

EASTERN DISTRICT OF KENTUCKY

No. _____

Ryan. P. Estes, D.M.D., M.S., P.S.C.,

Plaintiff,

v.

Cincinnati Insurance Company,

Defendant.

_____ /

COMPLAINT

Plaintiff, **Ryan. P. Estes, D.M.D., M.S., P.S.C.**, sues the Defendant, **Cincinnati Insurance Company**, and alleges as follows:

NATURE OF ACTION

1. This is an action for breach of an insurance contract as well as statutory and common law bad faith for Defendant's failure to pay insurance policy proceeds that are due and owing to Plaintiff under a commercial property policy of insurance issued by Defendants to Plaintiff.

JURISDICTION AND VENUE

2. Plaintiff's principal place of business is at 8136 Mall Road, Florence, KY 41042. Plaintiff owns and operates a dentist office and primarily provides dental services at that location.

3. Plaintiff also owns and operates dental offices at 40 N Grand Ave, Ste 305, Fort Thomas, KY 41075.

4. At all material times, Defendant (the "Insurance Company") is a corporation, duly authorized and licensed to transact insurance business in the State of Kentucky. The Insurance Company was and is engaged in a course of conduct in which revenue was derived from providing goods and/or services throughout Kentucky.

5. The Insurance Company has a principal place of business at Post Office Box 145496, Cincinnati, OH 45250-5496.

6. The Insurance Company operated, conducted, engaged in, and/or carried on a business or business venture in the State of KY.

7. The parties are diverse and the amount of coverage sought in this action exceeds the diversity jurisdictional limits of this Court. Therefore, this Court has jurisdiction over this action to 28 USC § 1332.

8. The action seeks damages in excess of \$75,000, exclusive of interest, costs and attorney's fees (the estimated value of Plaintiff's claim is in excess of the minimum jurisdictional threshold required by this Court).

9. Venue is proper in this Court because Plaintiff's principal place of business is in Boone County, KY; the Policy was entered into, issued, and covers property located in Boone County, KY; and this cause of action arose in Boone County, KY.

POLICY

10. The Insurance Company issued Plaintiff an insurance policy (the "Policy"). A copy of the Policy materials in Plaintiff's possession is attached as Exhibit 1. A certified copy of the Policy is in the exclusive control of the Insurance Company, and Plaintiff expects the Insurance Company will produce the certified copy in discovery.

11. The Policy was in full force and effect and provided coverage to Plaintiff.

12. The Policy provides coverage for Plaintiff's loss of business income and other losses and damages.

13. The Policy provides coverage for Plaintiff's loss of expense.

14. The Policy does not contain any exclusion for viruses, diseases, epidemics, or pandemics.

15. There is no other applicable exclusion.

16. Therefore the Policy covers loss, including business income and extra expense, from viruses, diseases, epidemics, or pandemics.

VIRUS/PANDEMIC

17. As this Court is well aware, the SARS-CoV-2 virus (commonly called by the disease it causes, "COVID-19") is the most recent strain of coronavirus. It is publicly acknowledged that COVID-19 is highly contagious and appears to have a higher mortality rate than other more common strains of virus, and the prevalence of COVID-19 has resulted in a pandemic. The pandemic became widespread in the United States at the beginning of the calendar year 2020.

18. As a result of the spread of the SARS-CoV-2 virus and COVID-19 pandemic, state and local governments issued executive orders, decrees, and mandates which prohibited and/or limited patrons, customers, vendors, employees and others from going to business establishments, including Plaintiff's business, resulting in the suspension of operations at the insured premises.

19. In this Commonwealth, on March 6, 2020, Kentucky Governor Beshear issued Executive Order 2020-215 and declared a state of emergency in Kentucky as a result of COVID-19.

20. Specific to Plaintiff's business, from March 16, 2020, until April 27, 2020, Plaintiff was prohibited from performing non-emergency services.

DIRECT PHYSICAL LOSS AND EXTRA EXPENSE

21. Due to the existence of COVID-19 and the related pandemic and the Order that bans non-emergency dental services, Plaintiff's property is not able to function as intended by Plaintiff and the Insurance Company. Plaintiff lost the use of the insured property and as a result, Plaintiff could not provide non-emergency dental services at the insured property, and has necessarily had to suspend its business activities occurring onsite at the insured property.

22. Plaintiff's loss of use of the insured property and insured property's inability to function as intended by Plaintiff and the Insurance Company is a direct physical loss. As a result of this direct physical loss, Plaintiff has suffered loss of business income, has incurred extra expense to minimize the suspension of business and continue its operations, and has suffered other losses and damages (collectively "Loss").

