

FILED

AUG 13 2020

Timothy W. Fitzgerald  
SPOKANE COUNTY CLERK

SUPERIOR COURT OF WASHINGTON IN AND FOR SPOKANE COUNTY

PERRY STREET BREWING COMPANY,  
LLC, a Washington limited liability company,

Plaintiff,

v.

MUTUAL OF ENUMCLAW INSURANCE  
COMPANY, a Washington insurance company,

Defendant.

**20202212-32**

COMPLAINT—CLASS ACTION

**I. INTRODUCTION**

Plaintiff Perry Street Brewing Company, LLC ("PSBC" or "Plaintiff"), individually and on behalf of all other similarly situated members of the defined class (the "Class Members"), by and through the undersigned attorneys, brings this class action against Defendant Mutual of Enumclaw Insurance Company ("Mutual of Enumclaw" or "Defendant") and alleges as follows based on personal knowledge and information and belief:

**II. JURISDICTION**

1. This Court has original jurisdiction pursuant to RCW 2.08.010 because the case originates in Washington and the amount in controversy exceeds the jurisdictional threshold.

1           2.     This Court has personal jurisdiction over Defendant because Defendant  
2 registered to do business in Washington, has sufficient minimum contacts with Washington, and  
3 otherwise intentionally avails itself of the markets within Washington through its business  
4 activities, such that the exercise of jurisdiction by this Court is proper pursuant to RCW  
5 4.28.185. Moreover, the claims of Plaintiff and all of the Class Members arise out of and  
6 directly relate to Defendant's contacts with Washington.  
7

### 8                                   III.   PARTIES

9           3.     Plaintiff PBSC owns and operates a brewery with dining business with its  
10 principal place of business located at 1025 S. Perry St. # 2, Spokane, WA 99202.

11           4.     Defendant Mutual of Enumclaw is an insurer with its principal office in  
12 Enumclaw, Washington. Defendant is an insurance carrier authorized to write, sell, and issue  
13 business insurance policies in Washington to policyholders, including PSBC.  
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### 15                                   IV.   NATURE OF THE CASE

16           5.     This lawsuit is filed to ensure that Plaintiff and other similarly-situated  
17 policyholders receive the insurance benefits to which they are entitled and for which they paid.

18           6.     Defendant issued one or more insurance policies to Plaintiff, including a  
19 businessowners policy and related endorsements ("the Policy"), insuring Plaintiff's property and  
20 business practice at all relevant times, including the periods of March 10, 2019, March 10, 2020,  
21 and March 10, 2020, to March 10, 2021.  
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23           7.     Defendant issued the Policy in Washington covering property situated in  
24 Washington.  
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1           8.     Plaintiff's business property includes property owned and/or leased by Plaintiff  
2 and used for general business purposes for the specific purpose of a brewery with dining  
3 business and other related business activities.

4           9.     Defendant promises to pay Plaintiff for risks of "direct physical loss of or  
5 damage to" covered property.

6           10.    The Policy includes coverage for risks of both damage to and loss of covered  
7 property.

8           11.    The Policy expressly defines property damage as including "loss of use" of  
9 property.

10          12.    Plaintiff paid all premiums for the coverage when due.

11          13.    Defendant's Businessowners Coverage Form provides Plaintiff with Business  
12 Income Coverage, Extra Expense Coverage, Extended Business Income Coverage, and Civil  
13 Authority Coverage.

14          14.    On information and belief, Defendant issued materially identical policies  
15 concerning business interruption and other coverages to other policyholders in Washington  
16 covering property in the state of Washington for the relevant period.

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

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

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

4           18.     On March 13, 2020, Governor Inslee issued Proclamation 20-11, "Statewide  
5 Limits on Gatherings," which prohibited all gatherings of 250 people or more in all Washington  
6 counties, including Spokane County.

7           19.     On March 16, 2020, Governor Inslee issued Proclamation 20-14, "Reduction of  
8 Statewide Limits on Gatherings," which prohibited all gatherings of 50 people or more in all  
9 Washington counties, including Spokane County, and further prohibited gatherings of fewer  
10 people unless organizers of those activities complied with certain social distancing and  
11 sanitation measures.

