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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

SITTING AT VIC'S LLC d.b.a. WEST 5;
ATHLETE'S PERFORMANCE CENTER, P.S.,
d.b.a. TANGELO MANUAL; BILL J.
MULLIKEN DDS, CASON CULBERSON
DDS, and BRIAN J. RUTHERFORD DDS
d.b.a. MILL CREEK FAMILY DENTISTRY;
ISAAC FU, DDS, MSD, PLLC; JOHN C
WALKER, DDS, INC P.S.; LEONE &
VAUGHN, DDS P.S.; PUGET SOUND
PERIODONTICS, PLLC; MAN SUNWOO,
DMD PLLC; GRANT D. MCCLENDON,
D.M.D., PLLC; KARI R. MANN DDS, PLLC
d.b.a. SHORELINE FAMILY DENTAL CARE;
5341 OPERATIONS LLC d.b.a. SAN FERMO;
MCLAUGHLIN AND STONEBRAKER PLLC
d.b.a. REDMOND SIGNATURE DENTISTRY;
and GARY L BELL, DDS, P.S.,

Plaintiffs,

v.

LIBERTY MUTUAL INSURANCE
COMPANY, an insurance company;
AMERICAN FIRE AND CASUALTY
COMPANY, an insurance company; OHIO
SECURITY INSURANCE COMPANY, an
insurance company; and THE OHIO
CASUALTY INSURANCE COMPANY, an
insurance company,

Defendants.

No.

COMPLAINT

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I. INTRODUCTION

Plaintiffs bring this action for business interruption insurance coverage. Plaintiffs allege 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 actions originate in Washington and the amounts in controversy exceed the jurisdictional threshold.

2. This Court has personal jurisdiction over Defendants because Defendants registered to do business in Washington, have sufficient minimum contacts with Washington, and otherwise intentionally avails themselves of the markets within Washington through their business activities, such that the exercise of jurisdiction by this Court is proper pursuant to RCW 48.05.200. Moreover, Plaintiffs' claims arise out of and directly relate to Defendants' contacts with Washington.

3. This case is filed within two years of the onset of Plaintiffs' loss, in accordance with the contractual limitation on suit in Plaintiffs' business interruption insurance policies.

4. A matter currently on direct review to the Washington Supreme Court, *Hill & Stout PLLC v. Mutual of Enumclaw Insurance Co.*, No. 100211-4 (Wash. review granted Jan. 5, 2022), addresses similar insurance coverage arising from similar facts, similar case theories, and virtually identical insuring language. In light of the pending *Hill & Stout* appeal, Plaintiffs contend this action should be stayed after filing and service until 60 days after the Washington Supreme Court issues a decision in *Hill & Stout*.

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III. PARTIES

5. Sitting at Vic's LLC d.b.a. West 5 is insured by Defendant Ohio Security Insurance Company under Policy #BKS(20)58475269 and Policy #BKS584752692.

6. Athlete's Performance Center, P.S. d.b.a Tangelo Manual is insured by Defendant American Fire and Casualty Company under Policy #BZA(20)57908146.

7. Bill J. Mulliken DDS, Cason Culberson DDS, and Brian J. Rutherford DDS, d.b.a. Mill Creek Family Dentistry, are insured by Defendant American Fire and Casualty Company under Policy # BZA576661414.

8. Isaac Fu, DDS, MSD, PLLC is insured by Defendant American Fire and Casualty Company under Policy # BZA(20)57336953.

9. John C. Walker, DDS, INC P.S. is insured by American Fire & Casualty under Policy # BZA579448243.

10. Leone & Vaughn, DDS P.S. is insured by Defendant Liberty Mutual Insurance Company or a related corporation under Policy # BZA(20)57709363.

11. Puget Sound Periodontics, PLLC is insured by Defendant American Fire and Casualty Company under Policy # BZA58731351.

12. Man Sunwoo, DMD PLLC is insured by Defendant Ohio Security Insurance Company under Policy # BZS(21)565766955.

13. Grant D. McClendon, D.M.D., PLLC is insured by Defendant Ohio Security Insurance Company under Policy # BZS(21)595891501.

14. Kari R. Mann DDS, PLLC d.b.a. Shoreline Family Dental Care is insured by Defendant Ohio Security Insurance Company under Policy # BZS57890852.

15. 5341 Operations LLC d.b.a. San Fermo is insured by Defendant Ohio Security Insurance Company under Policy # BKS573488204.

16. McLaughlin and Stonebraker PLLC d/b/a Redmond Signature Dentistry is insured by Defendant Ohio Security Insurance Company under Policy # BZS57609812.

17. Gary L. Bell, DDS, P.S. is insured by Defendant The Ohio Casualty Insurance Company under Policy #BZO(20)57239777 and Policy #BZO572397774.

18. Defendant Liberty Mutual Insurance Company (“Liberty Mutual”) does business in King County, Washington, including selling insurance policies in King County, Washington.

19. Defendant American Fire and Casualty Company (“American Fire”) does business in King County, Washington, including selling insurance policies in King County, Washington.

20. Defendant Ohio Security Insurance Company (“Ohio Security”) does business in King County, Washington, including selling insurance policies in King County, Washington.

21. Defendant The Ohio Casualty Insurance Company (“Ohio Casualty”) does business in King County, Washington, including selling insurance policies in King County, Washington.

22. Liberty Mutual, American Fire, Ohio Security, and Ohio Casualty are part of the same corporate family of insurers, and are referred to collectively herein as “Defendants”.

23. Each defendant is vicariously liable for the acts and omissions of its respective employees and agents.

IV. NATURE OF THE CASE

24. Defendants issued one or more insurance policies to each Plaintiff, including a businessowners policy and related endorsements (collectively, “the Policies”), which provide

1 broad property and business interruption coverage of each Plaintiff's property and business at all
2 relevant times.

