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UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

KARLA AYLEN, DDS PLLC, individually and  
on behalf of all others similarly situated,  
  
Plaintiff,  
  
v.  
  
ASPEN AMERICAN INSURANCE  
COMPANY,  
  
Defendant.

No.  
  
COMPLAINT—CLASS ACTION  
  
JURY DEMAND

**I. INTRODUCTION**

Plaintiff, KARLA AYLEN, DDS PLLC (“Aylen”), individually and on behalf of all other similarly situated members of the defined national class, and the defined Washington State subclasses (the “Class Members”), by and through the undersigned attorneys, brings this class action against Aspen American Insurance Company (“Aspen” or “Defendant”) and alleges as follows based on personal knowledge and information and belief:

**II. JURISDICTION AND VENUE**

1. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one member of the proposed Class and Washington subclass is a citizen of a state different from that of Defendant, the proposed Class



1 7. Aspen is authorized to write, sell, and issue business insurance policies in all 50  
2 States, the District of Columbia, Puerto Rico and the U.S. Virgin Islands. Aspen conducted  
3 business within these states by selling and issuing insurance policies to policyholders, including  
4 Plaintiff Aylen.

5  
6 **IV. NATURE OF THE CASE**

7 8. Due to COVID-19, and a state-ordered mandated closure, Plaintiff cannot provide  
8 dentistry services. Plaintiff intended to rely on its business insurance to maintain business  
9 income in case of an insured loss. This lawsuit is filed to ensure that Plaintiff and other similarly-  
10 situated policyholders receive the insurance benefits to which they are entitled and for which  
11 they paid.

12 9. Defendant Aspen issued one or more insurance policies to Plaintiff, including  
13 Building, Blanket Dental Practice Personal Property and Income Coverage Part and related  
14 endorsements, insuring Plaintiff's property and business practice and other coverages, with  
15 effective dates of January 1, 2020 to January 1, 2021.

16  
17 10. Plaintiff's business property includes property owned and/or leased by Plaintiff  
18 and used for general business purposes for the specific purpose of dentistry and other business  
19 activities.

20  
21 11. Defendant Aspen's insurance policy issued to Plaintiff promises to pay Plaintiff  
22 for "ALL RISK OF DIRECT PHYSICAL LOSS" to covered property and includes coverage for  
23 risks of both "loss of or damage to" covered property.

24 12. Defendant Aspen's policy issued to Plaintiff includes Practice Income Coverage,  
25 Extra Expense Coverage, Extended Practice Income Coverage and Civil Authority Coverage.

26 13. Plaintiff paid all premiums for the coverage when due.

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

3 15. On February 29, 2020, Washington Governor Jay Inslee issued Proclamation 20-  
4 5, declaring a State of Emergency for all counties in the state of Washington as a result of Covid-  
5 19. Thereafter, he issued a series of certain proclamations and order affecting many persons and  
6 businesses in Washington, whether infected with COVID-19 or not, requiring certain public  
7 health precautions.  
8

9 16. On March 19, 2020, Governor Inslee issued a “PROCLAMATION BY THE  
10 GOVERNOR AMENDING PROCLAMATION 20-05: 20-24 Restrictions on Non Urgent  
11 Medical Procedures.” dated March 19, 2020, which prohibited dental practitioners from  
12 providing dental services but for urgent and emergency procedures:  
13

14 WHEREAS, the health care person protective equipment supply chain in  
15 Washington State has been severely disrupted by the significant increased use of  
16 such equipment worldwide, such that there are now critical shortages of this  
17 equipment for health care workers. To curtail the spread of the COVID-19  
18 pandemic in Washington State and to protect our health care workers as they  
19 provide health care services, it is necessary to immediately prohibit all hospitals,  
ambulatory surgery centers, and dental orthodontic, and endodontic offices in  
Washington State from providing health care services, procedures and surgeries  
that require personal protective equipment, which if delayed, are not anticipated  
to cause harm to the patient within the next three months.