23. The Loss is covered under the Policy.

CIVIL AUTHORITY ADDITIONAL COVERAGE

24. The Policy also covers Loss caused by Civil Authority when access to the property is prohibited due to loss to other property.

25. Persons with COVID-19 have breathed, touched surfaces, spread the virus through the air and on surfaces, suffered from the virus, and died from the virus at other properties.

26. As a result of this loss to other properties, Plaintiff was denied access to the property for the purpose of non-emergency dental services.

27. For these reasons, Plaintiff's Loss is covered under the civil authority coverage.

INGRESS & EGRESS COVERAGE

28. The Policy also covers Loss caused by lack of ingress or egress to the property is prohibited due to loss to property contiguous to Plaintiff's property.

29. Upon information and belief, persons with COVID-19 have breathed, touched surfaces, spread the virus through the air and on surfaces and suffered from the virus at property contiguous to Plaintiff's property.

30. As a result of this loss to contiguous properties, Plaintiff was denied ingress and egress to the premises for the purpose of non-emergency dental services.

31. For these reasons, Plaintiff's Loss is covered under the ingress and egress coverage.

DEPENDENT PROPERTY COVERAGE

32. In addition, the Policy covers Loss caused by loss to dependent properties.

33. Plaintiff suffered a loss of materials, services, and lack of customers as a result of COVID-19 and the government orders restricting businesses and customers.

34. For these reasons, Plaintiff's Loss is covered under the dependent property coverage.

SUE AND LABOR

35. The Policy further requires the insured to "[t]ake all reasonable steps to protect any property involved from further damage," and "[i]f feasible, set the damaged property aside and in the best possible order for examination."

36. In complying with the government orders on closure and reopening, Plaintiff incurred expenses in connection with reasonable steps to protect the premises.

37. For these reasons, Plaintiff's Loss is covered under the sue and labor coverage.

COUNT 1

BREACH OF THE INSURANCE POLICY

38. Plaintiff adopts and reiterates each and every allegation above and below as if set out fully in this paragraph and incorporates them by reference.

39. Plaintiff complied with all conditions precedent to entitle Plaintiff to recover under the Policy, or the Insurance Company waived compliance with such conditions.

40. The Insurance Company chose not to pay Plaintiff for the Loss.

41. The Insurance Company's choice not to pay for the Loss is a material breach of contract.

42. As a result of the Insurance Company's material breach of contract, it has become necessary for Plaintiff to retain the services of the undersigned attorney.

WHEREFORE Plaintiff, Ryan. P. Estes, D.M.D., M.S., P.S.C., demands judgment against the Insurance Company for all covered losses with interest on any overdue payments, any incidental and foreseeable consequential damages caused by the breach of contract, plus costs of litigation.

COUNT 2

VIOLATION OF KENTUCKY'S UNFAIR CLAIMS SETTLEMENT PRACTICES ACT

43. Plaintiff adopts and reiterates each and every allegation above and below as if set out fully in this paragraph and incorporates them by reference.

44. The Insurance Company has a duty to investigate claims in good faith and promptly pay valid claims.

45. Upon information and belief, the Insurance Company conducted no investigation at all.

46. The Insurance Company has a duty to act in good faith and to deal fairly with Plaintiff, and to attempt to effectuate a fair and reasonable settlement of Plaintiff's claim.

47. The Insurance Company lacks a good faith basis to deny the claim.

48. The Insurance Company's actions are outrageous, intentional wrongdoing, and in reckless disregard to Plaintiff's rights.

49. The Insurance Company violated the Unfair Claims Settlement Practices Act as set forth in KRS § 304.12-230(2-6) by:

- (2) "Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;
- (3) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;
- (4) Refusing to pay claims without conducting a reasonable investigation based upon all available information;
- (5) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed; [and]
- (6) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear..."

50. Plaintiff has suffered financial loss due to the Insurance Company's bad faith denial of its claim.

51. Plaintiff is entitled to punitive damages for the Insurance Company's violations of the Unfair Claims Settlement Practices Act.

WHEREFORE Plaintiff, Ryan. P. Estes, D.M.D., M.S., P.S.C., demands judgment against the Insurance Company for all losses with interest on any overdue payments, any incidental and foreseeable consequential damages caused by the Insurance Company's violation of the Unfair Claims Settlement Practices Act, plus attorney's fees and costs of litigation.

