OF THE UNDERLYING INSURANCE, THIS POLICY MAY ONLY APPLY TO ANY CLAIM FIRST MADE AGAINST THE INSUREDS OR LOSS DISCOVERED DURING THE POLICY PERIOD PROVIDED THAT SUCH CLAIM OR LOSS IS REPORTED IN WRITING TO THE UNDERWRITERS PURSUANT TO THE POLICY PROVISIONS....

(Ex. 4, p. 1.)

29. The Insuring Agreement of the Beazley Excess Policy provides as follows:

INSURING CLAUSES

To pay on behalf of the Insured excess of Underlying Policies any claim or loss which triggers coverage under the Underlying Policies, and is not otherwise excluded by the terms, conditions or endorsements of this policy, and which is reported to Underwriters in accordance with Clause VI of this Policy.

(Ex. 4, p. 29, Clause I).

The “Underlying Policy” under this provision is the Scottsdale Policy, which affords professional liability coverage, also on a claims-made and reported basis.

30. Clause VI of the Beazley policy provides:

VI. NOTICE OF CLAIM, OR CIRCUMSTANCE THAT MIGHT LEAD TO A CLAIM

For all claims and circumstances that might lead to a claim the Insured must provide written notice in the same manner as required by the Primary Policy, and must be reported to the Underwriters in writing via the entity named in Item 5. of the Declarations. Notice to any underlying carrier is not notice to Underwriters.

(Ex. 4, pp. 30-31, Clause VI).

31. Additionally, the Beazley policy contains an Endorsement called “Amend Notice of Claim” that provides as follows:

In consideration of the premium charged for the Policy, it is hereby understood and agreed that Clause VI. NOTICE OF CLAIM, OR CIRCUMSTANCE THAT MIGHT LEAD TO A CLAIM is deleted in its entirety and replaced with the following:

All claims first made during the Policy Period and circumstances that might lead to a claim reported under the Primary Policy must be reported to Underwriters in writing via the entity named in Item 5 of the Declarations before the end of the Policy Period or any additional claims reporting period granted by the Primary Policy provided such additional claims reporting period is no greater than thirty (30) days. However, the Insured must provide immediate written notice to the Underwriters via the entity named in Item 5 of the Declarations of any claim made against the Insured where the Insured or the Insured’s defense counsel evaluates the potential liability of all claims plus costs and expenses incurred in the defense or settlement of such claims at an amount equal to or greater than fifty percent (50%) of the Underlying Policy Limits. Notice to any underlying carrier is not notice to the Underwriters.

(Ex. 4, p. 19, Form E02505 – 022011 Ed.).

32. The foregoing coverage grant and notice provisions of the Beazley Excess Policy clarify that coverage for professional liability is subject to a claims-made and reported framework.

33. The CFSIC Excess Policy follows form to the Beazley Excess Policy “unless otherwise directed by this Policy”.

34. The CFSIC Excess Policy provides that “[t]o the extent such provisions differ or conflict, the provisions of this Policy will apply” but also provides: “[h]owever, the coverage under this Policy will not be broader than that provided by any “underlying insurance.”

35. Given that the Beazley Excess Policy only provides coverage for claims-made and “suits” reported in the policy period, the CFSIC Excess Policy is correspondingly limited as a condition of the coverage grant.

36. Because the Turning Points Defendants failed to satisfy this condition when they failed to report the Underlying Suit during the Policy Period, coverage is not afforded under the CFSIC Excess Policy.

C. Administrator’s Claims Are a “Known Loss” for Which Coverage is Not Afforded

37. The Beazley Excess Policy contains an endorsement entitled “Retroactive Limitation Clause.” Clause (2) of the endorsement provides that no insurance is available for “any claim or circumstance...arising out of any circumstance or occurrence known to the Insured prior to the inception of the Policy and not disclosed to the Insurer at inception.” (Ex. 4, p. 13, Form E00118 – 10/2007 ed.).

38. The Administrator’s counsel wrote to Turning Points on November 15, 2019, requesting “copies of all records you have pertaining to [Decedent], as soon as possible.” Counsel signed the letter and enclosed a HIPAA authorization, which stated that the purpose of the use or disclosure was legal. This letter followed immediately on the heels of the arrest of an individual supervised by Turning Point Defendants during the period of suspected abuse.

39. Furthermore, Turning Points was in litigation in another case with the same law firm representing the Administrator, so Turning Points knew or reasonably should have known that litigation was highly likely to involve Turning Points and CUA 10.

40. The Administrator’s claims in the Complaint constitute an uncovered known loss for which coverage is lacking under the CFSIC Excess Policy by virtue of the “Retroactive Limitation Clause” endorsement in the Beazley Excess Policy (and to which the CFSIC Excess Policy follows form).

