

0300
GEGAT OUAFAFKI ÁT
SPOÁUWVY
ÚWÚOÜQÜÁUWÜVÁŠÖÜS
0300
ÔËJÒÄKÁFEGHFI ÉÁÜÖE

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

SNOQUALMIE ENTERTAINMENT
AUTHORITY d/b/a SNOQUALMIE
CASINO and SACRED FALLS LLC d/b/a
SALISH LODGE & SPA,

Plaintiffs,

v.

AFFILIATED FM INSURANCE
COMPANY,

Defendant.

NO.

COMPLAINT

Snoqualmie Entertainment Authority d/b/a Snoqualmie Casino and Sacred Falls LLC
d/b/a Salish Lodge & Spa bring this action against Affiliated FM Insurance Company and alleges
as follows:

I. PARTIES

1.1. **Plaintiff Snoqualmie Entertainment Authority d/b/a Snoqualmie Casino.**

Plaintiff Snoqualmie Entertainment Authority is an unincorporated governmental component and
a subordinate instrumentality of the Snoqualmie Indian Tribe (“Tribe”), a federally-recognized
sovereign Indian tribe and signatory to the Treaty of Point Elliott of 1855, with reserved rights

1 thereunder, that is formed under the laws of the Tribe and is the Named Insured under the Policy.
2
3 The Tribe wholly owns and operates, and does business as, among other businesses and
4
5 enterprises, the Snoqualmie Casino (“Casino”). The Casino is a Tribal business enterprise
6
7 located on the Tribe’s Reservation in King County, Washington. Plaintiff expressly retains its
8
9 sovereign immunity from uncontested suit.
10

11 **1.2. Plaintiff Sacred Falls LLC d/b/a Salish Lodge & Spa.** Sacred Falls LLC, a
12
13 Washington State LLC managed by the Tribe, owns, operates, and does business as the Salish
14
15 Lodge & Spa (“Lodge”), which is located on Tribally-owned fee land that is sacred to the Tribe,
16
17 but is not located on the Tribe’s Reservation. The Tribe is the sole member of Sacred Falls LLC.
18

19 **1.3. Defendant Affiliated FM Insurance Company.** Defendant Affiliated FM
20
21 Insurance Company (“AFM”) is an insurance company incorporated in the State of Rhode
22
23 Island. AFM is licensed to sell, and does sell, insurance in the State of Washington, including
24
25 the insurance policy that is the subject of this lawsuit.
26

27 **II. JURISDICTION AND VENUE**

28
29 **1.1. Subject Matter Jurisdiction.** This Court has subject matter jurisdiction over this
30
31 action pursuant to RCW 2.08.010 and RCW 7.24.020.
32

33 **1.2. Personal Jurisdiction.** The Court has personal jurisdiction because AFM
34
35 conducts business in King County and because the actions and events giving rise to this cause of
36
37 action occurred in King County.
38

39 **1.3. Venue.** Venue is proper in this Court pursuant to RCW 48.05.220. It is also
40
41 proper under RCW 4.12.025.
42
43
44
45

III. FACTUAL BACKGROUND

3.1. The Casino opened in late 2008. The 170,000 square-foot Casino features eight restaurants, lounges and bars, an 11,000 square-foot ballroom, and a 51,000 square-foot gaming floor featuring 1,700 slot machines and 54 table games positions. .

3.2. The Lodge is a luxury resort overlooking Snoqualmie Falls, the most sacred place of the Tribe. The Lodge offers luxury accommodations, including 86 guest rooms, fine dining, and spa services, and serves as a location for weddings, corporate functions and other special events.

3.3. Plaintiffs bring this lawsuit to ensure they receive the insurance benefits to which they are entitled and for which they paid.

3.4. AFM issued one or more insurance policies to Snoqualmie Entertainment Authority, including policy No. TO079, with an effective date from November 1, 2019 through November 1, 2020 ("Policy").

