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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

SHOKOFEH TABARAIE, DDS, PLLC,

Plaintiff,

v.

ASPEN AMERICAN INSURANCE
COMPANY,

Defendant.

No.

COMPLAINT FOR DAMAGES,
DECLARATORY JUDGMENT, AND
INJUNCTIVE RELIEF

JURY DEMAND

I. PARTIES

1. The plaintiff is Dr. Shokofeh Tabaraie, DDS, PLLC. Dr. Tabaraie is a resident of the state of Washington. Dr. Tabaraie owns and operates a dental practice in Seattle, Washington.

2. The defendant is Aspen American Insurance Company. Upon information and belief Aspen American is an insurance company domiciled in the state of Texas. Upon information and belief its principle place of business is Connecticut.

3. Defendant is vicariously liable for the acts and omissions of its employees and agents, including any outside person or entity to whom defendant assigned claims-handling or

1 investigative responsibilities, including third-party administrator American Claims
2 Management.

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4 **II. JURISDICTION AND VENUE**

5 4. This Court has subject-matter jurisdiction under 28 U.S.C. § 1332. The amount
6 in controversy exceeds \$75,000, exclusive of interest and costs. This action involves citizens of
7 different states. Dr. Tabaraie is a citizen of Washington. Aspen American is a citizen of Texas
8 and Connecticut.

9 5. This Court has personal jurisdiction over defendant.

10 6. Venue is proper in this district because a substantial part of the events or
11 omissions giving rise to the claim occurred in this district, 28 U.S.C. § 1391(b)(2); the property
12 that is the subject of the action is situated in this district, *id.*; and Aspen American is subject to
13 personal jurisdiction in this district, § 1391(b)(3).

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16 **III. CONDITIONS PRECEDENT**

17 7. All conditions precedent were performed or have occurred.

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19 **IV. FACTUAL ALLEGATIONS**

20 8. Whether an insurance company owes payment under a policy depends on a
21 careful examination of the specific policy documents and a full and fair investigation of the facts
22 that are material to the insured's claim.

23 9. In addition to its duty to investigate fully and fairly, the insurance company also
24 has a duty to explain the policy to the insured and assist the insured in attempting to secure
25 payment to the maximum extent possible. As the Court is aware, commercial policies often
26

1 consist of various base forms that are modified by numerous endorsements. In this case, for
2 example, the policy contains more than a dozen forms and endorsements.

3 10. Dr. Tabaraie purchased the Professional Protector Plan for Dentists from Aspen
4 American Insurance Company, policy number D019651-13. The policy period runs August 16,
5 2019, to August 16, 2020.
6

7 11. At all relevant times the policy was in effect and insured Dr. Tabaraie's dental
8 practice at 7900 E. Greenlake Dr. N. #200, Seattle, WA 98103.

9 12. Dr. Tabaraie purchased this insurance from Aspen American to protect against
10 financial catastrophes. As part of the coverage purchased by Dr. Tabaraie, she received
11 Building, Blanket Dental Practices Person Property and Income Coverage.
12

13 13. This policy is an "all-risk" policy, as opposed to a "named perils" or "specific
14 perils" policy. An all-risk policy provides coverage for all risks unless a specific risk is
15 excluded. All-risk policies generally allocate risk to the insurer, in contrast to specific-peril
16 policies, which place more risk on the insured.

17 14. The policy provides coverage for "direct physical damage." "Damage" is defined
18 as "partial or total loss of or damage to [the] covered property." This coverage includes
19 coverage for risks of both damage to and loss of covered property.
20

21 15. In February 2020 state and local health officials confirmed cases of Covid-19 in
22 the State of Washington. There was an early outbreak of Covid-19 at the Life Care Center of
23 Kirkland in King County, Washington, beginning in late February 2020. That outbreak resulted
24 in dozens of residents dying and dozens of employees being infected.
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1 16. On February 29, 2020, Governor Jay Inslee proclaimed a state of emergency in
2 all counties of the state due to the outbreak of Covid-19. *See* Proclamation by the Governor, 20-
3 05. As of the date of the filing of this lawsuit, this Proclamation is still active.

