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**SUPERIOR COURT OF WASHINGTON
COUNTY OF KING**

SCRBKR2017, LLC, a Washington Limited Liability Company;

NO.

V.

COMPLAINT

SENTINEL INSURANCE COMPANY,
LTD., a foreign insurer doing business in
Washington

1. Parties

1.1 SCRBKR2017, LLC (“South Center Piroshky”) is the Plaintiff, and is a Washington Limited Liability Company in good standing and otherwise qualified to bring this lawsuit.

1.3 Sentinel Insurance Company, Ltd. (“Sentinel”) is an insurer fully licensed and admitted to conduct insurance business in the State of Washington.

2. Facts

2.1 South Center Piroshky is a well-known, loved, and successful Seattle institution, having provided patrons of the South Center mall with Piroshkies and other baked goods.

2.8 South Center Piroshky was insured under a policy of insurance issued by Defendant Sentinel.

2.9 The policy issued by Sentinel provided coverage for lost income as the result of a direct physical loss of or damage to the insured property.

2.10 The policy issued by Sentinel provided coverage for lost income caused by direct physical loss of or damage to “dependent property” – property of others with whom the insured does business, causing a loss to the insured.

2.11 The policy issued by Sentinel provided coverage for income loss due the exercise of Civil Authority.

2.12 The policy issued by Sentinel provided coverage for income loss due to a governmental suspension of its operations because of actual or suspected “food contamination.”

2.13 In or around January 2020, news began to percolate in the United States that there was a contagious virus (Covid-19) in Wuhan, China that was spreading quickly.

2.14 By February 2020, there were significant public concerns that Covid-19 would gain a foothold in the United States and other countries. The fear of the virus began to affect behavior in the tourism industry and amongst locals, reducing traffic and purchases at food hotspots in the Seattle area.

The nature of Covid-19

2.15 Coronavirus (Covid-19) is a highly contagious virus that has rapidly spread and continues to spread across the United States. It is a physical substance, human pathogen and can be present outside the human body in viral fluid particles. According to the CDC, everyone is at risk of getting Covid-19.

2.16 Covid-19 is spread by a number of methods, including “community spread,” meaning that some people have been infected and it is not known how or where they became exposed. Public

1 health authorities, including the CDC, have reported significant ongoing community spread of the
2 virus including instances of community spread in all 50 states.

3 2.17 The CDC has reported that a person can be become infected with Covid-19 by touching a
4 surface or object (like a table, floor, wall, furniture, desk, countertop, touch screen or chair) that
5 has the virus on it, and then touching their own mouth, nose or eyes. Covid-19 can and does live
6 on and/or remains capable of being transmitted and active on inert physical surfaces.

7
8 2.18 More specifically, Covid-19 infections are spread through droplets of different sizes which
9 can be deposited on surfaces or objects.

10 2.19 In addition, The New England Journal of Medicine reported finding that experimentally-
11 produced aerosols containing the virus remained infectious in tissue-culture assays, with only a
12 slight reduction in infectivity during a 3-hour period of observations. An April 2020 study
13 published in the journal Emerging Infectious Diseases found a wide distribution of Covid-19 on
14 surfaces and in the air about 13 feet from patients in two hospital wards. This means there has been
15 a finding of Covid-19 in the air.

16 2.20 Covid-19 has been transmitted by way of human contact with surfaces and items of
17 physical property located at premises in Washington.

18 2.21 Covid-19 has been transmitted by human to human contact and interaction with premises
19 in Washington.

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21 2.22 Covid-19 has been transmitted by way of human contact with airborne Covid-19 particles
22 emitted into the air at premises in Washington.

23 2.23 The presence of any Covid-19 particles renders items of physical property unsafe and the
24 premises unsafe.

1 2.24 The presence of any Covid-19 particles on physical property impairs its value, usefulness
2 and/or normal function.

3 2.25 The presence of any Covid-19 particles causes direct physical harm, direct physical damage
4 and direct physical loss to property.