3.5. The Policy's "Named Insured" is "Snoqualmie Entertainment Authority, and its wholly or majority owned subsidiaries and any interest which may now exist or hereinafter be created or acquired which are owned, controlled or operated by any one or more of those named insureds." Snoqualmie Entertainment Authority, the Casino, Sacred Falls LLC, and the Lodge are "Named Insureds" as defined by the Policy.

3.6. The Policy's per occurrence limit of liability is \$340,500,000, subject to the certain sub-limits of liability contained in the Policy.

3.7. The Policy is an "all-risk" policy that provides broad property and business interruption coverage for "ALL RISKS OF PHYSICAL LOSS OR DAMAGE" except where

1 excluded. The Policy also provides additional coverages, including Communicable Diseases-
2
3 Property Damage, Civil or Military Authority, and Decontamination Costs.
4

5 3.8. The Policy excludes loss or damage caused by “**Contamination**, and any cost *due*
6 *to contamination* including the inability to use or occupy property or any cost of making
7 property safe or suitable for use or occupancy; nor will the foregoing constitute direct physical
8 loss or damage insured by this policy.” (Italics added.) The Policy also states that
9 “**contamination** means any *condition of property due to the actual or suspected presence of any*
10 foreign substance, impurity, pollutant, hazardous material, poison, toxin, pathogen or pathogenic
11 organism, bacteria, virus, disease causing or illness causing agent, fungus, mold or mildew.”
12 (Italics added).
13
14
15
16
17
18
19
20

21 3.9. Snoqualmie Entertainment Authority paid all premiums for the coverage when
22 due. All conditions under the Policy have been satisfied, discharged and/or excused.
23
24

25 3.10. On or about January 2020, the United States saw its first cases of persons infected
26 by COVID-19, which has been designated a worldwide pandemic.
27
28

29 3.11. COVID-19 remains stable and transmittable in aerosols for up to three hours and
30 up to two or three days on certain surfaces. Persons infected with COVID-19 can be
31 asymptomatic. COVID-19 is spread by breathing, talking, singing, and touching shared or
32 common objects or surfaces. To slow or stop the spread of COVID-19, the United States Centers
33 for Disease Control and Prevention (“CDC”) recommends avoiding indoor activities, avoiding
34 crowded and congested areas, limiting contact with commonly touched surfaces in public
35 venues, selecting seating based on the ability to maintain six feet of space from people outside
36 your household, and otherwise maintaining social distance of at least six feet between people.
37
38
39
40
41
42
43
44
45

1 3.12. On or about March 10, 2020, the Casino learned through social media that a
2
3 Casino valet tested positive for COVID-19. When the Casino learned of the test, the Casino
4
5 valet was no longer employed by the Casino; however, the former employee had last worked at
6
7 the Casino on February 28, 2020, and was on property twice the first week of March, all of
8
9 which is well-within the window for incubation of COVID-19. Over the next several months,
10
11 the Casino learned that a number of other employees had tested positive for COVID-19.
12

13 3.13. On February 29, 2020, the Governor of the State of Washington (“Governor
14
15 Inslee”) issued a proclamation declaring a State of Emergency. Governor Inslee issued
16
17 additional proclamations on March 11, 2020 and March 15, 2020 that significantly limited public
18
19 events throughout the State of Washington, including King and Snohomish Counties.
20

21 3.14. The Snoqualmie Tribal Council, the elected governing body of the Tribe, is the
22
23 sole government with civil authority over the Casino. In response to Governor Inslee’s initial
24
25 proclamations, the Snoqualmie Tribal Council declared a Tribal State of Emergency via
26
27 Resolution 39-2020 on March 11, 2020. On March 16, 2020, the Snoqualmie Tribal Council
28
29 passed Resolution 44-2020, which directed the immediate temporary closure of the Casino due to
30
31 the COVID-19 pandemic. Due to this Resolution, the Casino closed on March 18, 2020.
32

33 3.15. On March 23, 2020, Governor Inslee issued a “Stay Home” order that prohibited
34
35 all public gatherings and directed the citizens of the State of Washington to stay at home until at
36
37 least April 6, 2020.
38