20 17. On March 23, 2020, Mr. John Weisman, Secretary of Washington State’s  
21 Department of Health, issued a list of directives and orders regarding healthcare matters and  
22 mandated that all healthcare practitioners, including dental, cease all elective and non-urgent  
23 medical procedures and appointments as of the close of business on March 24, 2000, and  
24 throughout the duration of the catastrophic health emergency.  
25

26 18. On March 25, 2020, the Washington State Dental Association recommended that  
all dental practices follow the mandates and orders of the Washington Department of Health and  
COMPLAINT—CLASS ACTION - 4

**KELLER ROHRBACK L.L.P.**

1201 Third Avenue, Suite 3200  
Seattle, WA 98101-3052  
TELEPHONE: (206) 623-1900  
FACSIMILE: (206) 623-3384

1 postpone all non-emergency or non-urgent dental procedures throughout the duration of the  
2 catastrophic health emergency.

3 19. On March 30, 2020, Governor Inslee issued Order Number 20-03-30-01 affecting  
4 persons and residents within the State of Washington, which includes a “Stay-at-Home Order”  
5 requiring all persons living in Washington to stay in their homes or places of residences except  
6 under certain specified circumstances.

8 20. No COVID-19 virus has been detected on Plaintiff’s business premises.

9 21. Plaintiff’s property sustained direct physical loss and/or damages related to  
10 COVID-19 and/or the proclamations and orders.

11 22. Plaintiff’s property will continue to sustain direct physical loss or damage covered  
12 by the Aspen policy or policies, including but not limited to business interruption, extra expense,  
13 interruption by civil authority, and other expenses.

15 23. Plaintiff’s property cannot be used for its intended purposes.

16 24. As a result of the above, Plaintiff has experienced and will experience loss  
17 covered by the Aspen policy or policies.

18 25. Plaintiff contacted its insurance agent to inquire into coverage for its losses  
19 covered by the Aspen Policy. Plaintiff was informed by voice message that there was no  
20 coverage for its losses.

22 26. Upon information and belief, Aspen has denied and will deny coverage to other  
23 similarly situated policyholders.

24 **V. CLASS ACTION ALLEGATIONS**

25 27. This matter is brought by Plaintiff on behalf of itself and those similarly situated,  
26 under Federal Rules of Civil Procedure 23(b)(1), 23(b)(2), and 23(b)(3).

1 28. The Classes and Subclasses that Plaintiff seeks to represent are defined as:

2 A. ***Practice Income Breach of Contract Class:*** All persons and entities in the  
3 United States insured under an Aspen policy with Practice Income Coverage who  
4 suffered a suspension of their practice at the covered premises related to COVID-19  
5 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities  
6 and whose Practice Income claim has been denied by Aspen.  
7

8 B. ***Practice Income Breach of Contract Washington Subclass:*** All persons  
9 and entities in the State of Washington insured under an Aspen policy with Practice  
10 Income Coverage who suffered a suspension of their practice at the covered premises  
11 related to COVID-19 and/or orders issued by Governor Inslee, and/or other civil  
12 authorities and whose Practice Income claim has been denied by Aspen.  
13

14 C. ***Practice Income Declaratory Relief Class:*** All persons and entities in the  
15 United States insured under an Aspen policy with Practice Income Coverage who  
16 suffered a suspension of their practice at the covered premises related to COVID-19  
17 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities.  
18

19 D. ***Practice Income Declaratory Relief Washington Subclass:*** All persons  
20 and entities in the State of Washington insured under an Aspen policy with Practice  
21 Income Coverage who suffered a suspension of their practice at the covered premises  
22 related to COVID-19 and/or orders issued by Governor Inslee, and/or other civil  
23 authorities.  
24

25 E. ***Extra Expense Breach of Contract Class:*** All persons and entities in the  
26 United States insured under an Aspen policy with Extra Expense Coverage who incurred  
expenses while seeking to minimize the suspension of business at the covered premises in

1 connection with COVID-19 and/or orders issued by Governor Inslee, other Governors,  
2 and/or other civil authorities and whose Extra Expense claim has been denied by Aspen.

3 F. ***Extra Expense Breach of Contract Washington Subclass:*** All persons  
4 and entities in the State of Washington insured under an Aspen policy with Extra  
5 Expense Coverage who incurred expenses while seeking to minimize the suspension of  
6 business at the covered premises in connection with COVID-19 and/or orders issued by  
7 Governor Inslee, and/or other civil authorities and whose Extra Expense claim has been  
8 denied by Aspen.