5 2.26 The presence of people infected with or carrying Covid-19 particles renders physical
6 property in their vicinity unsafe and unusable, resulting in direct physical loss to that property.

7 2.27 The presence of people infected with or carrying Covid-19 particles at premises renders
8 the premises, including property located at that premises unsafe, resulting in direct physical loss
9 to the premises and property.
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11 2.28 Plaintiff's premises more likely than not have been infected with Covid-19 and it has
12 suffered direct physical loss of and damage to its property. The incubation period for Covid-19 is
13 at least 14 days. Current evidence shows that the first death from Covid-19 occurred as early as
14 February 6, 2020—weeks earlier than previously reported, suggesting that the virus has been
15 circulated in the United States far longer than previously assumed. It is more likely than not that
16 customers, employees and/or other visitors to the insured property over the last several months
17 were infected with Covid-19 and thereby infected the insured property with Covid-19.

18 2.29 To reduce the spread of the disease, the CDC has recommended that businesses clean and
19 disinfect all surfaces, prioritizing the most frequently touched surfaces.
20

21 2.30 Covid-19 has been declared a pandemic by the World Health Organization.

22 2.31 The Covid-19 pandemic is a public health crisis that has profoundly impacted American
23 society, including the public's ability to patronize hair salons, barber shops, restaurants, bars and
24 other establishments.

1 2.32 The presence of Covid-19 has caused civil authorities throughout the country to issue
2 orders requiring the suspension of business at a wide range of establishments, including civil
3 authorities with jurisdiction over Plaintiff's businesses (the "Closure Orders").

4 2.33 Because of the widespread presence of Covid-19 in the community, in combination with
5 the fact that its presence cannot be detected in real-time, Plaintiff has been forced to treat all of it
6 property, patrons and employees as though they harbor the virus. This compulsion is the result of
7 both Closure Orders and the need to protect health and insured property from the virus.
8

9 2.34 From the early days of the Covid-19 pandemic, it was general public knowledge that the
10 Covid-19 virus could be acquired by coming into contact with surfaces and airspaces in property
11 of both private and public accommodation. Some such property is owned, leased or operated by
12 others upon whom Plaintiff is dependent to accept Plaintiff's goods and attract customers to its
13 business premises. It is more likely than not that Covid-19 virus was actually present at some such
14 property. But regardless of whether the Covid-19 virus was actually present, the owners, lessees,
15 and operators of such property were compelled by governmental orders and the duty of reasonable
16 care to act as though the virus was actually present.
17

18 The Washington Closure Orders

19 2.35 On February 29, Governor Jay Inslee declared a state of emergency after the first US death
20 attributable to Covid-19 occurred in a man in his 50s with an underlying chronic health condition
21 who had been admitted to Evergreen Health Medical Center after complaining of severe breathing
22 problems.

23 2.36 Researchers at the Fred Hutchinson Cancer Research Center and the University of
24 Washington analyzed the genomes of the first reported case in Snohomish County from January
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1 20 and a more recent case on February 28, and determined that the virus strain was related. Their
2 findings indicate that the virus may have been spreading through the community for close to six
3 weeks.

4 2.37 Seattle mayor Jenny Durkan declared a civil emergency on March 3.

5 2.38 On March 9, Governor Inslee announced new rules—including mandatory screening for
6 visitors and staff—for nursing homes to slow the spread of the virus. The state was also considering
7 mandatory measures of social distancing to prevent spread.
8

9 2.39 On March 11, Governor Inslee invoked emergency powers and banned “social, spiritual,
10 and recreational gatherings” of over 250 people in King, Snohomish and Pierce Counties
11 (including the core of the Seattle metropolitan area) for at least the month of March. The order
12 included provisions for its enforcement by the Washington Military Department.

13 2.40 On March 12, Governor Inslee announced closures for all public and private K-12 schools
14 in King, Snohomish, and Pierce Counties beginning from March 17 through at least April 24.
15 Later, on March 13, Inslee announced K-12 closures until at least April 24 throughout the state.

