

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

JAE Y. HONG, PLLC, and PUYALLUP ORAL
AND MAXILLOFACIAL SURGERY, LLC.
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

TRANSPORTATION INSURANCE
COMPANY,

Defendant.

COMPLAINT—CLASS ACTION

JURY DEMAND

I. INTRODUCTION

Plaintiffs, JAE Y. HONG, PLLC, AND PUYALLUP ORAL AND MAXILLOFACIAL SURGERY, LLC, on behalf of all other similarly situated members of the defined national class and Washington State subclasses (collectively, the “Class Members”), by and through the undersigned attorneys, brings this class action against Defendant Transportation Insurance Company (“Transportation” or “Defendant”) and allege as follows based on personal knowledge and information and belief:

II. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to the Class Action Fairness

COMPLAINT—CLASS ACTION - 1

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1 Act of 2005, 28 U.S.C. § 1332(d), because at least one Class member is of diverse citizenship
2 from Defendant, there are 100 or more Class members nationwide, and the aggregate amount in
3 controversy exceeds \$5,000,000. The Court has supplemental jurisdiction over Plaintiffs' state
4 law claims under 28 U.S.C. § 1367.

5
6 2. This Court has personal jurisdiction over Defendant because Defendant is
7 registered to do business in Washington, has sufficient minimum contacts in Washington, and
8 otherwise intentionally avails itself of the markets within Washington through its business
9 activities, such that the exercise of jurisdiction by this Court is proper. Moreover, the claims of
10 Plaintiffs and all of the Washington subclass members in this case arise out of and directly relate
11 to Defendant's contacts with Washington.

12
13 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(3) because the
14 Court has personal jurisdiction over Defendant, a substantial portion of the alleged wrongdoing
15 occurred in this District and the state of Washington, and Defendant has sufficient contacts with
16 this District and the state of Washington.

17 4. Venue is proper in the Western District of Washington pursuant to 28 U.S.C. §
18 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims at issue
19 in this Complaint arose in this District. Plaintiffs' business is located in Puyallup, Pierce County.
20 This action is therefore appropriately filed in the Tacoma Division because a substantial portion
21 of the events giving rise to this lawsuit arose in Pierce County.
22

23 III. PARTIES

24 5. Plaintiffs, Jae Y. Hong, PLLC, and Puyallup Oral and Maxillofacial Surgery,
25 LLC, own and operate an oral and maxillofacial surgical dental business located at 4202 10th
26 Street SE, Puyallup, Washington 98374.

1 6. Defendant Transportation Insurance Company is an insurance carrier duly
2 organized and existing under the laws the State of Illinois, with a principal place of business
3 located at 151 N. Franklin, Chicago, Illinois 60606.

4 7. Defendant Transportation is authorized to write, sell, and issue business insurance
5 policies in all 50 states. Defendant conducts business within Washington and these states by
6 selling and issuing business insurance policies to policyholders, including Plaintiffs.
7

8 IV. NATURE OF THE CASE

9 8. This lawsuit is filed to ensure that Plaintiffs and other similarly-situated
10 policyholders receive the insurance benefits to which they are entitled and for which they paid.

11 9. Defendant Transportation issued one or more insurance policies to Plaintiffs,
12 including Commercial Property Coverage, with a Businessowners Special Property Coverage
13 Form and related endorsements, insuring Plaintiffs' property and business practice and other
14 coverages, with effective dates of December 31, 2019 to December 31, 2020.
15

16 10. Plaintiffs' business property includes property owned and/or leased by Plaintiffs
17 and used for general business purposes for the specific purpose of oral and maxillofacial surgical
18 services and other related business activities.

19 11. Defendant Transportation promises to pay Plaintiffs for "direct physical loss of or
20 damage to" to covered property.
21

22 12. The Policy includes coverage for risks of both damage to and loss of covered
23 property.

24 13. Defendant Transportation's insurance policy issued to Plaintiffs includes Business
25 Income Coverage, Extra Expense Coverage, Extended Business Income Coverage and Civil
26 Authority Coverage.

1 14. Plaintiffs paid all premiums for the coverage when due.