12           20.     Also on March 16, 2020, Governor Inslee issued Proclamation 20-13, "Statewide  
13 Limits: Food and Beverage Services, Areas of Congregation," which prohibited the onsite  
14 consumption of food and/or beverages in a public venue, including restaurants, bars, or other  
15 similar venues in which people congregate for the consumption of food or beverages.

16           21.     By order of Governor Inslee, restaurant venues including Plaintiff were  
17 prohibited from providing food and beverage service, except for limited legally delivered or  
18 taken out of the venue for consumption.

19           22.     No COVID-19 virus has been detected on Plaintiff's business premises.

20           23.     Plaintiff's property has sustained direct physical loss and/or damages related to  
21 COVID-19 and/or the proclamations and orders.

22           24.     Plaintiff's property will continue to sustain direct physical loss or damage  
23 covered by the Mutual of Enumclaw policy or policies, including but not limited to business  
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1 interruption, extra expense, extended business interruption, interruption by civil authority, and  
2 other expenses.

3 25. Plaintiff's property cannot be used for its intended purposes.

4 26. As a result of the above, Plaintiff has experienced and will experience loss  
5 covered by the Mutual of Enumclaw policy or policies.  
6

7 27. Mutual of Enumclaw has denied Plaintiff coverage and has or will continue to  
8 deny coverage for other similarly situated members of the proposed class.

9 **V. CLASS ACTION ALLEGATIONS**

10 28. This matter is brought by Plaintiff on behalf of itself and those similarly situated,  
11 under Washington Civil Rules 23(b)(1), 23(b)(2), and 23(b)(3).

12 29. The Class Members that Plaintiff seeks to represent are defined as:  
13

14 A. ***Business Income Breach of Contract Class:*** Named insureds in the state  
15 of Washington issued a Mutual of Enumclaw policy with Business Income Coverage  
16 covering property situated in the state of Washington who suffered a suspension of their  
17 business at the covered premises related to COVID-19 and/or orders issued by Governor  
18 Inslee, and/or other civil authorities and whose Business Income claim was denied by  
19 Mutual of Enumclaw.

20 B. ***Business Income Declaratory Relief Class:*** Named insureds in the state  
21 of Washington issued a Mutual of Enumclaw policy with Business Income Coverage  
22 covering property situated in the state of Washington who suffered a suspension of their  
23 business at the covered premises related to COVID-19 and/or orders issued by Governor  
24 Inslee, and/or other civil authorities.  
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1           C.     ***Extra Expense Breach of Contract Class:*** Named insureds in the state of  
2 Washington issued a Mutual of Enumclaw policy with Extra Expense coverage covering  
3 property situated in the state of Washington who incurred expenses while seeking to  
4 minimize losses from the suspension of business at the covered premises in connection  
5 with COVID-19 and/or orders issued by Governor Inslee, and/or other civil authorities  
6 and whose Extra Expense claim was denied by Mutual of Enumclaw.  
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8           D.     ***Extra Expense Declaratory Relief Class:*** Named insureds in the state of  
9 Washington issued a Mutual of Enumclaw policy with Extra Expense coverage covering  
10 property situated in the state of Washington who incurred expenses while seeking to  
11 minimize losses from the suspension of their business at the covered premises in  
12 connection with COVID-19 and/or orders issued by Governor Inslee, and/or other civil  
13 authorities.  
14

15           E.     ***Extended Business Income Breach of Contract Class:*** Named insureds  
16 in the state of Washington issued a Mutual of Enumclaw policy with Extended Business  
17 Income coverage covering property situated in the state of Washington who suffered a  
18 suspension of their business at the covered premises related to COVID-19 and/or orders  
19 issued by Governor Inslee, and/or other civil authorities and whose Extended Business  
20 Income claim was denied by Mutual of Enumclaw.  
21

22           F.     ***Extended Business Income Declaratory Relief Class:*** Named insureds in  
23 the state of Washington issued a Mutual of Enumclaw policy with Extended Business  
24 Income coverage covering property situated in the state of Washington who suffered a  
25 suspension of their business at the covered premises due to COVID-19 related to  
26 COVID-19 and/or orders issued by Governor Inslee, and/or other civil authorities.