9  
10 G. ***Extra Expense Declaratory Relief Class:*** All persons and entities in the  
11 United States insured under an Aspen policy with Extra Expense Coverage who incurred  
12 expenses while seeking to minimize the suspension of business at the covered premises in  
13 connection with COVID-19 and/or orders issued by Governor Inslee, other Governors,  
14 and/or other civil authorities.

15  
16 H. ***Extra Expense Declaratory Relief Washington Subclass:*** All persons and  
17 entities in the State of Washington insured under an Aspen policy with Extra Expense  
18 Coverage who incurred expenses while seeking to minimize the suspension of business at  
19 the covered premises in connection with COVID-19 and/or orders issued by Governor  
20 Inslee, and/or other civil authorities.

21  
22 I. ***Extended Practice Income Breach of Contract Class:*** All persons and  
23 entities in the United States insured under an Aspen policy with Extended Practice  
24 Income Coverage who suffered a suspension of their practice at the covered premises  
25 related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or  
26

1 other civil authorities and whose Extended Practice Income claim has been denied by  
2 Aspen.

3 J. ***Extended Practice Income Breach of Contract Washington Subclass:***

4 All persons and entities in the State of Washington insured under an Aspen policy with  
5 Extended Practice Income Coverage who suffered a suspension of their practice at the  
6 covered premises related to COVID-19 and/or orders issued by Governor Inslee, and/or  
7 other civil authorities and whose Extended Practice Income claim has been denied by  
8 Aspen.  
9

10 K. ***Extended Practice Income Declaratory Relief Class:*** All persons and

11 entities in the United States insured under an Aspen policy with Extended Practice  
12 Income Coverage who suffered a suspension of their practice at the covered premises  
13 related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or  
14 other civil authorities.  
15

16 L. ***Extended Practice Income Declaratory Relief Washington Subclass:*** All

17 persons and entities in the State of Washington insured under an Aspen policy with  
18 Extended Practice Income Coverage who suffered a suspension of their practice at the  
19 covered premises related to COVID-19 and/or orders issued by Governor Inslee, and/or  
20 other civil authorities.  
21

22 M. ***Civil Authority Breach of Contract Class:*** All persons and entities in the

23 United States insured under an Aspen policy with Civil Authority Coverage who suffered  
24 a suspension of their practice at the covered premises related to the impact of COVID-19  
25 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities  
26 and whose Civil Authority claim has been denied by Aspen.



1 N. **Civil Authority Breach of Contract Washington Subclass:** All persons  
2 and entities in the State of Washington insured under an Aspen policy with Civil  
3 Authority Coverage who suffered a suspension of their practice at the covered premises  
4 related to the impact of COVID-19 and/or orders issued by Governor Inslee, and/or other  
5 civil authorities and whose Civil Authority claim has been denied by Aspen.  
6

7 O. **Civil Authority Declaratory Relief Class:** All persons and entities in the  
8 United States insured under an Aspen policy with Civil Authority Coverage who suffered  
9 a suspension of their practice at the covered premises related to COVID-19 and/or orders  
10 issued by Governor Inslee, other Governors, and/or other civil authorities.  
11

12 P. **Civil Authority Declaratory Relief Washington Subclass:** All persons and  
13 entities in the State of Washington insured under an Aspen policy with Civil Authority  
14 Coverage who suffered a suspension of their practice at the covered premises related to  
15 COVID-19 and/or orders issued by Governor Inslee, and/or other civil authorities.  
16

17 29. Excluded from the Class are Defendant's officers, directors, and employees; the  
18 judicial officers and associated court staff assigned to this case; and the immediate family  
19 members of such officers and staff. Plaintiff Aylen reserves the right to amend the Class  
20 definition based on information obtained in discovery.  
21

22 30. This action may properly be maintained on behalf of each proposed Class under  
23 the criteria of Rule 23 of the Federal Rules of Civil Procedure.