2 15. On or about January 2020, the United States of America saw its first cases of
3 persons infected by COVID-19, which has been designated a worldwide pandemic.

4 16. In light of this pandemic, on February 29, 2020, Washington Governor Jay Inslee
5 issued Proclamation 20-5, declaring a State of Emergency for all counties in the state of
6 Washington as the result of COVID-19.

7 17. Thereafter, Governor Inslee issued a series of certain proclamations and orders
8 affecting many persons and businesses in Washington, whether infected with COVID-19 or not,
9 requiring certain public health precautions.

10 18. On March 19, 2020, Governor Inslee issued Proclamation 20-24, “Restrictions on
11 Non-Urgent Medical Procedures.” The proclamation provides, in part:
12

13 WHEREAS, the health care personal protective equipment supply chain in
14 Washington State has been severely disrupted by the significant increased use of
15 such equipment worldwide, such that there are now critical shortages of this
16 equipment for health care workers. To curtail the spread of the COVID-19
17 pandemic in Washington State and to protect our health care workers as they
18 provide health care services, it is necessary to immediately prohibit all hospitals,
19 ambulatory surgery centers, and dental, orthodontic, and endodontic offices in
Washington State from providing health care services, procedures and surgeries
that require personal protective equipment, which if delayed, are not anticipated
to cause harm to the patient within the next three months[.]

20 19. By order of Governor Inslee, oral and maxillofacial surgical businesses, including
21 Plaintiffs’, were prohibited from providing services but for urgent and emergency procedures.

22 20. No COVID-19 virus has been detected on Plaintiffs’ business premises.

23 21. Plaintiffs’ property sustained direct physical loss and/or damage related to
24 COVID-19 and/or the proclamations and orders.
25
26

22. Plaintiffs' property will continue to sustain direct physical loss or damage covered by the Transportation policy or policies, including but not limited to business interruption, extra expense, interruption by civil authority, and other expenses.

23. Plaintiffs' property cannot be used for its intended purposes.

24. As a result of the above, Plaintiffs have experienced and will experience loss covered by the Transportation policy or policies.

25. After Plaintiffs' business was shut down in March 2020, Plaintiffs sought coverage for their loss. By letter dated April 20, 2020, Transportation denied coverage for the loss.

26. Upon information and belief, Transportation has denied or will deny all similar claims for coverage.

V. CLASS ACTION ALLEGATIONS

27. This matter is brought by Plaintiffs on behalf of itself and those similarly situated, under Federal Rules of Civil Procedure 23(b)(1), 23(b)(2), and 23(b)(3).

28. The Classes that Plaintiffs seeks to represent are defined at this time as:

A. ***Business Income Breach of Contract Class:*** All persons and entities in the United States issued a Transportation policy with Business Income Coverage who suffered a suspension of their business at the covered premises related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities and whose Business Income claim has been denied by Transportation.

B. ***Business Income Breach of Contract Washington Subclass:*** All persons and entities in the State of Washington issued a Transportation policy with Business Income Coverage who suffered a suspension of their business at the covered premises

1 related to COVID-19 and/or orders issued by Governor Inslee, and/or other civil
2 authorities and whose Business Income claim has been denied by Transportation.

3 C. ***Business Income Declaratory Relief Class:*** All persons and entities in the
4 United States issued a Transportation policy with Business Income Coverage who
5 suffered a suspension of their business at the covered premises related to COVID-19
6 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities.
7

8 D. ***Business Income Declaratory Relief Washington Subclass:*** All persons
9 and entities in the State of Washington issued a Transportation policy with Business
10 Income Coverage who suffered a suspension of their business at the covered premises
11 related to COVID-19 and/or orders issued by Governor Inslee, and/or other civil
12 authorities.
13

14 E. ***Extended Business Income Breach of Contract Class:*** All persons and
15 entities in the United States issued a Transportation policy with Extended Business
16 Income Coverage who suffered a suspension of their business at the covered premises
17 related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or
18 other civil authorities and whose Extended Business Income claim has been denied by
19 Transportation.
20

21 F. ***Extended Business Income Breach of Contract Washington Subclass:***
22 All persons and entities in the State of Washington issued a Transportation policy with
23 Extended Business Income Coverage who suffered a suspension of their business at the
24 covered premises related to COVID-19 and/or orders issued by Governor Inslee, and/or
25 other civil authorities and whose Extended Business Income claim has been denied by
26 Transportation.

