

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

121-1402

<p>ACE PROPERTY AND CASUALTY INSURANCE COMPANY</p> <p>Plaintiff</p> <p>V.</p> <p>AUTORIDAD DE LOS PUERTOS DE PUERTO RICO, IVYPORT LOGISTICAL SERVICES, INC., ALFREDO FERNANDEZ-CRUZ, and MARIA DE LOS ANGELES NAVAS-PAVIA</p> <p>Defendants</p>	<p>CIVIL NO: 14-1042</p>
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COMPLAINT FOR DECLARATORY JUDGMENT

TO THE HONORABLE COURT:

COMES NOW, Plaintiff ACE Property and Casualty Insurance Company (“ACE”) through the undersigned attorney, respectfully states, alleges and prays as follows:

1. ACE Property and Casualty Insurance Company (“ACE”) brings this declaratory action against the Puerto Rico Ports Authority seeking a judgment defining the scope of the contractual duties owed by ACE, if any, under an insurance policy issued to the Puerto Rico Ports Authority (“PRPA”) as a result of a certain lawsuit filed against PRPA. This court is the first court, whether federal or local, to have jurisdiction over this contractual dispute between ACE and PRPA.

2. Ivyport Logistical Services, Inc. (“Ivyport”), Alfonso Fernandez-Cruz (“Alfonso Fernandez”) and Maria de los Angeles Navas-Pavia (“Maria Nava”) are included as parties to this case as they filed the aforementioned lawsuit against PRPA, and are therefore potentially indispensable parties to this declaratory action.

3. ACE Property and Casualty Insurance Company (“ACE”) is an insurance company organized under the laws of the Commonwealth of Pennsylvania, with its principal place of business in the Commonwealth of Pennsylvania where it is domiciled.

4. The Puerto Rico Ports Authority (“PRPA”) is a public corporation organized under the laws of Puerto Rico, and is domiciled in Puerto Rico.

5. Ivyport Logistical Services, Inc., is a corporation organized under the laws of Puerto Rico, and is domiciled in Puerto Rico.

6. Alfonso Fernandez-Cruz is a natural person of legal age, domiciled in Puerto Rico.

7. Maria de los Angeles Navas-Pavia is a natural person of legal age, domiciled in Puerto Rico.

8. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1332, inasmuch as plaintiff ACE on one hand, and defendants PRPA, Alfredo Fernandez-Cruz and Maria de los Angeles Navas-Pavia on the other, are citizens of different states, and the controversy between the parties relates to coverage for a claim in excess of the jurisdictional amount of \$75,000.00.

9. Venue is proper in this district, as ACE issued the policy to PRPA who in turn is a Puerto Rico public corporation, and the policy was delivered to PRPA in Puerto Rico.

10. Ivyport was a tenant of PRPA at the Luis Munoz Marin International Airport, and while there, offered ground handling services to various airlines. Prior to July 31, 2008, Ivyport had a long standing history of not paying rent to PRPA, and had even defaulted on a rent repayment plan. PRPA evaluated its options regarding Ivyport,

and after seeking legal advice, PRPA decided it would revoke certain access permits used by Ivyport employees in order to provide ground handling services to its clients.

11. On July 31, 2008, PRPA executed its decision and revoked the access permits of several Ivyport employees. The following morning Ivyport immediately filed for and obtained a preliminary injunction, which resulted in the access permits being restored that same day.

12. On August 6, 2008, Ivyport filed suit against PRPA in Carolina, Puerto Rico, which was assigned civil action number F DP2008-0300. An amended complaint was filed thereafter on September 6, 2011. In its lawsuit, Ivyport alleges that on or about July 7, 2008, PRPA had contacted COPA Airlines and Liat Airlines, then clients of Ivyport, telling them they should seek ground handling services elsewhere because effective July 31, 2008, Ivyport would no longer be able to service them.

13. In the aforementioned lawsuit Ivyport also claims that on July 31, 2008, PRPA in fact revoked Ivyport's access permits (although these access permits were reinstated on August 1, 2008). Ivyport also claims PRPA did not allow it to protect its equipment, and that this action on behalf of PRPA amounts to an illegal seizure of its property.

