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**SUPERIOR COURT OF WASHINGTON
COUNTY OF KING**

PIROSHKY PIROSHKY BAKERY LLC, a
Washington Limited Liability Company and
PIROSHKY BAKING COMPANY, LLC,
Washington Limited Liability Company;

NO.

COMPLAINT

v.

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

1. Parties

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

1.2 Piroshky Baking Company, LLC (“Piroshky Baking Company”) is a 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 Piroshky Piroshky Bakery is a well-known, loved, and successful Seattle institution, having provided patrons of Pike Place Market with Piroshkies and other baked goods since 1992.

2.2 Piroshky Baking Company is a local business that has been a successful purveyor of wholesale and retail food items, as well as catering services. Piroshky Baking Company provides food items wholesale to its related Piroshky Piroshky entities, as well as others. It provides retail sales to customers online and pickup orders, and operates a food truck.

2.8 Piroshky Piroshky Bakery and Piroshky Baking Company were both 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

1 the tourism industry, reducing traffic at tourist hotspots in the Seattle area, including Pike Place
2 Market. Seattleites also reduced their purchases from restaurants and cafes. There was a
3 concurrent loss of demand for catering services as businesses and organizations cancelled catered
4 gatherings.

5 **The nature of Covid-19**

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7 2.15 Coronavirus (Covid-19) is a highly contagious virus that has rapidly spread and continues
8 to spread across the United States. It is a physical substance, human pathogen and can be present
9 outside the human body in viral fluid particles. According to the CDC, everyone is at risk of getting
10 Covid-19.

11 2.16 Covid-19 is spread by a number of methods, including “community spread,” meaning that
12 some people have been infected and it is not known how or where they became exposed. Public
13 health authorities, including the CDC, have reported significant ongoing community spread of the
14 virus including instances of community spread in all 50 states.

15 2.17 The CDC has reported that a person can be become infected with Covid-19 by touching a
16 surface or object (like a table, floor, wall, furniture, desk, countertop, touch screen or chair) that
17 has the virus on it, and then touching their own mouth, nose or eyes. Covid-19 can and does live
18 on and/or remains capable of being transmitted and active on inert physical surfaces.

19
20 2.18 More specifically, Covid-19 infections are spread through droplets of different sizes which
21 can be deposited on surfaces or objects.

22 2.19 In addition, The New England Journal of Medicine reported finding that experimentally-
23 produced aerosols containing the virus remained infectious in tissue-culture assays, with only a
24 slight reduction in infectivity during a 3-hour period of observations. An April 2020 study

published in the journal Emerging Infectious Diseases found a wide distribution of Covid-19 on surfaces and in the air about 13 feet from patients in two hospital wards. This means there has been a finding of Covid-19 in the air.

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

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

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

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

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

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

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

2.27 The presence of people infected with or carrying Covid-19 particles at premises renders the premises, including property located at that premises unsafe, resulting in direct physical loss to the premises and property.

2.28 Plaintiffs' premises more likely than not have been infected with Covid-19 and they have suffered direct physical loss of and damage to their property. The incubation period for Covid-19

1 is at least 14 days. Current evidence shows that the first death from Covid-19 occurred as early as
2 February 6, 2020—weeks earlier than previously reported, suggesting that the virus has been
3 circulated in the United States far longer than previously assumed. It is more likely than not that
4 customers, employees and/or other visitors to the insured properties over the last several months
5 were infected with Covid-19 and thereby infected the insured properties with Covid-19.

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7 2.29 To reduce the spread of the disease, the CDC has recommended that businesses clean and
8 disinfect all surfaces, prioritizing the most frequently touched surfaces.

9 2.30 Covid-19 has been declared a pandemic by the World Health Organization.

10 2.31 The Covid-19 pandemic is a public health crisis that has profoundly impacted American
11 society, including the public’s ability to patronize hair salons, barber shops, restaurants, bars and
12 other establishments.