24 31. **Numerosity:** The members of the Class are so numerous that joinder of all  
25 members would be impractical. Plaintiff is informed and believes that each proposed Class and  
26 Subclass contains hundreds of members. The precise number of class members can be  
ascertained through discovery, which will include Defendant's records of policyholders.

1           32.    **Commonality and Predominance:** Common questions of law and fact  
2 predominate over any questions affecting only individual members of the Class. Common  
3 questions include, but are not limited to, the following:

4           A.    Whether the class members suffered covered losses based on common  
5 policies issued to members of the Class and Subclass;

6           B.    Whether Aspen acted in a manner common to the Class and Subclass  
7 wrongfully denied claims for coverage relating to COVID-19 and/or orders issued by  
8 Governor Inslee, other Governors, and/or other civil authorities;

9           C.    Whether Practice Income Coverage in Aspen’s policies of insurance  
10 applies to a suspension of practice relating to COVID-19 and/or orders issued by  
11 Governor Inslee, other Governors, and/or other civil authorities;

12           D.    Whether Extra Expense Coverage in Aspen’s policies of insurance applies  
13 to efforts to minimize a loss relating to COVID-19 and/or orders issued by Governor  
14 Inslee, other Governors, and/or other civil authorities;

15           E.    Whether Extended Practice Income Coverage in Aspen’s policies of  
16 insurance applies to a suspension of practice relating to COVID-19 and/or orders issued  
17 by Governor Inslee, other Governors, and/or civil authorities;

18           F.    Whether Civil Authority Coverage in Aspen’s policies of insurance  
19 applies to a suspension of practice relating to COVID-19 and/or orders issued by  
20 Governor Inslee, other Governors, and/or civil authorities;

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

3 H. Whether, because of Defendant's conduct, Plaintiff and the class members  
4 have suffered damages; and if so, the appropriate amount thereof; and

5 I. Whether, because of Defendant's conduct, Plaintiff and the class members  
6 are entitled to equitable and declaratory relief, and if so, the nature of such relief.  
7

8 33. **Typicality:** Plaintiff's claims are typical of the claims of the members of the  
9 classes. Plaintiff and all the members of the classes have been injured by the same wrongful  
10 practices of Defendant. Plaintiff's claims arise from the same practices and course of conduct  
11 that give rise to the claims of the members of the Class and are based on the same legal theories.  
12

13 34. **Adequacy:** Plaintiff will fully and adequately assert and protect the interests of  
14 the classes and has retained class counsel who are experienced and qualified in prosecuting class  
15 actions. Neither Plaintiff nor its attorneys have any interests contrary to or in conflict with the  
16 Class.

17 35. **Federal Rule of Civil Procedure 23(b)(1), the Risk of Inconsistent or Varying**  
18 **Adjudications and Impairment to Other Class Members' Interests:** Plaintiff seeks  
19 adjudication as to the interpretation, and resultant scope, of Defendant's policies, which are  
20 common to all members of the class. The prosecution of separate actions by individual members  
21 of the classes would risk inconsistent or varying interpretations of those policy terms and create  
22 inconsistent standards of conduct for Defendant. The policy interpretations sought by Plaintiff  
23 could also impair the ability of absent class members to protect their interests.  
24

25 36. **Federal Rule of Civil Procedure 23(b)(2), Declaratory and Injunctive Relief:**  
26 Defendant acted or refused to act on grounds generally applicable to Plaintiff and other members



1 Relief Washington Subclass, Civil Authority Declaratory Relief Class, and Civil Authority  
2 Declaratory Relief Washington Subclass.

3 41. Plaintiff Aylen seeks a declaratory judgment declaring that Plaintiff Aylen's and  
4 class members' losses and expenses resulting from the interruption of their business are covered  
5 by the Policy.

6 42. Plaintiff Aylen seeks a declaratory judgment declaring that Aspen is responsible  
7 for timely and fully paying all such claims.

8  
9 **Count Two—Breach of Contract**

10 *(Brought on behalf of the Practice Income Coverage Breach of Contract Class,*  
11 *Practice Income Coverage Breach of Contract Washington Subclass, Extra Expense Breach*  
12 *of Contract Class, Extra Expense Breach of Contract Washington Subclass, Extended*  
13 *Practice Income Breach of Contract Class, Extended Practice Income Breach of Contract*  
*Washington Subclasses, Civil Authority Breach of Contract Class, and Civil Authority Breach*  
*of Contract Washington Subclass)*

14 43. Previous paragraphs alleged are incorporated herein.