1           G.     **Civil Authority Breach of Contract Class:** Named insureds in the state of  
2 Washington issued a Mutual of Enumclaw policy with Civil Authority coverage  
3 covering property situated in the state of Washington who suffered a loss of business  
4 income and/or extra expense related to the impact of COVID-19 and/or orders issued by  
5 Governor Inslee, and/or other civil authorities and whose Civil Authority claim was  
6 denied by Mutual of Enumclaw.  
7

8           H.     **Civil Authority Declaratory Relief Class:** Named insureds in the state of  
9 Washington issued a Mutual of Enumclaw policy with Civil Authority coverage  
10 covering property situated in the state of Washington who suffered a loss of business  
11 income and/or extra expense related to the impact of COVID-19 19 and/or orders issued  
12 by Governor Inslee, and/or other civil authorities.  
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14       30.     Excluded from the Class are Defendant's officers, directors, and employees; the  
15 judicial officers and associated court staff assigned to this case; and the immediate family  
16 members of such officers and staff.

17       31.     Plaintiff reserves the right to amend the above-described Class definition based  
18 on information obtained in discovery including Defendant's internal records presently  
19 unavailable to Plaintiff.  
20

21       32.     This action may properly be maintained on behalf of each proposed Class under  
22 the criteria of CR 23.

23       33.     **Numerosity:** The Class Members are so numerous that joinder of all members  
24 would be impractical. Plaintiff is informed and believes that the proposed Class, named  
25 insureds in the state of Washington issued policies by Mutual of Enumclaw covering property  
26 situated in the state of Washington, contains hundreds of members. The precise number of class

1 members can be ascertained through discovery, which will include Defendant's records of  
2 policyholders.

3       34.     **Commonality and Predominance:** Common questions of law and fact  
4 predominate over any questions affecting only individual Class Members. Common questions  
5 include, but are not limited to, the following:  
6

7             A.     Whether the Class Members suffered covered losses based on common  
8 policies issued in the state of Washington covering property situated in the state of  
9 Washington by Mutual of Enumclaw to members of the Class;

10            B.     Whether Mutual of Enumclaw acted in a manner common to the Class  
11 and wrongfully denied claims for coverage relating to COVID-19 and/or orders issued  
12 by Governor Inslee, other Governors, and/or other civil authorities;  
13

14            C.     Whether Business Income coverage in Mutual of Enumclaw's policies of  
15 insurance applies to a suspension of business relating to COVID-19 and/or orders issued  
16 by Governor Inslee, other Governors, and/or other civil authorities;  
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18            D.     Whether Extra Expense coverage in Mutual of Enumclaw's policies of  
19 insurance applies to efforts to minimize a loss relating to COVID-19 and/or orders  
20 issued by Governor Inslee, other Governors, and/or other civil authorities;  
21

22            E.     Whether Extended Business Income coverage in Mutual of Enumclaw's  
23 policies of insurance applies to a suspension of business relating to COVID-19 and/or  
24 orders issued by Governor Inslee, other Governors, and/or civil authorities;  
25

26            F.     Whether Civil Authority coverage in Mutual of Enumclaw's policies of  
insurance applies to a suspension of business relating to COVID-19 and/or orders issued  
by Governor Inslee, other Governors, and/or civil authorities;



1           G.     Whether Mutual of Enumclaw has breached its contracts of insurance  
2 through a blanket denial of all claims based on business interruption, income loss or  
3 closures related to COVID-19 and/or orders issued by Governor Inslee, other Governors,  
4 and/or other civil authorities;

5  
6           H.     Whether, because of Defendant's conduct, Plaintiff and the Class  
7 Members have suffered damages; and if so, the appropriate amount thereof; and

8           I.     Whether, because of Defendant's conduct, Plaintiff and the Class  
9 Members are entitled to equitable and declaratory relief, and if so, the nature of such  
10 relief.

11           35.    **Typicality:** Plaintiff's claims are typical of the claims of the members of the  
12 classes. Plaintiff and all Class Members of the classes have been injured by the same wrongful  
13 practices of Mutual of Enumclaw, which issued policies to named insureds in the state of  
14 Washington covering property situated in the state of Washington. Plaintiff's claims arise from  
15 the same practices and course of conduct that give rise to the claims of the members of the Class  
16 and are based on the same legal theories.

17  
18           36.    **Adequacy:** Plaintiff will fully and adequately assert and protect the interests of  
19 the classes and has retained class counsel who are experienced and qualified in prosecuting class  
20 actions. Neither Plaintiff nor its attorneys have any interests contrary to or in conflict with the  
21 Class.