14. Ivyport claims that as a result of PRPA's actions, it lost COPA, Liat and Iberia airlines as clients, and was put out of business. Specifically, Ivyport claims it lost COPA and Liat as clients because PRPA urged these airlines to cease doing business with Ivyport, thereby interfering with Ivyport's contractual relationship with these entities. Ivyport also claims that because it was unable to service other clients who had flights coming in the evening of July 31 and the morning of August 1, 2008, it lost additional clients.

15. Ivyport claims that as a result of being shut down, it lost its business and had to cease operations. Ivyport claims it is entitled to recover from PRPA the value of its business lost, which it alleges is in excess of \$15,000,000.00.

16. Mr. Alfredo Fernández and Mrs. María Navas who are co-plaintiffs with Ivyport, claim that at the time of the incident they were shareholders and officers of Ivyport, and claim to have suffered mental anguish as a result of PRPA's actions in excess of \$1,500,000.00.

17. The specific policy in question is a general liability policy, number AAPN00980080004, issued by ACE to PRPA and effective from August 20, 2007 to August 20, 2008. A true and correct copy of this policy is attached as **Exhibit A**, and will be hereinafter referred to simply as the "policy".

18. The policy provides five coverage parts, A through E, See **Exhibit A**. These five coverage parts are as follows:

Coverage A – Bodily Injury and Property Damage Liability

Coverage B – Personal and Advertising Injury Liability

Coverage C – Medical Payments

Coverage D – Hangarkeepers Liability

Coverage E – Non-owned Aircraft Liability

Id., p. 7 (the page number refers to the page of the pdf document that comprises the policy).

19. The Insuring Agreement of Coverage A provides in part:

1. Insuring Agreement.

- a. We 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...

- b. This insurance applies to “bodily injury” and “property damage” only if:
 - (1) The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory”; and
 - (2) The “bodily injury” or “property damage” occurs during the policy period; and
 - (3) The “bodily injury” or “property damage” arises out of your “airport operations”.

Id., p. 8.

20. The policy contains the following definitions relevant to Coverage A:

- 6. “Bodily injury” means:
 - a. Bodily injury, sickness or disease sustained by any person, including death resulting from any of these at any time; or
 - b. Fright or mental anguish sustained by a person.

Id., p. 25.

- 17. “Property damage” means:
 - a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 - b. Loss of use of tangible property that is not physically injured. All such loss shall be deemed to occur at the time of the “occurrence” that caused it.

Id., p. 28.

- 14. “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

Id., p. 27.

21. The coverage afforded under Coverage A is limited in part by the following exclusions:

2. Exclusions

This insurance does not apply to:

a. Expected or Intended Injury

“Bodily injury” or “property damage” expected or intended from the standpoint of the insured. This exclusion does not apply to “bodily injury” resulting from the use of reasonable force to protect persons or property.

n. Damage to Impaired Property or Property Not Physically Injured

“Property damage” to “impaired property” or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in “your product” or “your work”; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

Id., p. 8, 11.

22. The Insuring Agreement for Coverage B in turn provides in part:

1. Insuring Agreement.

- a. We will pay those sums that you become legally obligated to pay as damages because of “personal injury” or “advertising injury” to which this insurance applies...
- b. This insurance applies to:
 - (1) “Personal injury” caused by an offense excluding advertising, publishing, broadcasting or telecasting done by or for you;
 - (2) “Advertising injury” caused by an offense committed in the course of advertising your goods, products or services;but only if:
 - (a) The offense was committed or alleged to have been committed unintentionally by you or any of your employees while engaged in their employment by you; and
 - (b) The offense was committed or alleged to have been committed in the “coverage territory” during the policy period and arises out of your “airport operations”.

Id., p. 12.

23. The policy in turn defines “Personal Injury” in part as follows:

15. “Personal Injury” means injury, other than “bodily injury”, arising out of one or more of the following offenses:
 - a. Mistaken arrest, detention or imprisonment;
 - b. Malicious prosecution;
 - c. 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 by or on behalf of its owner, landlord or lessor;
 - d. 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;
 - e. Oral or written publication of material that violates a person’s right of privacy;
 - f. Unintentional discrimination, including unintentional humiliation;
 - g. Misdirection of a passenger by an insured to the wrong aircraft, automobile or other connecting transportation; or

The offenses described in paragraph f. of this definition do not include personal injury arising out of the employment, past employment or future employment of a person by any insured.