D. The Insured’s Misrepresentations Support Rescission

41. The November 3, 2019, death claim, as described in the Complaint, should have been, but was not, reported to CFSIC in the February 2020 renewal application, prior to the inception of the Policy, as a supplement to question 15, p.3. Instead, Turning Points indicated in the application attached as Exhibit 6 that “[t]here have been claims made in the previous five years, but these were previously reported. There are no claims about which the insured has any knowledge that have not been reported.” A true and correct copy of the Application is attached as Exhibit 6.

42. The Insureds responses on the application were knowingly false, inaccurate, misleading, made in bad faith, and were material to the risk insured under the CFSIC Excess Policy.

43. The Insureds knew or should reasonably have known that a legal request for confidential records by a prominent law firm specializing in childhood abuse cases arising out of the murder of an infant by a woman whose home was monitored by Turning Points, and whose disposition was alleged to have been volatile, would likely give rise to a claim.

44. As a consequence of the material misrepresentation of the Insureds, CFSIC failed to appreciate the potential risk of this known loss and would certainly have either refused the risk or priced the premium accordingly.

45. Following demand for the limits of CFSIC’s Excess coverage in September of 2022, on December 14, 2022, CFSIC issued Insureds a reservation of rights letter with respect to

coverage being afforded, including the right of CFSIC to seek judicial review and determination of its rights and duties under the CFSIC Excess Policy.

46. CFSIC, in that same communication, advised the Insureds of its right to rescind the CFSIC Excess Policy based on the failure to disclose the existence of the death and the potential claim on the application for renewal.

FIRST CAUSE OF ACTION

(For a Declaration that Coverage is Not Afforded Under the CFSIC Policy)

47. Plaintiffs reallege paragraphs 1 through 45 as if fully set forth herein.

48. CFSIC contends that coverage is not afforded under the CFSIC Excess Policy for several reasons, including: (a) the Insureds failed to provide “immediate” notice of the Claims which is a condition precedent to coverage that Insureds failed to satisfy; (2) the Insureds failed to provide notice of the Claims within the Policy Period which is a condition precedent to coverage that Insureds failed to satisfy; and (3) the Insureds knew about the Claims prior to the inception of the CFSIC Excess Policy and therefore the Claims constitute a “known loss” for which no coverage is afforded.

49. Upon information and belief, Defendants dispute CFSIC’s contentions and assert that coverage is afforded under the CFSIC Excess Policy for the Claims.

50. An actual controversy exists between CFSIC and Defendants regarding whether the CFSIC Excess Policy potentially affords coverage for the Claim as alleged in the Complaint.

SECOND CAUSE OF ACTION

(For a Declaration of Rescission of the CFSIC Policy)

51. Plaintiffs reallege paragraphs 1 through 49 as if fully set forth herein.

52. CFSIC contends that sufficient clear and convincing evidence exists that the Insureds were aware of their obligation to report potential claims to CFSIC's underwriters upon application for renewal.

53. CFSIC was entitled to a complete, accurate, good faith accounting of all potential claims the Insureds were aware of prior to the execution of Exhibit 6.

54. CFSIC contends that the representations made in the application regarding potential claims were (1) false and knowingly false when made; (2) made in bad faith (3) material to the risk and (4) if on being disclosed to their Excess Insurers would have caused the insurer to refuse the risk altogether or demand a higher premium.

55. CFSIC reasonably believes that the omissions in the CFSIC February 2020 renewal application were of such a magnitude that a reasonable Insured being aware of the horrific facts of the incident, and having discussed the incident internally amongst Administrative staff after receipt of a legal request for confidential records, with full knowledge that the suspected murderer had previously been under their professional supervision for suspected abuse within her household would have immediately disclosed the existence of the potential of a claim on the application and/or directly to their insurers.

56. Upon information and belief, Defendants dispute CFSIC's contentions and oppose rescission of the CFSIC policy.

57. An actual controversy exists between CFSIC and Defendants regarding whether the CFSIC Excess Policy should be deemed void ab initio and unavailable to respond to any demands for coverage for the Claim as alleged in the Complaint.

WHEREFORE, Plaintiff prays that judgment be entered in its favor and against Defendants as follows:

- A. Declaring that the Insureds had an obligation to provide notice of the potential claim prior to submitting their February 2020 renewal application for the CFSIC Excess Policy;
- B. Declaring that the representations made by the Insureds during the February renewal process were false and knowingly false when made;
- C. Declaring that the misrepresentations and omissions were made in bad faith;
- D. Declaring that the misrepresentations and omissions were material to the risk being insured;
- E. Rescinding the CFSIC Excess Policy and declaring it void ab initio; and
- F. Awarding Plaintiff such additional relief as shall be deemed appropriate in the circumstances, together with its costs and expenses.

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