1 G. ***Extended Business Income Declaratory Relief Class:*** All persons and
2 entities in the United States issued a Transportation policy with Extended Business
3 Income Coverage who suffered a suspension of their business at the covered premises
4 related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or
5 other civil authorities.
6

7 H. ***Extended Business Income Declaratory Relief Washington Subclass:*** All
8 persons and entities in the State of Washington issued a Transportation policy with
9 Extended Business Income coverage who suffered a suspension of their business at the
10 covered premises related to COVID-19 and/or orders issued by Governor Inslee, and/or
11 other civil authorities.
12

13 I. ***Extra Expense Breach of Contract Class:*** All persons and entities in the
14 United States issued a Transportation policy with Extra Expense Coverage who sought to
15 minimize losses from the suspension of their business at the covered premises in
16 connection with COVID-19 and/or orders issued by Governor Inslee, other Governors,
17 and/or other civil authorities and whose Extra Expense claim has been denied by
18 Transportation.
19

20 J. ***Extra Expense Breach of Contract Washington Subclass:*** All persons
21 and entities in the State of Washington issued a Transportation policy with Extra Expense
22 Coverage who sought to minimize losses from the suspension of their business at the
23 covered premises in connection with COVID-19 and/or orders issued by Governor Inslee,
24 and/or other civil authorities and whose Extra Expense claim has been denied by
25 Transportation.
26

 K. ***Extra Expense Declaratory Relief Class:*** All persons and entities in the

1 United States issued a Transportation policy with Extra Expense Coverage who sought to
2 minimize losses from the suspension of their business at the covered premises in
3 connection with COVID-19 and/or orders issued by Governor Inslee, other Governors,
4 and/or other civil authorities.

5 L. ***Extra Expense Declaratory Relief Washington Subclass:*** All persons and
6 entities in the State of Washington issued a Transportation policy with Extra Expense
7 Coverage who sought to minimize losses from the suspension of their business at the
8 covered premises in connection with COVID-19 and/or orders issued by Governor Inslee,
9 and/or other civil authorities.

10 M. ***Civil Authority Breach of Contract Class:*** All persons and entities in the
11 United States issued a Transportation policy with Civil Authority Coverage who suffered
12 a suspension of their practice and/or extra expense at the covered premises related to
13 COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil
14 authorities and whose Civil Authority claim has been denied by Transportation.

15 N. ***Civil Authority Breach of Contract Washington Subclass:*** All persons
16 and entities in the State of Washington issued a Transportation policy with Civil
17 Authority coverage who suffered a suspension of their business and/or extra expense at
18 the covered premises related to COVID-19 and/or orders issued by Governor Inslee,
19 and/or other civil authorities and whose Civil Authority claim has been denied by
20 Transportation.

21 O. ***Civil Authority Declaratory Relief Class:*** All persons and entities in the
22 United States issued a Transportation policy with Civil Authority Coverage who suffered
23 a suspension of their practice at the covered premises related to COVID-19 and/or orders
24
25
26

issued by Governor Inslee, other Governors, and/or other civil authorities.

P. ***Civil Authority Declaratory Relief Washington Subclass:*** All persons and entities in the State of Washington issued a Transportation policy with Civil Authority Coverage who suffered a suspension of their business at the covered premises related to COVID-19 and/or orders issued by Governor Inslee, and/or other civil authorities.

29. Excluded from the Classes are Defendant's officers, directors, and employees; the judicial officers and associated court staff assigned to this case; and the immediate family members of such officers and staff. Plaintiffs reserves the right to amend the above-described Class definitions based on information obtained in discovery including Defendant's internal records presently unavailable to Plaintiffs.