15 44. Plaintiff Aylen brings this cause of action on behalf of the Practice Income  
16 Coverage Breach of Contract Class, Practice Income Breach of Contract Washington Subclass,  
17 Extra Expense Breach of Contract Class, Extra Expense Breach of Contract Washington  
18 Subclass, Extended Practice Income Breach of Contract Class, Extended Practice Income Breach  
19 of Contract Washington Subclass, Civil Authority Breach of Contract Class, and Civil Authority  
20 Breach of Contract Washington Subclass.

21 45. The Policy is a contract under which Plaintiff Aylen and the class paid premiums  
22 to Aspen in exchange for Aspen's promise to pay Plaintiff Aylen and the class for all claims  
23 covered by the Policy.

24 46. Plaintiff Aylen has paid its insurance premiums.  
25  
26

1 47. Plaintiff Aylen has been denied coverage for its losses covered by the Aspen  
2 policy.

3 48. Upon information and belief, Aspen has denied, and will continue to deny  
4 coverage for other similarly situated policyholders.

5 49. Denying coverage for the claim is a breach of the insurance contract.

6 50. Plaintiff Aylen is harmed by the breach of the insurance contract by Aspen.  
7

8 **1. PRAYER FOR RELIEF**

9 1. A declaratory judgment that the policy or policies cover the plaintiff's losses and  
10 expenses resulting from the interruption of the Plaintiff's business by COVID-19 and/or orders  
11 issued by Governor Inslee, other Governors, and/or other authorities.

12 2. A declaratory judgment that the defendant is responsible for timely and fully  
13 paying all such losses.

14 3. Damages.

15 4. Pre-judgment interest at the highest allowable rate.

16 5. Reasonable attorney fees and costs.

17 6. Such further and other relief as the Court shall deem appropriate.  
18

19 **VII. JURY DEMAND**

20 Plaintiff demands a jury trial on all claims so triable.  
21  
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1 DATED this 13th day of May, 2020.

2 KELLER ROHRBACK L.L.P.

3 By: s/ Amy Williams-Derry

4 By: s/ Lynn L. Sarko

5 By: s/ Ian S. Birk

6 By: s/ Gretchen Freeman Cappio

7 By: s/ Irene M. Hecht

8 By: s/ Maureen Falecki

9 By: s/ Nathan L. Nanfelt

Amy Williams-Derry, WSBA #28711

Lynn L. Sarko, WSBA #16569

Ian S. Birk, WSBA #31431

Gretchen Freeman Cappio, WSBA #29576

Irene M. Hecht, WSBA #11063

Maureen Falecki, WSBA #18569

Nathan Nanfelt, WSBA #45273

1201 Third Avenue, Suite 3200

Seattle, WA 98101

Telephone: (206) 623-1900

Fax: (206) 623-3384

Email: [awilliams-derry@kellerrohrback.com](mailto:awilliams-derry@kellerrohrback.com)

Email: [lsarko@kellerrohrback.com](mailto:lsarko@kellerrohrback.com)

Email: [ibirk@kellerrohrback.com](mailto:ibirk@kellerrohrback.com)

Email: [gcappio@kellerrohrback.com](mailto:gcappio@kellerrohrback.com)

Email: [ihecht@kellerrohrback.com](mailto:ihecht@kellerrohrback.com)

Email: [mfalecki@kellerrohrback.com](mailto:mfalecki@kellerrohrback.com)

Email: [nnanfelt@kellerrohrback.com](mailto:nnanfelt@kellerrohrback.com)

18  
19 By: s/ Alison Chase

Alison Chase, *pro hac vice* forthcoming

801 Garden Street, Suite 301

Santa Barbara, CA 93101

Telephone: (805) 456-1496

Fax: (805) 456-1497

Email: [achase@kellerrohrback.com](mailto:achase@kellerrohrback.com)

23 ***Attorneys for Plaintiff***

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25 4817-1314-0668, v. 1