Id., p. 27-28. (The cited policy language includes the changes to subparagraph f. that are provided for in Endorsement No. 21 of **Exhibit A**, which is at p. 64 of the exhibit).

24. Coverage B is subject to the following exclusions, among others:

2. Exclusions.

This insurance does not apply to:

a. "Personal injury" or "advertising injury":

- (1) Arising out of any oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (2) Arising out of any oral or written publication of material whose first publication took place before the beginning of the policy period;
- (3) Arising out of the willful violation of a penal statute or ordinance committed by or with the consent of the insured;
- (4) For which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement; or
- (5) Arising out of the conduct of any airmeet, contest or exhibition permitted, sponsored or participated in by any insured. This exclusion does not apply to static displays.

Id., p. 12-13.

25. There are also other exclusions listed in Section II of the policy which apply to all coverage parts. In relevant part, this Section II, titled "Common Coverage Exclusions", provides:

All Coverages included in this policy are subject to the following exclusions.

A. Noise and pollution and other perils

1. This policy does not cover claims directly or indirectly occasioned by, happening through or in consequence of:
 - (a) noise (whether audible to the human ear or not), vibration, sonic boom and any phenomena associated therewith,
 - (b) pollution and contamination of any kind whatsoever,

- (c) electrical and electromagnetic interference,
- (d) interference with the use of property;

unless caused by or resulting in a crash fire explosion or collision or a recorded in-flight emergency caused by abnormal aircraft operation.

Id., p. 17.

26. ACE seeks a declaratory judgment finding that the ACE policy issued to PRPA does not cover the damages claimed by Ivyport in its complaint. The individual bases for which coverage does not exist are listed in the counts that follow:

FIRST CLAIM

ACE has neither a duty to defend nor a duty to indemnify under Coverage A for damages claimed by Ivyport arising from PRPA revoking certain access permits, because revoking access permits is not an “occurrence” as defined in the policy.

27. Coverage A applies to certain “bodily injury” and “property damage” caused by an “occurrence”.

28. “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

29. PRPA did not revoke Ivyport’s access permits by accident. Rather, PRPA did so deliberately, after much consideration. Therefore, Coverage A does not apply to PRPA’s affirmative action of revoking Ivyport’s access permits because the actions do not constitute an “occurrence”.

SECOND CLAIM

ACE has neither a duty to defend nor a duty to indemnify under Coverage A for damages claimed by Ivyport arising from PRPA’s alleged interference with Ivyport’s contractual relationships with its clients, because PRPA’s communications with Ivyport’s clients is not an “occurrence” as defined in the policy.

30. Coverage A applies to certain “bodily injury” and “property damage” caused by an “occurrence”.

31. “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

32. PRPA’s communications with Ivyport’s clients were not by accident, but rather, were communications PRPA undertook deliberately. Therefore, Coverage A does not apply to PRPA’s communications with Ivyport’s clients because the actions do not constitute an “occurrence”.

THIRD CLAIM

ACE has neither a duty to defend nor a duty to indemnify under Coverage A for damages claimed by Ivyport because of Exclusion “a. Expected or Intended Injury.”

33. Coverage A applies to certain “bodily injury” and “property damage” caused by an “occurrence”.

34. Coverage A does not apply to:

“Bodily injury” or “property damage” expected or intended from the standpoint of the insured. This exclusion does not apply to “bodily injury” resulting from the use of reasonable force to protect persons or property.

35. PRPA’s decision to revoke Ivyport’s access permits was conscious, and the revocation of such permits was intentional and would prevent Ivyport from using its property. Assuming Ivyport’s inability to access its property constitutes “property damage”, such “property damage” was therefore intended, or alternatively, was expected or reasonably expected from the standpoint of PRPA, because PRPA’s decision was premeditated and intentional, and therefore triggers Exclusion a.

36. PRPA’S decision to communicate with Ivyport’s clients was premeditated and conscious, and such communications were intentional. Even assuming that such client’s decision to terminate Ivyport’s services constitutes “property damage”, such termination of services was premeditated and intentional from PRPA’s standpoint, and

therefore such “property damage” was therefore intended, or alternatively was expected or reasonably expected from the standpoint of PRPA and therefore triggers Exclusion a.