30. This action may properly be maintained on behalf of each proposed Class under the criteria of Rule 23 of the Federal Rules of Civil Procedure.

31. **Numerosity:** The members of the Class are so numerous that joinder of all members would be impractical. Plaintiffs are informed and believes that the proposed Class contains hundreds of members. The precise number of class members can be ascertained through discovery, which will include Defendant's records of policyholders.

32. **Commonality and Predominance:** Common questions of law and fact predominate over any questions affecting only individual members of the Class. Common questions include, but are not limited to, the following:

A. Whether the class members suffered covered losses based on common policies issued to members of the Class;

B. Whether Transportation acted in a manner common to the class and wrongfully denied claims for coverage relating to COVID-19 and/or orders issued by

1 Governor Inslee, other Governors, and/or other civil authorities;

2 C. Whether Business Income Coverage in Transportation's policies of
3 insurance applies to a suspension of practice relating to COVID-19 and/or orders issued
4 by Governor Inslee, other Governors, and/or other civil authorities;

5 D. Whether Extended Business Income Coverage in Transportation's policies
6 of insurance applies to a suspension of practice relating to COVID-19 and/or orders
7 issued by Governor Inslee, other Governors, and/or other civil authorities;

8 E. Whether Extra Expense Coverage in Transportation's policies of insurance
9 applies to efforts to minimize a loss at the covered premises relating to COVID-19 and/or
10 orders issued by Governor Inslee, other Governors, and/or other civil authorities;

11 F. Whether Civil Authority Coverage in Transportation's policies of
12 insurance applies to a suspension of practice relating to COVID-19 and/or orders issued
13 by Governor Inslee, other Governors, and/or civil authorities;

14 G. Whether Transportation has breached its contracts of insurance through a
15 blanket denial of all claims based on business interruption, income loss or closures
16 related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or
17 other civil authorities;

18 H. Whether, because of Defendant's conduct, Plaintiffs and the Class
19 Members have suffered damages; and if so, the appropriate amount thereof; and

20 I. Whether, because of Defendant's conduct, Plaintiffs and the Class
21 Members are entitled to equitable and declaratory relief, and if so, the nature of such
22 relief.

23 33. **Typicality:** Plaintiffs' claims are typical of the claims of the members of the
24
25
26

1 classes. Plaintiffs and all the members of the classes have been injured by the same wrongful
 2 practices of Defendant. Plaintiffs' claims arise from the same practices and course of conduct
 3 that give rise to the claims of the members of the Class and are based on the same legal theories.

4 34. **Adequacy:** Plaintiffs will fully and adequately assert and protect the interests of
 5 the classes and has retained class counsel who are experienced and qualified in prosecuting class
 6 actions. Neither Plaintiffs nor its attorneys have any interests contrary to or in conflict with the
 7 Class.
 8

9 35. **Federal Rule of Civil Procedure 23(b)(1), the Risk of Inconsistent or Varying**
 10 **Adjudications and Impairment to Other Class Members' Interests:** Plaintiffs seeks
 11 adjudication as to the interpretation, and resultant scope, of Defendant's policies, which are
 12 common to all Class Members. The prosecution of separate actions by individual members of the
 13 classes would risk inconsistent or varying interpretations of those policy terms and create
 14 inconsistent standards of conduct for Defendant.
 15

16 36. **Federal Rule of Civil Procedure 23(b)(2), Declaratory and Injunctive Relief:**
 17 Defendant acted or refused to act on grounds generally applicable to Plaintiffs and other
 18 members of the proposed classes making injunctive relief and declaratory relief appropriate on a
 19 classwide basis.
 20

21 37. **Federal Rule of Civil Procedure 23(b)(3), Superiority:** A class action is
 22 superior to all other available methods of the fair and efficient adjudication of this lawsuit. While
 23 the aggregate damages sustained by the classes are likely to be in the millions of dollars, the
 24 individual damages incurred by each class member may be too small to warrant the expense of
 25 individual suits. Individual litigation creates a risk of inconsistent and/or contradictory decisions
 26 and the court system would be unduly burdened by individual litigation of such cases. A class

1 action would result in a unified adjudication, with the benefits of economies of scale and
2 supervision by a single court.