16 2.41 Local transit agencies in the Seattle area, including King County Metro and Sound Transit,
17 announced more frequent deep cleanings of their vehicles and facilities. Within the first week of
18 widespread work-from-home policies from local employers, Sound Transit ridership dropped 25
19 percent and Metro reported a 13 percent decrease compared to March 2019.
20

21 2.42 On March 15, Governor Inslee announced the closing of all sit-down restaurants statewide,
22 noting that “very strong measures are necessary to slow the spread of the disease”. Restaurants
23 were still allowed to offer takeout and drive through options. The governor also announced that he
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1 would issue an emergency proclamation ordering all entertainment and recreation facilities to
2 temporarily close. The same order banned gatherings of groups of 50 or more statewide.

3 2.43 On March 16, 2020, Governor Inslee issued a Proclamation, in part, “prohibit[ing] any
4 number of people from gathering in any public venue in which people congregate for purposes of
5 public entertainment, recreation, food and beverage service, theater, bowling, fitness and other
6 similar activities, to include all public venues in which the serving, provision, or consumption of
7 prepared food or beverages occurs at a table, bar, or for consumption within.”

8
9 2.44 The Proclamation permitted restaurants only to provide food through take-out and delivery
10 services. King County required heightened food preparation standards for any restaurant willing
11 and able to provide take-out and delivery service.

12 2.45 On April 2, Governor Inslee announced that the stay at home order would be extended
13 through at least May 4. Although some restrictions have been lifted, many have not.

14 **The Impact of Covid-19 and the Closure Orders**

15 2.46 Loss of a right to use of property that has not been physically altered constitutes “physical
16 loss or damage” for purposes of first-party property insurance.

17 2.47 As the drafter of the policies, if Sentinel had wished to exclude from coverage as “physical
18 loss or damage” loss of use of property that has not been physically altered or deformed, it could
19 have used explicit language stating such a definition, but it did not do so.

20
21 2.48 The presence of Covid-19 caused direct physical loss of or damage to the covered property
22 or “premises” under the Plaintiff’s policy by denying use of and damaging the covered property,
23 and by causing a necessary suspension of operations during a period of restoration.

1 2.49 The prevalence of Covid-19 in the environment, and the inability to test for it in real-time,
2 required Plaintiff to treat its insured property as though the virus were actually present on the
3 surfaces and in the airspace. Property that must be treated as physically damaged, in order to
4 comply with Closure Orders and the legally required duty of care to others with respect to
5 spreading of a pandemic, is “physically damaged” for purposes of the policies issued to Plaintiff.

6 2.50 The Closure Orders prohibited access to and use of Plaintiff’s Covered Property, and the
7 area immediately surrounding damaged property, in response to dangerous physical conditions
8 resulting from the damage or continuation of the Covered Cause of Loss that caused the damage.
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10 2.51 The presence of Covid-19 and the Closure Orders caused a direct loss to Plaintiff’s
11 dependent property, which resulted in a loss of Business Income sustained.

12 2.52 The presence of Covid-19 and the Closure Orders caused a direct loss to locations near to
13 Plaintiff’s premises, which prevented access to Plaintiff’s premises and caused a loss of Business
14 Income sustained and necessary Extra Expense incurred.