COUNT 5

COMMON LAW BAD FAITH

52. Plaintiff adopts and reiterates each and every allegation above and below as if set out fully in this paragraph and incorporates them by reference.

53. The Insurance Company has a duty to investigate claims in good faith and promptly pay valid claims.

54. Upon information and belief, the Insurance Company conducted no investigation at all.

55. The Insurance Company has a duty to act in good faith and to deal fairly with Plaintiff, and to attempt to effectuate a fair and reasonable settlement of Plaintiff's claim.

56. The Insurance Company lacks a good faith basis to deny the claim.

57. The Insurance Company's actions are outrageous, intentional wrongdoing, and in reckless disregard to Plaintiff's rights.

58. Plaintiff has suffered financial loss due to the Insurance Company's bad faith denial of its claim.

59. Plaintiff is entitled to punitive damages for the Insurance Company's bad faith.

WHEREFORE Plaintiff, Ryan. P. Estes, D.M.D., M.S., P.S.C., demands judgment against the Insurance Company for all losses with interest on any overdue payments, any

incidental and foreseeable consequential damages caused by the Insurance Company's bad faith, plus attorney's fees and costs of litigation.

COUNT 6

VIOLATION OF KRS §304.12-235

60. Plaintiff adopts and reiterates each and every allegation above and below as if set out fully in this paragraph and incorporates them by reference.

61. The Insurance Company failed to make a good faith attempt to settle Plaintiff's claim within thirty days of being provided notice of his claim.

62. The Insurance Company's denial is without reasonable foundation.

63. Plaintiff is entitled to recover his attorneys' fees and costs incurred in obtaining a claim settlement or verdict, and pre-claim payment of statutory interest at 12% from thirty days after the proof of claim was made to the Insurance Company until the claim is paid.

WHEREFORE Plaintiff, Ryan. P. Estes, D.M.D., M.S., P.S.C., demands judgment against the Insurance Company for all losses with interest on any overdue payments, any incidental and foreseeable consequential damages caused by the Insurance Company's violation of KRS §304.12-235, plus attorney's fees and costs of litigation.

COUNT 7

VIOLATION OF KENTUCKY'S CONSUMER PROTECTION ACT – KRS §367.110 ET SEQ

64. Plaintiff adopts and reiterates each and every allegation above and below as if set out fully in this paragraph and incorporates them by reference.

65. The insurance coverage purchased by Plaintiff qualifies as a “service” intended to be protected by Kentucky’s Consumer Protection Act, KRS §367.110 through KRS §367.360.

66. The Insurance Company violated the Consumer Protection Act by denying the claim in bad faith and failing to reasonably investigate the claim.

67. Plaintiff is entitled to damages as set forth above and for recovery of his attorneys’ fees and cost and punitive damages for violations of the Consumer Protection Act.

WHEREFORE Plaintiff, Ryan. P. Estes, D.M.D., M.S., P.S.C., demands judgment against the Insurance Company for all losses with interest on any overdue payments, any incidental and foreseeable consequential damages caused by the Insurance Company’s violation of the Consumer Protection Act, plus attorney’s fees and costs of litigation.

COUNT 8

PUNITIVE DAMAGES

68. Plaintiff adopts and reiterates each and every allegation above and below as if set out fully in this paragraph and incorporates them by reference.

69. The Insurance Company’s actions as set forth above constitute such gross negligence, malice, and reckless disregard for Plaintiff’s rights so as to warrant punitive damages.

70. The imposition of punitive damages is necessary to serve as a deterrent effect to the Insurance Company and all others similarly situated.

Wherefore, Plaintiff respectfully demands as follows:

1. Trial by Jury of any issue triable of right by a jury;

2. Judgment for inconvenience and financial pain and suffering and interest against the Insurance Company on all counts;
3. Compensatory and punitive damages in a fair and reasonable amount that exceeds the jurisdictional limits of this Court;
4. Attorney fees;
5. Pre-judgment interest;
6. Post-judgment interest;
7. Cost and expenses expended in this litigation; and
8. Any and all other relief to which Plaintiff may be entitled.

JURY DEMAND

Plaintiff demands a trial by jury of any issue triable of right by a jury.

Dated this 29th day of September, 2020.

Morgan and Morgan, P.A.

/s/ Josh Autry
Kentucky Bar No. 98419
333 West Vine Street, Suite 1200
Lexington, KY 40507
Phone: (859) 899-8785
Fax: (859) 899-8806
jautry@forthepeople.com
Counsel for Plaintiff