3 VI. CAUSES OF ACTION

4 Count One—Declaratory Judgment

5 *(Brought on behalf of the Business Income Declaratory Relief Class, Business Income*
6 *Declaratory Relief Washington Subclass, Extended Business Income Declaratory Relief Class,*
7 *Extended Business Income Declaratory Relief Washington Subclass, Extra Expense*
8 *Declaratory Relief Class, Extra Expense Declaratory Relief Washington Subclass, Civil*
9 *Authority Declaratory Relief Class, and Civil Authority Declaratory Relief Washington*
10 *Subclass)*

11 38. Previous paragraphs alleged are incorporated herein.

12 39. This is a cause of action for declaratory judgment pursuant to the Declaratory
13 Judgment Act, codified at 28 U.S.C. § 2201.

14 40. Plaintiffs bring this cause of action on behalf of the Business Income Declaratory
15 Relief Class, Business Income Declaratory Relief Washington Subclass, Extended Business
16 Income Declaratory Relief Class, Extended Business Income Declaratory Relief Washington
17 Subclass, Extra Expense Declaratory Relief Class, Extra Expense Declaratory Relief Washington
18 Subclass, Civil Authority Declaratory Relief Class, and Civil Authority Declaratory Relief
19 Washington Subclass.

20 41. Plaintiffs seek a declaratory judgment declaring that Plaintiffs and Class
21 Members' losses and expenses resulting from the interruption of their business are covered by
22 the Policy.

23 42. Plaintiffs seek a declaratory judgment declaring that Transportation is responsible
24 for timely and fully paying all such claims.

25 Count Two—Breach of Contract

(Brought on behalf of the Business Income Breach of Contract Class, Business Income Breach of Contract Washington Subclass, Extended Business Income Breach of Contract Class, Extended Business Income Breach of Contract Washington Subclass, Extra Expense Breach of Contract Class, Extra Expense Breach of Contract Washington Subclass, Civil Authority Breach of Contract Class, and Civil Authority Breach of Contract Washington Subclass)

43. Previous paragraphs alleged are incorporated herein.

44. Plaintiffs bring this cause of action on behalf of the Business Income Breach of Contract Class, Business Income Breach of Contract Washington Subclass, Extended Business Income Breach of Contract Class, Extended Business Income Breach of Contract Washington Subclass, Extra Expense Breach of Contract Class, Extra Expense Breach of Contract Washington Subclass, Civil Authority Breach of Contract Class and Civil Authority Breach of Contract Washington Subclass.

45. The Policy is a contract under which Plaintiffs and the class paid premiums to Transportation in exchange for Transportation's promise to pay Plaintiffs and the class for all claims covered by the Policy.

46. Plaintiffs have paid their insurance premiums.

47. Plaintiffs submitted a claim to Transportation for its covered loss, and Transportation denied coverage.

48. On information and belief, Transportation has denied coverage for other similarly situated policyholders.

49. Denying coverage for the claim is a breach of the insurance contract.

50. Plaintiffs are harmed by the breach of the insurance contract by Transportation.

VII. REQUEST FOR RELIEF

1. A declaratory judgment that the policy or policies cover Plaintiffs' losses and expenses resulting from the interruption of the Plaintiffs' business related to COVID-19 and/or

orders issued by Governor Inslee, other Governors, and/or other authorities.

2. A declaratory judgment that the defendant is responsible for timely and fully paying all such losses.

3. Damages.

4. Class action status under Fed. R. Civ. P. 23.

5. Pre- and post-judgment interest at the highest allowable rate.

6. Reasonable attorney fees and costs.

7. Such further and other relief as the Court shall deem appropriate.

VIII. JURY TRIAL DEMANDED

Plaintiffs demand a jury trial on all claims so triable.

DATED this 9th day of June, 2020.

KELLER ROHRBACK L.L.P.

By: s/ Amy Williams Derry

By: s/ Lynn L. Sarko

By: s/ Ian S. Birk

By: s/ Gretchen Freeman Cappio

By: s/ Irene M. Hecht

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