13 2.32 The presence of Covid-19 has caused civil authorities throughout the country to issue
14 orders requiring the suspension of business at a wide range of establishments, including civil
15 authorities with jurisdiction over Plaintiffs’ businesses (the “Closure Orders”).

16 2.33 Because of the widespread presence of Covid-19 in the community, in combination with
17 the fact that its presence cannot be detected in real-time, Plaintiffs have been forced to treat all of
18 their property, patrons and employees as though they harbor the virus. This compulsion is the result
19 of both Closure Orders and the need to protect health and insured property from the virus.

20
21 2.34 From the early days of the Covid-19 pandemic, it was general public knowledge that the
22 Covid-19 virus could be acquired by coming into contact with surfaces and airspaces in property
23 of both private and public accommodation. Some such property is owned, leased or operated by
24 others upon whom Plaintiffs are dependent to accept Plaintiffs’ goods and attract customers to

1 their business premises. It is more likely than not that Covid-19 virus was actually present at some
2 such property. But regardless of whether the Covid-19 virus was actually present, the owners,
3 lessees, and operators of such property were compelled by governmental orders and the duty of
4 reasonable care to act as though the virus was actually present.

5 The Washington Closure Orders

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7 2.35 On February 29, Governor Jay Inslee declared a state of emergency after the first US death
8 attributable to Covid-19 occurred in a man in his 50s with an underlying chronic health condition
9 who had been admitted to Evergreen Health Medical Center after complaining of severe breathing
10 problems.

11 2.36 Researchers at the Fred Hutchinson Cancer Research Center and the University of
12 Washington analyzed the genomes of the first reported case in Snohomish County from January
13 20 and a more recent case on February 28, and determined that the virus strain was related. Their
14 findings indicate that the virus may have been spreading through the community for close to six
15 weeks.

16 2.37 Seattle mayor Jenny Durkan declared a civil emergency on March 3.

17 2.38 On March 9, Governor Inslee announced new rules—including mandatory screening for
18 visitors and staff—for nursing homes to slow the spread of the virus. The state was also considering
19 mandatory measures of social distancing to prevent spread.
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21 2.39 On March 11, Governor Inslee invoked emergency powers and banned “social, spiritual,
22 and recreational gatherings” of over 250 people in King, Snohomish and Pierce Counties
23 (including the core of the Seattle metropolitan area) for at least the month of March. The order
24 included provisions for its enforcement by the Washington Military Department.

1 2.40 On March 12, Governor Inslee announced closures for all public and private K-12 schools
2 in King, Snohomish, and Pierce Counties beginning from March 17 through at least April 24.

3 Later, on March 13, Inslee announced K-12 closures until at least April 24 throughout the state.

4 2.41 Local transit agencies in the Seattle area, including King County Metro and Sound Transit,
5 announced more frequent deep cleanings of their vehicles and facilities. Within the first week of
6 widespread work-from-home policies from local employers, Sound Transit ridership dropped 25
7 percent and Metro reported a 13 percent decrease compared to March 2019.

8 2.42 On March 15, Governor Inslee announced the closing of all sit-down restaurants statewide,
9 noting that “very strong measures are necessary to slow the spread of the disease”. Restaurants
10 were still allowed to offer takeout and drive through options. The governor also announced that he
11 would issue an emergency proclamation ordering all entertainment and recreation facilities to
12 temporarily close. The same order banned gatherings of groups of 50 or more statewide.

13 2.43 On March 16, 2020, Governor Inslee issued a Proclamation, in part, “prohibit[ing] any
14 number of people from gathering in any public venue in which people congregate for purposes of
15 public entertainment, recreation, food and beverage service, theater, bowling, fitness and other
16 similar activities, to include all public venues in which the serving, provision, or consumption of
17 prepared food or beverages occurs at a table, bar, or for consumption within.”