22  
23           37.    **CR 23(b)(1), the Risk of Inconsistent or Varying Adjudications and**  
24 **Impairment to Other Class Members' Interests:** Plaintiff seeks adjudication as to the  
25 interpretation, and resultant scope, of Defendant's policies, which are common to all members  
26 of the class. The prosecution of separate actions by individual members of the classes would

1 risk inconsistent or varying interpretations of those policy terms and create inconsistent  
2 standards of conduct for Defendant.

3 38. **CR 23(b)(2), Declaratory and Injunctive Relief:** Defendant acted or refused to  
4 act on grounds generally applicable to Plaintiff and other members of the proposed classes  
5 making injunctive relief and declaratory relief appropriate on a classwide basis.  
6

7 39. **CR 23(b)(3), Superiority:** A class action is superior to all other available  
8 methods of the fair and efficient adjudication of this lawsuit. While the aggregate damages  
9 sustained by the classes are likely to be in the millions of dollars, the individual damages  
10 incurred by each class member may be too small to warrant the expense of individual suits.  
11 Individual litigation creates a risk of inconsistent and/or contradictory decisions and the court  
12 system would be unduly burdened by individual litigation of such cases. A class action would  
13 result in a unified adjudication, with the benefits of economies of scale and supervision by a  
14 single court.  
15

## 16 VI. CAUSES OF ACTION

### 17 Count One—Declaratory Judgment

18 *(Brought on behalf of the Business Income Coverage Declaratory Relief Class, Extra*  
19 *Expense Declaratory Relief Class, Extended Business Income Declaratory Relief Class, Civil*  
20 *Authority Declaratory Relief Class)*

21 40. Previous paragraphs alleged are incorporated herein.

22 41. This is a cause of action for declaratory judgment pursuant to the Uniform  
23 Declaratory Judgments Act, RCW 7.24.010 *et seq.*

24 42. Plaintiff brings this cause of action on behalf of the Business Income Coverage  
25 Declaratory Relief Class, Extra Expense Declaratory Relief Class, Extended Business Income  
26 Declaratory Relief Class, and Civil Authority Declaratory Relief Class.

1           43.     Plaintiff seeks a declaratory judgment declaring that Plaintiff's and Class  
2 Members' losses and expenses resulting from the interruption of their business are covered by  
3 the Policy issued by Mutual of Enumclaw to named insureds in the state of Washington  
4 covering property situated in Washington.  
5

6           44.     Plaintiff seeks a declaratory judgment declaring that Mutual of Enumclaw is  
7 responsible for timely and fully paying all such claims.  
8

9                               **Count Two—Breach of Contract**

10                   *(Brought on behalf of the Business Income Coverage Breach of Contract Class, Extra*  
11                   *Expense Breach of Contract Class, Extended Business Income Breach of Contract Class,*  
12                   *Civil Authority Breach of Contract Class)*

13           45.     Previous paragraphs alleged are incorporated herein.

14           46.     Plaintiff brings this cause of action on behalf of the Business Income Coverage  
15 Breach of Contract Class, Extended Business Income Breach of Contract Class, Civil Authority  
16 Breach of Contract Class, and Extra Expense Breach of Contract Class.

17           47.     The Policy by Mutual of Enumclaw is a contract under which Plaintiff and Class  
18 Members paid premiums to Mutual of Enumclaw in exchange for Mutual of Enumclaw's  
19 promise to pay Plaintiff and the class for all claims covered by the Policy.

20           48.     Plaintiff has paid its insurance premiums.

21           49.     Mutual of Enumclaw intends to deny or has denied Plaintiff coverage and has or  
22 will continue to deny coverage for other similarly situated members of the proposed class.

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

24           51.     Plaintiff and the Class Members are harmed by the breach of the insurance  
25 contract by Mutual of Enumclaw.  
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**VII. REQUEST FOR RELIEF**

1. A declaratory judgment that the policy or policies cover Plaintiff's losses and expenses resulting from the interruption of Plaintiff's 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 CR 23.

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

6. Attorney fees and costs under *Olympic Steamship* and/or other applicable law.

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

DATED this 13th day of August, 2020.

KELLER ROHRBACK L.L.P.

By: s/ Ian S. Birk

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4833-5909-9589, v. 1