39 3.16. On March 24, 2020, the Snoqualmie Tribal Council passed Resolution 48-2020
40
41 extending the temporary closure of the Casino due to the COVID-19 pandemic until April 6,
42
43 2020.
44
45

1 3.17. On April 2, 2020, Governor Inslee extended the “Stay Home” order for at least a
2
3 month. The following day the Snoqualmie Tribal Council passed Resolution 54-2020, which
4
5 extended the closure of the Casino consistent with Governor Inslee’s order.
6

7 3.18. On April 29, 2020, Governor Inslee announced he would be extending the “Stay
8
9 Home” order that prohibits most public gatherings and directs the citizens of the State of
10
11 Washington to stay home. Exercising its inherent civil authority under the Snoqualmie Indian
12
13 Tribe’s Constitution, the Snoqualmie Tribal Council passed Resolution 68-2020, which
14
15 authorized and directed a fourth extension of the temporary closure of the Casino through May
16
17 18, 2020, which was subsequently extended. The Casino reopened with limited capacity on June
18
19 1, 2020.
20

21 3.19. Due to the COVID-19 closure resolutions passed by the Snoqualmie Tribal
22
23 Council, the Casino experienced significant losses, including business interruption losses. These
24
25 losses total in the tens of millions of dollars.
26

27 3.20. The Casino reported its loss to AFM on March 17, 2020.
28

29 3.21. Although AFM ultimately determined that \$100,000 in Communicable Disease
30
31 Coverage was available to the Casino under the Policy, it denied the Casino’s request for
32
33 coverage under the Policy’s Civil or Military Authority Coverage and Business Interruption
34
35 Coverage based on the assertion that COVID-19 did not constitute “physical loss or damage.”
36

37 3.22. On November 16, 2020, the Casino provided AFM with the copy of an order
38
39 denying the insurer’s motion to dismiss that had been entered by Judge Amini of the King
40
41 County Superior Court on November 13, 2020 in the matter of *Hill & Stout PLLC v. Mutual of*
42
43 *Enumclaw Insurance Company*, No. 20-20795-1 SEA. In that case, Judge Amini rejected the
44
45 insurer’s position that a dental office’s closure due to Governor Inslee’s closure orders did not

1 constitute “direct physical loss of or damage to” covered property. AFM responded as follows
2
3 on December 30, 2020, continuing to deny coverage to the Casino:
4

5 This letter is in response to your letter of November 16, 2020, responding to our coverage letter dated
6 October 21, 2020. In addition to your letter, you also provided a copy of a Motion to Dismiss from the
7 Superior Court of the State of Washington King County, dated November 13, 2020.
8

9 Please note, the above noted court ruling does not address the coverages within the Affiliated FM
10 Insurance Policy and we have no further comment in this regard. As respects our coverage position
11 outlined in our October 21, 2020 letter, we have not been provided with any additional information that
12 changes the coverage position set forth in the letter.

13 3.23. The Lodge, because it is located on Tribally-owned fee land, is subject to the
14 closure orders issued by Governor Inslee. In addition, the Tribe, as owner of the Lodge, directed
15 the temporary cessation of all activities at the Lodge on September 30, 2020 due to a sudden
16 COVID-19 outbreak among employees of the Lodge who tested positive for COVID-19.
17
18

19 3.24. The Lodge reopened on October 8, 2020 after multiple tests of all employees
20 revealed no new positive tests, and the Lodge implemented certain operational changes.
21
22

23 3.25. Not long after the Lodge reopened, Governor Inslee reintroduced government
24 restrictions on activities on November 16, 2020 due to a resurgence of COVID-19 cases,
25 including a cessation of indoor dining, significant limitations on retail capacity, and further
26 limitations on indoor gatherings of all kinds. These limitations, which were in effect until
27 December 14, 2020, as well as others that had been imposed by Governor Inslee, applied to the
28 Lodge because it is located on fee land.
29
30
31
32

33 3.26. The Lodge reported its loss to AFM on October 2, 2020.
34
35

36 3.27. The Lodge’s losses related to the closures totaled millions of dollars.
37
38

39 3.28. Similar to the Casino, AFM ultimately determined that only \$100,000 in
40 Communicable Disease Coverage was available to the Lodge under the Policy, but refused to
41 provide any other coverage under the Policy.
42
43
44
45

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

IV. FIRST CLAIM: DECLARATORY JUDGMENT

4.1. **Incorporation by Reference.** Plaintiffs reallege the allegations of paragraphs 1.1 through 3.28 above.