18 2.44 The Proclamation permitted restaurants only to provide food through take-out and delivery
19 services. King County required heightened food preparation standards for any restaurant willing
20 and able to provide take-out and delivery service.

21 2.45 On April 2, Governor Inslee announced that the stay at home order would be extended
22 through at least May 4. Although some restrictions have been lifted, many have not.

The Impact of Covid-19 and the Closure Orders

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

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

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

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

2.50 The Closure Orders prohibited access to and use of Plaintiffs’ Covered Property, and the area immediately surrounding damaged property, in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage.

2.51 The presence of Covid-19 and the Closure Orders caused a direct loss to Plaintiffs’ dependent property, which resulted in a loss of Business Income sustained.

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

1 2.53 The State of Washington and its political subdivisions have issued and continue to issue
2 authoritative orders governing Washingtonians and Washington businesses, including the
3 Plaintiffs' businesses, in response to Covid-19 and the Pandemic, the effect of which has required
4 and continues to require Plaintiffs to cease and/or significantly reduce operations at, and that have
5 prohibited, and continue to prohibit access to, the premises described in their policies.

6 2.54 State and local governmental authorities and public health officials around the United
7 States acknowledge that Covid-19 and the Pandemic cause direct physical loss and damage to
8 property. For example: (a) the State of Washington issued a stay at home Proclamation stating the
9 "Covid-19 pandemic and its progression...remains a public disaster affecting life, health [and]
10 property." (b) The State of Colorado issued a Public Health Order indicating that "Covid-
11 19...physically contributes to property loss, contamination and damage..." (c) The City of New
12 York issued an Emergency Executive Order in response to Covid-19 and the Pandemic, in part
13 "because the virus physically is causing property loss and damage." (d) Broward County, Florida
14 issued an Emergency Order acknowledging that Covid-19 "is physically causing property
15 damage." (e) The State of Indiana issued an Executive Order recognizing that Covid-19 has the
16 "propensity to physically impact surfaces and personal property." (f) the City of New Orleans
17 issued an order stating "there is reason to believe that Covid-19 may spread amongst the population
18 by various means of exposure, including the propensity to attach to surfaces for a prolonged period
19 of time, thereby spreading from surface to person and causing property loss and damage in certain
20 circumstances." (g) the State of New Mexico issued a Public Health Order acknowledging the
21 "threat" Covid-19 "poses" to "property." (h) North Carolina issued a statewide Executive Order
22 in response to the Pandemic not only "to assure adequate protection for lives" but also to "assure
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adequate protection of...property.” (i) The City of Los Angeles issued an Order in response to Covid-19 “because, among other reasons, the Covid-19 virus can spread easily from person to person and it is physically causing property loss or damage due to its tendency to attach to surfaces for prolonged periods of time; and (j) The City of Kansas City, Missouri issued a Proclamation in response to Covid-19 “to protect life and property.”

2.55 As a result of the presence of Covid-19 and the Closure Orders, Plaintiffs lost Business Income and incurred Extra Expense.

2.56 A combination of Closure Orders and the community response to living with Covid-19 running through homes, businesses, and public places caused a precipitous decline in the income of both Piroshky Piroshky Bakery and Piroshky Baking Company.

2.57 On May 14, 2020, the Plaintiffs both gave notice of a claim related to loss of income because of the Closure Orders, the presence of Covid-19, and the community response to the Covid-19.

2.58 On May 22, 2020, Sentinel denied these claims.

3. First Cause of Action – Breach of Contract

3.1 Plaintiffs incorporate the allegations contained in the remainder of Complaint by reference.

3.2 The policy issued by Sentinel is an enforceable contract.

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

3.4 Sentinel has refused to pay any amount for the claims submitted by the Plaintiffs.

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

3.6 Plaintiffs have been injured by Sentinel’s breach in an amount to be proven at trial

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4. Second Cause of Action – Bad Faith.