15 2.53 The State of Washington and its political subdivisions have issued and continue to issue
16 authoritative orders governing Washingtonians and Washington businesses, including the
17 Plaintiffs’ businesses, in response to Covid-19 and the Pandemic, the effect of which has required
18 and continues to require Plaintiff to cease and/or significantly reduce operations at, and that have
19 prohibited, and continue to prohibit access to, the premises described in their policies.
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21 2.54 State and local governmental authorities and public health officials around the United
22 States acknowledge that Covid-19 and the Pandemic cause direct physical loss and damage to
23 property. For example: (a) the State of Washington issued a stay at home Proclamation stating the
24 “Covid-19 pandemic and its progression...remains a public disaster affecting life, health [and]
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1 property.” (b) The State of Colorado issued a Public Health Order indicating that “Covid-
2 19...physically contributes to property loss, contamination and damage...” (c) The City of New
3 York issued an Emergency Executive Order in response to Covid-19 and the Pandemic, in part
4 “because the virus physically is causing property loss and damage.” (d) Broward County, Florida
5 issued an Emergency Order acknowledging that Covid-19 “is physically causing property
6 damage.” (e) The State of Indiana issued an Executive Order recognizing that Covid-19 has the
7 “propensity to physically impact surfaces and personal property.” (f) the City of New Orleans
8 issued an order stating “there is reason to believe that Covid-19 may spread amongst the population
9 by various means of exposure, including the propensity to attach to surfaces for a prolonged period
10 of time, thereby spreading from surface to person and causing property loss and damage in certain
11 circumstances.” (g) the State of New Mexico issued a Public Health Order acknowledging the
12 “threat” Covid-19 “poses” to “property.” (h) North Carolina issued a statewide Executive Order
13 in response to the Pandemic not only “to assure adequate protection for lives” but also to “assure
14 adequate protection of...property.” (i) The City of Los Angeles issued an Order in response to
15 Covid-19 “because, among other reasons, the Covid-19 virus can spread easily from person to
16 person and it is physically causing property loss or damage due to its tendency to attach to surfaces
17 for prolonged periods of time; and (j) The City of Kansas City, Missouri issued a Proclamation in
18 response to Covid-19 “to protect life and property.”
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21 2.55 As a result of the presence of Covid-19 and the Closure Orders, Plaintiff lost Business
22 Income and incurred Extra Expense.
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1 2.56 A combination of Closure Orders and the community response to living with Covid-19
2 running through homes, businesses, and public places caused a precipitous decline in the income
3 of South Center Piroshky.

4 2.57 On May 14, 2020, the Plaintiff gave notice of a claim related to loss of income because of
5 the Proclamation and community response to the Covid-19 virus.

6 2.58 By letter of May 28, 2020, Sentinel denied these claims.
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8 **3. First Cause of Action – Breach of Contract**

9 3.1 Plaintiff incorporates the allegations contained in the remainder of Complaint by reference.

10 3.2 The policy issued by Sentinel is an enforceable contract.

11 3.3 The policy issued by Sentinel obligates Sentinel to pay some or all of the lost income
12 suffered by the Plaintiff as described above.

13 3.4 Sentinel has refused to pay any amount for the claim submitted by the Plaintiff.

14 3.5 Such refusal is a breach of the insurance contract issued by Sentinel.

15 3.6 Plaintiff has been injured by Sentinel's breach in an amount to be proven at trial
16

17 **4. Second Cause of Action – Bad Faith.**

18 4.1 Plaintiff incorporates the allegations contained in the remainder of Complaint by reference.

19 4.2 Sentinel had a duty to handle Plaintiffs' claims in good faith, and to refrain from denying
20 claims unreasonably, without foundation, or frivolously.

21 4.3 Sentinel denied Plaintiffs claims without conducting a reasonable investigation of the
22 factual and legal bases for those claims.

23 4.4 Accordingly, Sentinel breached its duty of good faith to Plaintiffs.
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1 4.5 Sentinel breached its duty of good faith by violating the WAC provision as detailed in the
2 following cause of action.

3 4.6 Had Sentinel conducted a reasonable factual and legal investigation of Plaintiff's claims,
4 Sentinel would have concluded that there was coverage for them under the policy; the
5 unreasonable, unfounded or frivolous denial harmed Plaintiff.

6 4.7 Because Sentinel failed conducted a reasonable factual and legal investigation of Plaintiff's
7 claims, Plaintiff was forced to conduct that investigation on its own, at its own expense; the
8 unreasonable, unfounded or frivolous denial harmed Plaintiff by forcing it to incur this expense.
9

10 **5. Third Cause of Action – Violation of the WAC**

11 5.1 Plaintiff incorporates the allegations contained in the remainder of Complaint by reference.