4.2. **Duty to Pay.** Under the Policy, AFM has a duty to pay Plaintiffs for direct physical loss or damage to insured property occurring during the policy term.

4.3. **Breach of Duties under the Policy.** AFM has breached its duty to pay by failing to fully reimburse Plaintiffs for their COVID-related losses in response to Plaintiffs' tenders, and by refusing to acknowledge that Plaintiffs' losses are the result of a covered cause of loss under the all-risk Policy within AFM's duty to pay under the Policy.

4.4. **Breach of Extra-Contractual Duties.** AFM has acted in bad faith and violated various insurance claim handling regulations and statutes by denying coverage based on unreasonable, frivolous, or unfounded interpretations of the Policy, failing to deal fairly with Plaintiffs and give equal consideration to (and not put its own interests ahead of) Plaintiffs' financial interests, and failing to conduct a full, fair, and prompt investigation at its own expense.

4.5. **Actual Controversy.** An actual controversy of a justiciable nature presently exists between Plaintiffs and AFM regarding the proper construction of the Policy and the rights and obligations of the parties with respect to Plaintiffs' claims. Issuance of declaratory relief by this Court will terminate the existing and any future controversies between the parties.

4.6. **Relief Sought.** Plaintiffs seek a declaratory judgment declaring that: (a) Plaintiffs' losses and expenses resulting from the interruption of their businesses are covered by the AFM Policy; (b) AFM is responsible for timely and fully paying all such claims; (c) AFM breached the Policy and violated various insurance claims handling regulations and statutes; and

(d) AFM is obligated to pay Plaintiffs' reasonable attorney fees, costs, and disbursements in obtaining coverage.

V. SECOND CLAIM: BREACH OF CONTRACT

5.1. **Incorporation by Reference.** Plaintiffs reallege the allegations of paragraphs 1.1 through 4.6 above.

5.2. **Breach of Contract.** AFM has failed to: (1) acknowledge that Plaintiffs' COVID-related losses, including the losses sustained by the Casino and the Lodge, constitute "physical loss or damage" to covered property and are covered under the Policy; and (2) fully reimburse Plaintiffs for their covered loss.

5.3. **Damages.** As a direct and proximate result of AFM's breach of its insurance contract, Plaintiffs have been deprived of the benefits of their insurance coverage with respect to their COVID-related losses.

5.4. **Additional Damages.** As another direct and proximate result of AMF's breach of the Policy, Plaintiffs have been forced to incur attorneys' fees and other expenses in order to prosecute this action.

VI. THIRD CLAIM: INSURANCE BAD FAITH

6.1. **Incorporation by Reference.** Plaintiffs reallege the allegations of paragraphs 1.1 through 5.4.

6.2. **Duty of Good Faith and Fair Dealing.** AFM owes Plaintiffs a duty of good faith and fair dealing. Pursuant to that duty, AFM was obliged to refrain from taking any action that is unreasonable or unfounded. AFM was, likewise, required to conduct a full, fair, and prompt investigation at its own expense. AFM was also required to deal fairly with Plaintiffs

1 and give equal consideration to (and not put its own interests ahead of) Plaintiffs' financial
2
3 interests.
4

5 6.3. **AFM Acted in Bad Faith.** AFM breached its duty of good faith and fair dealing
6
7 as described in this Complaint.
8

9 6.4. **Damages.** As a direct and proximate result of this conduct, Plaintiffs have
10
11 suffered damages in an amount to be proven at trial.
12

13 **VII. FOURTH CLAIM: VIOLATIONS OF THE**
14 **WASHINGTON CONSUMER PROTECTION ACT, RCW 19.86**
15

16 7.1. **Incorporation by Reference.** Plaintiffs reallege the allegations of paragraphs 1.1
17
18 through 6.4.
19