4.1 Plaintiffs incorporate the allegations contained in the remainder of Complaint by reference.

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

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

4.4 Accordingly, Sentinel breached its duty of good faith to Plaintiffs.

4.5 Sentinel breached its duty of good faith by violating the WAC provisions as detailed in the following cause of action.

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

4.7 Because Sentinel failed to conduct a reasonable factual and legal investigation of Plaintiffs' claims, Plaintiffs were forced to conduct that investigation on their own, at their own expense; the unreasonable, unfounded or frivolous failure to investigate and subsequent denial harmed Plaintiffs by forcing them to incur this expense.

5. Third Cause of Action – Violation of the WAC

5.1 Plaintiffs incorporate the allegations contained in the remainder of Complaint by reference.

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

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

1 5.4 Sentinel violated WAC 284-30-330(4) by refusing to pay claims without conducting a
2 reasonable investigation into the facts and the law governing Plaintiffs' claims.

3 5.5 Sentinel violated WAC 284-30-330(13) by failing to promptly provide a reasonable
4 explanation of the basis in the insurance policy in relation to the facts or applicable law for denial
5 of Plaintiffs' claims.

6 5.6 Sentinel violated WAC 284-30-350(1) by failing to fully disclose to Plaintiffs all pertinent
7 benefits, coverages or other provisions of an insurance policy or insurance contract under which a
8 claim is presented.

9 5.7 These violations harmed Plaintiffs in an amount to be proven at trial.

10 5.8 In addition to being actionable under the Consumer Protection Act and the Insurance Fair
11 Conduct Act, these violations also represent per se bad faith.
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13 **6. Fourth Cause of Action – Violation of the IFCA – RCW 48.30.015**

14 6.1 Plaintiffs incorporate the allegations contained in the remainder of Complaint by reference.

15 6.2 Pursuant to RCW 48.30.015, the Plaintiffs are "first party claimants."

16 6.3 Sentinel unreasonably denied Plaintiffs' claims for coverage and / or benefits.

17 6.4 This unreasonable denial was a violation of RCW 48.30.015.

18 6.5 Sentinel also violated the WAC in at least the ways described in the preceding cause of
19 action, relative to RCW 48.30.015.
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21 6.6 Plaintiffs complied with the pre-suit notice requirements of RCW 48.30.015 and are
22 otherwise entitled to bring this cause of action.

23 6.7 Plaintiffs are entitled to reasonable attorney fees in this action pursuant to RCW 48.30.015.
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1 6.8 Plaintiffs suffered actual damages flowing from Sentinel's unreasonable denial in an
2 amount to be proven at trial.

3 6.9 Plaintiffs are entitled to treble damages under RCW 48.30.015.

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

5 7.1 Plaintiffs incorporate the allegations contained in the remainder of Complaint by reference.

6 7.2 In violation of RCW 19.86, Sentinel committed unfair or deceptive acts and practices by
7 engaging in the conduct elsewhere described in this Complaint, including failure to act in good
8 faith and violating the WAC as described.

9 7.3 The acts described in paragraph 7.2 took place in trade or commerce.

10 7.4 The acts described in paragraph 7.2 impact the public interest *per se*.

11 7.5 The acts described in paragraph 7.2 proximately caused injury to Plaintiffs' business or
12 property.

13 7.6 Plaintiffs are entitled to actual and treble damages under RCW 19.86.

14 7.7 Plaintiffs are entitled to their reasonable attorney fees under RCW 19.86.

15 **9. Prayer for Relief**

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17 Having stated the preceding causes of action, Plaintiffs respectfully request the Court grant
18 them the following relief:

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

21 B. Treble damages under RCW 48.30.015;

22 C. Treble damages under RCW 19.86;

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

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

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

8 /s Brent W. Beecher

Brent W. Beecher, WSBA #31095

Hackett, Beecher & Hart

601 Union St. Suite 2600

Seattle, WA 98101

Telephone: 206.624.2200

Email: bbecher@hackettbeeher.com

Attorneys for Plaintiffs
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