12 5.2 Sentinel had a duty to comply with the Washington Administrative Code, particularly
13 WAC 284-30 *et seq*, in handling Plaintiff's claims.

14 5.3 Sentinel violated WAC 284-30-330(1) by misrepresenting pertinent facts or insurance
15 policy provisions in its coverage letters to Plaintiff.

16 5.4 Sentinel violated WAC 284-30-330(4) by refusing to pay claims without conducting a
17 reasonable investigation into the facts and the law governing Plaintiff's claims.

18 5.5 Sentinel violated WAC 284-30-330(13) by failing to promptly provide a reasonable
19 explanation of the basis in the insurance policy in relation to the facts or applicable law for denial
20 of Plaintiff's claims.

21 5.6 Sentinel violated WAC 284-30-350(1) by failing to fully disclose to Plaintiff all pertinent
22 benefits, coverages or other provisions of an insurance policy or insurance contract under which a
23 claim is presented.
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1 5.7 These violations harmed Plaintiff in an amount to be proven at trial.

2 5.8 In addition to being actionable under the Consumer Protection Act and the Insurance Fair
3 Conduct Act, these violations also represent per se bad faith.

4 **6. Fourth Cause of Action – Violation of the IFCA – RCW 48.30.015**

5 6.1 Plaintiff incorporates the allegations contained in the remainder of Complaint by reference.

6 6.2 Pursuant to RCW 48.30.015, the Plaintiff is a “first party claimant.”

7 6.3 Sentinel unreasonably denied Plaintiff’s claim for coverage and / or benefits.

8 6.4 This unreasonable denial was a violation of RCW 48.30.015.

9 6.5 Sentinel also violated the WAC in at least the ways described in the preceding cause of
10 action, which is a consideration under RCW 48.30.015.

11 6.6 Plaintiff complied with the pre-suit notice requirements of RCW 48.30.015 and is
12 otherwise entitled to bring this cause of action.

13 6.7 Plaintiff is entitled to reasonable attorney fees in this action pursuant to RCW 48.30.015.

14 6.8 Plaintiff suffered actual damages flowing from Sentinel’s unreasonable denial in an amount
15 to be proven at trial.

16 6.9 Plaintiff is entitled to treble damages under RCW 48.30.015.

17 **7. Fifth Cause of Action – Violation of the Consumer Protection Act – RCW 19.86**

18 7.1 Plaintiff incorporates the allegations contained in the remainder of Complaint by reference.

19 7.2 In violation of RCW 19.86, Sentinel committed unfair or deceptive acts and practices by
20 engaging in the conduct elsewhere described in this Complaint, including failure to act in good
21 faith and violating the WAC as described.

22 7.3 The acts described in paragraph 7.2 took place in trade or commerce.

1 7.4 The acts described in paragraph 7.2 impact the public interest *per se*.

2 7.5 The acts described in paragraph 7.2 proximately caused injury to Plaintiffs' business or
3 property.

4 7.6 Plaintiff is entitled to actual and treble damages under RCW 19.86.

5 7.7 Plaintiff is entitled to its reasonable attorney fees under RCW 19.86.
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7 **9. Prayer for Relief**

8 Having stated the preceding causes of action, Plaintiff respectfully requests the Court grant
9 it the following relief:

10 A. A money judgment against Sentinel Insurance Company, Ltd. in an amount to be
11 proven;

12 B. Treble damages under RCW 48.30.015;

13 C. Treble damages under RCW 19.86;

14 D. An award of reasonable attorney fees and costs under RCW 19.86, RCW 48.30.015,
15 *Olympic Steamship*, and the equitable basis of failure to act in good faith;

16 E. Pre- and post-judgment interest as allowed by law; and

17 F. Such other and further relief as to the Court may seem just and equitable.
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1 DATED THIS 8th day of September 2020.

2 /s Brent W. Beecher

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