20 7.2. **Violations of the Unfair Claims Settlement Practices Act.** Washington has
21
22 adopted the Unfair Claims Settlement Practices Act under Chapter 284-30, *et seq.* of the WAC.
23
24 AFM violated WAC 284-30 *et seq.* as described in this Complaint.
25

26 7.3. **Violations of CPA.** Violations of WAC 284-30 *et seq.* are *per se* violations of
27
28 the Washington Consumer Protection Act, RCW 19.86, entitling Plaintiffs to exemplary
29
30 damages, attorney fees, and costs. AFM also committed *non-per se* violations of the Consumer
31
32 Protection Act.
33

34 7.4. **Damages.** As a direct and proximate cause of this conduct, Plaintiffs suffered
35
36 damages in an amount to be established at trial.
37

38 **VIII. RESERVATION OF RIGHT TO AMEND COMPLAINT FOR**
39 **VIOLATION OF THE INSURANCE FAIR CONDUCT ACT, RCW 48.30.015**
40

41 8.1. **Incorporation by Reference.** Plaintiffs reallege the allegations of paragraphs 1.1
42
43 through 7.4.
44
45

1 8.2. **IFCA Notice.** Plaintiffs are preparing an IFCA Notice, which will be served in
2
3 accordance with RCW 48.30.015.
4

5 8.3. **Reservation to Amend Complaint.** Plaintiffs reserve the right to amend their
6
7 Complaint after the 20-day notice period under IFCA expires.
8

9 **IX. PRAYER FOR RELIEF**

10
11 Plaintiffs pray for the following relief:
12

13 9.1. **Declaratory Judgment.** Enter declaratory judgment as stated;
14

15 9.2. **Monetary Damages.** Award Plaintiffs the full benefit of the Policy and recovery
16
17 for all of their contractual and extracontractual damages arising from AFM's breach of the
18
19 Policy;
20

21 9.3. **Attorneys' Fees and Costs of Suit.** Award Plaintiffs their costs and attorneys'
22
23 fees incurred pursuant to *Olympic Steamship Co. v. Centennial Ins. Co.*, 117 Wn.2d 37 (1991)
24
25 and its progeny, the Washington Consumer Protection Act, or under any other basis permitted by
26
27 law or equity;
28

29 9.4. **Treble Damages Under the Consumer Protection Act.** Award Plaintiffs treble
30
31 damages up to \$25,000 under the Consumer Protection Act;
32

33 9.5. **Interest.** Award Plaintiffs pre-judgment interest on the amount of insurance
34
35 benefits awarded; and
36

37 9.6. **Other Relief.** Grant Plaintiffs such other relief as may be just, legal, and proper.
38
39
40
41
42
43
44
45

1 DATED this 10th day of March, 2021.
2

3 **GORDON TILDEN THOMAS & CORDELL LLP**
4 Attorneys for Plaintiffs

5
6 By s/ Kasey D. Huebner

7 Kasey D. Huebner, WSBA #32890

8 Miles C. Bludorn, WSBA #54238

9 600 University Street, Suite 2915

10 Seattle, Washington 98101

11 206.467.6477

12 khuebner@gordontilden.com

13 mbludorn@gordontilden.com
14

15
16 DATED this 10th day of March, 2021.
17

18 **KILPATRICK TOWNSEND & STOCKTON LLP**
19 Attorneys for Plaintiffs

20
21 By s/ Rob Roy Smith

22 Rob Roy Smith, WSBA #33798

23 1420 Fifth Avenue, Suite 3700

24 Seattle, Washington 98101

25 206.467.9600

26 rrsmith@kilpatricktownsend.com
27

28
29 By s/ Bree R. Black Horse

30 Bree R. Black Horse, WSBA #47803

31 1420 Fifth Avenue, Suite 3700

32 Seattle, Washington 98101

33 206.467.9600

34 brblackhorse@kilpatricktownsend.com
35
36
37
38
39
40
41
42
43
44
45