FOURTH CLAIM

ACE has neither a duty to defend nor a duty to indemnify under Coverage A for damages claimed by Ivyport because of Exclusion “n. Damage to Impaired Property or Property Not Physically Injured.”

37. Coverage A applies to certain “bodily injury” and “property damage” caused by an “occurrence”.

38. Coverage A does not apply to: “Property damage” to “impaired property” or property that has not been physically injured, arising out of a delay or failure by PRPA or anyone acting on its behalf to perform a contract or agreement in accordance with its terms.

39. Ivyport claims that PRPA, in revoking Ivyport’s access permits, failed to abide by its contract with Ivyport. Therefore, even assuming Ivyport’s claims were for “property damage”, PRPA’s action of revoking Ivyport’s access permits triggers Exclusion n.

FIFTH CLAIM

ACE has neither a duty to defend nor a duty to indemnify under Coverage B for damages claimed by Ivyport arising from PRPA’s alleged interference with Ivyport’s contractual relationships with its clients, because PRPA’s communications with Ivyport’s clients is not one of the offenses within the policy definition of “personal injury.”

40. Coverage B provides that ACE will pay those sums that PRPA becomes legally obligated to pay as damages because of “personal injury” or “advertising injury” to which the insurance applies. The insurance applies to “Personal injury” caused by an offense excluding advertising, publishing, broadcasting or telecasting done by or for you; and “Advertising injury” caused by an offense committed in the course of advertising your goods, products or services;

but only if:

- (a) The offense was committed or alleged to have been committed unintentionally by you or any of your employees while engaged in their employment by you; and
- (b) The offense was committed or alleged to have been committed in the “coverage territory” during the policy period and arises out of your “airport operations”.

41. “Personal Injury” means injury, other than “bodily injury”, arising out of one or more of the following offenses:

- a. Mistaken arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy or a room, dwelling or premises that a person occupies by or on behalf of its owner, landlord or lessor;
- d. 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;
- e. Oral or written publication of material that violates a person’s right of privacy;
- f. Unintentional discrimination, including unintentional humiliation;
- g. Misdirection of a passenger by an insured to the wrong aircraft, automobile or other connecting transportation; or

The offenses described in paragraph f. of this definition do not include personal injury arising out of the employment, past employment or future employment of a person by any insured.

42. Ivyport claims damages as a result of PRPA having communicated with Ivyport’s clients and having told them they needed to seek ground handling services from another provider.

43. Such communications on behalf of PRPA to Ivyport’s clients do not constitute any of the offenses listed under the definition of “personal injury.” Consequently, no coverage exists under Coverage B for damages allegedly arising out of such communications.

SIXTH CLAIM

ACE has neither a duty to defend nor a duty to indemnify under Coverage B for damages claimed by Iyport arising from PRPA revoking certain access permits, because revoking access permits is not one of the offenses within the policy definition of “personal injury.”

44. Coverage B provides ACE will pay those sums that PRPA become legally obligated to pay as damages because of “personal injury” or “advertising injury” to which this insurance applies. The insurance applies to:

- (1) “Personal injury” caused by an offense excluding advertising, publishing, broadcasting or telecasting done by or for you;
 - (2) “Advertising injury” caused by an offense committed in the course of advertising your goods, products or services;
- but only if:
- (a) The offense was committed or alleged to have been committed unintentionally by your or any of your employees while engaged in their employment by you; and
 - (b) The offense was committed or alleged to have been committed in the “coverage territory” during the policy period and arises out of your “airport operations”.

Id., p. 12.

45. “Personal Injury” means injury, other than “bodily injury”, arising out of one or more of the following offenses:

- a. Mistaken arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy or a room, dwelling or premises that a person occupies by or on behalf of its owner, landlord or lessor;
- d. 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;
- e. Oral or written publication of material that violates a person’s right of privacy;
- f. Unintentional discrimination, including unintentional humiliation;
- g. Misdirection of a passenger by an insured to the wrong aircraft, automobile or other connecting transportation; or

The offenses described in paragraph f. of this definition do not include personal injury arising out of the employment, past employment or future employment of a person by any insured.