3 25. Defendants issued the Policies in Washington covering property situated in
4 Washington.

5 26. The Plaintiffs' business property includes Plaintiffs' business premises and
6 property and equipment owned and/or leased and used for each Plaintiff's specific business
7 activity.

8 27. Defendants promised to pay Plaintiffs for loss of business income because of
9 direct physical loss or damage of property. The Policies do not define the key coverage terms.

10 28. In general, courts have found coverage under business interruption policies when
11 the policyholder has lost the functional use of their business property. This occurred to
12 Plaintiffs.

13 29. Plaintiffs paid all premiums for the coverage when due.

14 30. Plaintiffs seek all coverage due under their policies, including without limitation
15 Business Income Coverage, Extra Expense Coverage, Extended Business Income Coverage, and
16 Civil Authority Coverage, to whatever extent provided.

17 31. 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 32. It is now known that COVID-19 spreads through airborne transmission, and, in
20 some cases in conjunction with governmental responses, leads to loss of functional use of
21 business property for ordinary business purposes.

22 33. The first confirmed case of COVID-19 in King County, Washington was noted
23 on January 21, 2020.

1 34. On February 29, 2020, Washington Governor Jay Inslee issued Proclamation 20-
2 5, declaring a State of Emergency for all counties in the State of Washington as the result of
3 COVID-19.

4 35. Thereafter, Governor Inslee issued a series of certain proclamations and orders
5 affecting many persons and businesses in Washington, whether infected with COVID-19 or not,
6 requiring certain public health precautions. Among other things, Governor Inslee’s “Stay Home,
7 Stay Healthy” order required the closure of all non-essential businesses, including each of the
8 Plaintiffs’ businesses here.

9
10 36. Issued March 12, 2020, Proclamation 20-08 closed all public and private K-12
11 schools in King, Pierce, and Snohomish counties. Issued March 13, 2020, Proclamation 20-09
12 extended the school closure to the entire state.

13
14 37. Issued March 16, 2020, Proclamation 20-13 closed theaters, gyms, performance
15 venues, dance studios, bowling alleys, and indoor dining at restaurants.

16 38. Proclamation 20-13 prohibited “any number of people from gathering in any
17 public venue in which people congregate for purposes of . . . fitness and other similar activities.”
18 The proclamation further prohibits “the operation of public venues in which people congregate
19 for entertainment, social or recreational purposes, including but not limited to . . . gyms, fitness
20 centers . . . and other similar venues.”

21
22 39. Proclamation 20-13 states that one of the reasons for its restrictions is that “the
23 worldwide COVID-19 pandemic and its progression in Washington State continues to threaten
24 the life and health of our people as well as the economy of Washington State, and remains a
25 public disaster affecting life, health, property, or the public peace.”
26

1 40. The various orders issued in Washington State in connection with the COVID-19
2 global pandemic led to Plaintiffs' experiencing a loss of functionality of their business property.

3 41. Proclamations 20-05 and 20-13 refer to property damage throughout the State of
4 Washington, including where Plaintiffs' businesses are located.

5 42. Other premises, schools, and businesses in immediate close proximity to each
6 Plaintiff were closed and suffered direct physical loss as a result of these and similar
7 governmental orders.

8 43. As a result of the above, Plaintiffs have experienced and will experience losses
9 covered by the Policies.
10

11 **V. CAUSES OF ACTION**

12 **Count One—Declaratory Judgment**

13 44. This is a cause of action for declaratory judgment pursuant to the Uniform
14 Declaratory Judgments Act, RCW 7.24.010 *et seq.*

15 45. Plaintiffs seek a declaratory judgment declaring that losses and expenses
16 resulting from the interruption of their businesses are covered by the Policies Defendants issued
17 to them.

18 46. Plaintiffs seek a declaratory judgment declaring that Defendants are responsible
19 for timely and fully paying their claims.
20

21 **Count Two—Breach of Contract**

22 47. The Policies issued by Defendants promise to pay Plaintiffs for all claims
23 covered by the Policies.

24 48. Each Plaintiff has paid its insurance premiums.
25
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1 49. Defendants' failure to provide coverage for the claims is a breach of the
2 insurance contract.

3 50. Each Plaintiff is harmed by the breach of the insurance contract by their insurer.
4

5 **VI. REQUEST FOR RELIEF**

6 1. A declaratory judgment that the Policies cover Plaintiffs' losses and expenses
7 resulting from the interruption of Plaintiffs' businesses related to COVID-19 and/or orders
8 issued by Governor Inslee, other Governors, and/or other authorities.

9 2. A declaratory judgment that Defendants are responsible for timely and fully
10 paying all such losses.

11 3. Damages.

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

13 5. Attorney fees and costs under *Olympic Steamship Co. v. Centennial Insurance*
14 *Co.*, 117 Wn.2d 37, 51–53, 811 P.2d 673 (1991) and/or other applicable law.
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16 6. Such further and other relief as the Court shall deem appropriate.
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1 DATED this 11th day of March, 2022.

2 KELLER ROHRBACK L.L.P.

3
4 By s/Ian S. Birk

Ian S. Birk, WSBA #31431

Gabe Verdugo, WSBA #44154

Nathan Nanfelt, WSBA #45273

Amy Williams-Derry, WSBA #28711

1201 Third Avenue, Suite 3200

Seattle, WA 98101

Telephone: (206) 623-1900

Fax: (206) 623-3384

Email: ibirk@kellerrohrback.com

Email: gverdugo@kellerrohrback.com

Email: nnanfelt@kellerrohrback.com

Email: awilliams-derry@kellerrohrback.com

11
12 *Attorneys for Plaintiffs*