46. Ivyport claims damages as a result of PRPA having revoked Ivyport's access permits.

47. The PRPA's action of revoking Ivyport's access permits does not constitute any of the offenses listed under the definition of "personal injury." Consequently, no coverage exists under Coverage B for damages allegedly to have been caused by PRPA in revoking Ivyport's access permits.

SEVENTH CLAIM

ACE has neither a duty to defend nor a duty to indemnify under Coverage A for damages claimed by Alfonso Fernández or Maria Navas because the cause of their alleged damages is not an "occurrence" as defined in the policy.

48. Coverage A applies to certain "bodily injury" and "property damage" caused by an "occurrence".

49. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

50. PRPA did not revoke Ivyport's access permits by accident. Rather, PRPA did so deliberately, after much consideration. Therefore, PRPA's affirmative action of revoking Ivyport's access permits is not an "occurrence."

51. Alfonso Fernández and Maria Navas claim mental anguishes as a result of PRPA's actions in revoking Ivyport's access permits, and in communicating with clients of Ivyport and telling them to seek ground handling services elsewhere.

52. PRPA's communications with Ivyport's clients were not by accident, but rather, were communications PRPA undertook deliberately. Therefore, PRPA's communications with Ivyport's clients are not an "occurrence."

53. Because PRPA's affirmative action of revoking Ivyport's access permits is not an "occurrence," and because PRPA's communications with Ivyport's clients are not an "occurrence," the damages claimed by Alfonso Fernández and María Navas on account of such actions do not trigger coverage A.

EIGHTH CLAIM

ACE has neither a duty to defend nor a duty to indemnify under Coverage A for damages claimed by Alfonso Fernández or Maria Navas because of Exclusion "a. Expected or Intended Injury."

54. Coverage A applies to certain "bodily injury" and "property damage" caused by an "occurrence".

55. The insurance does not apply to "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

56. Alfonso Fernandez and Maria Navas claim PRPA's actions in revoking Ivyport's access permits and in communicating with Ivyport's clients telling them to procure ground handling services elsewhere caused them mental anguish.

57. PRPA's decision to revoke Ivyport's access permits was conscious, and the revocation of such permits was intentional, and revoking the access permits would cause mental anguish because such mental anguish was expected or reasonably expected from the standpoint of PRPA, and therefore Exclusion a. applies to bar coverage.

58. PRPA'S decision to communicate with Ivyport's clients was premeditated, and conscious, and such communications were intentional, and that such communications would lead Ivyport's clients to terminate Ivyport's services, and that

such termination of services would cause mental anguish. Such alleged damage was therefore expected or reasonably expected from the standpoint of PRPA and therefore Exclusion a. applies to bar coverage..

NINTH CLAIM

ACE has neither a duty to defend nor a duty to indemnify under Coverage B for damages claimed by Alfonso Fernández or Maria Navas because the alleged cause of such damages is not one of the offenses within the policy definition of “personal injury.”

59. Coverage B provides that ACE will pay those sums that PRPA becomes legally obligated to pay as damages because of “personal injury” or “advertising injury” to which the insurance applies. The insurance applies to:

- (1) “Personal injury” caused by an offense excluding advertising, publishing, broadcasting or telecasting done by or for you;
 - (2) “Advertising injury” caused by an offense committed in the course of advertising your goods, products or services;
- but only if:
- (a) The offense was committed or alleged to have been committed unintentionally by your or any of your employees while engaged in their employment by you; and
 - (b) The offense was committed or alleged to have been committed in the “coverage territory” during the policy period and arises out of your “airport operations”.

Id., p. 12.

60. “Personal Injury” means injury, other than “bodily injury”, arising out of one or more of the following offenses:

- a. Mistaken arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy or a room, dwelling or premises that a person occupies by or on behalf of its owner, landlord or lessor;
- d. 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;
- e. Oral or written publication of material that violates a person’s right of privacy;

- f. Unintentional discrimination, including unintentional humiliation;
- g. Misdirection of a passenger by an insured to the wrong aircraft, automobile or other connecting transportation; or

The offenses described in paragraph f. of this definition do not include personal injury arising out of the employment, past employment or future employment of a person by any insured.

Id., p. 27-28. (The cited policy language includes the changes to subparagraph f. that are provided for in the endorsement at page 64 of **Exhibit A**).

61. Alfonso Fernández and María Navas claim mental anguish as a result of PRPA's actions in revoking Ivyport's access permits, and in communicating with clients of Ivyport and telling them to seek ground handling services elsewhere.

62. PRPA's action of revoking Ivyport's access permits does not constitute any of the offenses listed under the definition of "personal injury," and consequently no coverage exists under Coverage B for mental anguish allegedly caused to Alfonso Fernández and María Navas by PRPA in revoking Ivyport's access permits.

63. PRPA communications to Ivyport's clients and telling them to seek ground handling services elsewhere do not constitute any of the offenses listed under the definition of "personal injury." Consequently, no coverage exists under Coverage B for mental anguish allegedly caused to Alfonso Fernández and María Navas by PRPA in telling Ivyport's clients to seek ground handling services elsewhere.

TENTH CLAIM

ACE has neither a duty to defend nor a duty to indemnify under Coverage B for damages claimed by Ivyport, Alfonso Fernández, or María Navas because such the actions that allegedly caused damages were not committed unintentionally as required by the Insuring Agreement of Coverage B.

64. PRPA's decision to revoke Ivyport's access permits was conscious and premeditated, and the revocation of such permits was intentional. Even assuming that PRPA, in revoking Ivyport's access permits, committed an offense within the definition

of “personal injury”, because Coverage B only applies to offenses committed unintentionally, the revocation of Ivyport’s access permits does not trigger coverage B. Consequently, the damages claimed by Ivyport, Alfonso Fernández and María Navas as a result of PRPA having revoked Ivyport’s access permits are not covered under Coverage B.

65. PRPA’S decision to communicate with Ivyport’s clients was premeditated and conscious, and such communications were intentional. Even assuming that PRPA, in communicating with Ivyport’s clients and telling them to procure services elsewhere, committed an offense within the definition of “personal injury”, because Coverage B only applies to offenses committed unintentionally, PRPA’s communications with Ivyport’s clients do not trigger coverage B. Consequently, the damages claimed by Ivyport, Alfonso Fernández and María Navas as a result of PRPA having communicated with Ivyport’s clients are not covered under Coverage B.

ELEVENTH CLAIM

ACE has neither a duty to defend nor a duty to indemnify because Common Coverage Exclusion A.1.(d) bars coverage.

66. The policy contains a list of exclusions set forth in Section II of the policy, titled “Common Coverage Exclusions”, which apply to all coverage parts.

67. The policy does to cover claims directly or indirectly occasioned by, happening through or in consequence of interference with the use of property unless caused by or resulting in a crash fire explosion or collision or a recorded in-flight emergency caused by abnormal aircraft operation.

68. PRPA, in revoking Ivyport’s access permits, interfered with Ivyport’s use of property. Regardless of whether such interference was lawful or unlawful, plaintiffs’ complaint is undeniably a claim “directly or indirectly occasioned by, happened through

or are in consequence of” the alleged interference of Ivyport’s use of property. Therefore, plaintiffs’ complaint triggers Common Coverage Exclusion d, and therefore coverage is barred for the complaint.

TWELFTH CLAIM

ACE has neither a duty to defend nor a duty to indemnify under Coverages C, D or E.

69. As stated previously, the policy issued by ACE to PRPA also includes a Coverage C, for Medical Payments, a Coverage D, for Hangarkeepers Liability, and Coverage E, for Non-owned Aircraft Liability.

70. The damages claimed by Ivyport, Alfonso Fernández, and María Navas are not for medical payments.

71. The damages claimed by Ivyport, Alfonso Fernández, and María Navas do not arise from Hangarkeeper’s liability.

72. The damages claimed by Ivyport, Alfonso Fernández, and María Navas do not arise from Non-owned Aircraft Liability.

WHEREFORE, for the reasons stated above, ACE respectfully requests that this Honorable Court enter judgment declaring that ACE owes neither a duty to defend nor a duty to indemnify the Puerto Rico Ports Authority for the damages alleged in civil action F DP2008-0330 filed in the Carolina Superior Court.

In San Juan, Puerto Rico, this 16th day of January, 2014.

Respectfully submitted,

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