4 17. On March 19, 2020, the Governor issued Proclamation 20-24 prohibiting all
5 medical and dental offices from providing services, procedures, or surgeries that required
6 personal protective equipment, except for immediate emergencies. As a result, Dr. Tabaraie was
7 prohibited from running her regular dental practice except for urgent and emergency procedures.

8 18. Proclamation 20-24 was modified by Proclamation 20-24.1 on May 18, 2020, to
9 allow the resumption of some medical and dental procedures under strict guidelines designed to
10 conserve personal protective equipment. As of the date of the filing of this lawsuit,
11 Proclamation 20-24.1 remains active.

12 19. On March 23, 2020, the Governor issued Proclamation 20-25, called the Stay
13 Home Stay Healthy Order. It prohibited all people from leaving their homes except for the
14 limited essential purposes defined in the order. All non-essential businesses were prohibited
15 from conducting business.

16 20. On June 1, 2020, Proclamation 20-25.4 went into effect which allowed a gradual
17 re-opening of businesses in phases on a county by county basis. King County was approved to
18 move to a modified Phase 1 (commonly referred to as Phase 1.5) on June 5, 2020. On June 19,
19 2020 King County was approved to enter Phase 2.

20 21. Neither Dr. Tabaraie nor any of her employees have exhibited symptoms of
21 Covid-19 nor tested positive for Covid-19.
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1 22. Because of COVID-19, orders to conserve PPE, and state-mandated closures,
2 Dr. Tabaraie and her team were not able to provide dental services, and Dr. Tabaraie lost most
3 of her income during the affected period.

4 23. As a result of the pandemic, proclamations, and orders, Dr. Tabaraie suffered a
5 direct physical loss of her property because she was unable to use her dental practice for its
6 intended purpose.

7 24. Once Dr. Tabaraie was permitted to re-open her clinic, she was back to operating
8 at full capacity within a few weeks and is no longer losing income.

9 25. Dr. Tabaraie submitted a claim with Aspen American under her policy.

10 26. Plaintiff is an insured and first-party claimant under the policy.

11 27. On March 28, 2020 Dr. Tabaraie received an email acknowledging her claim had
12 been received and an investigation had begun. The communication was from American Claims
13 Management, a third-party administrator hired by defendant.

14 28. All communication on Dr. Tabaraie's claim was handled by American Claims
15 Management.

16 29. On May 12, 2020, American Claims Management sent a letter denying coverage
17 for Dr. Tabaraie's claim.

18 30. The purported bases of the denial were threefold: (1) there was no "direct
19 physical damage," (2) the exclusion for enforcement of "any ordinance or law regulating the use
20 of property, and the loss of use or loss of market," and (3) the exclusion for microbes which
21 includes any "non-fungal micro-organism or non-fungal, colony-form organism that causes
22 infection or disease."
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1 31. Upon information and belief, neither Aspen American nor American Claims
2 Management conducted any investigation into the amount of monetary benefits owed to
3 Dr. Tabaraie. Aspen American improperly transferred the burden of investigation to
4 Dr. Tabaraie.

5 32. Insurance companies such as Aspen American owe their insureds numerous
6 duties upon the occurrence of a loss under an insurance policy. For example:
7

- 8 • Insurance companies owe their insureds a duty of good faith.
- 9 • Insurance companies have an obligation to tell the truth, to have a lawful
10 purpose, to deal fairly with the policyholder, and to give equal consideration to
11 policyholders' interests as they do their own.
- 12 • Insurance companies are prohibited from engaging in conduct toward their
13 policyholders that is in any way unreasonable, frivolous, or unfounded.
- 14 • Insurance companies must conduct a full, fair, and prompt investigation of all
15 material aspects of the insurance claim at their own expense.

16 33. Upon information and belief Aspen American violated the duties it owes its
17 insureds.
18

19 34. The Unfair Claims Settlement Practices Regulation, which is found in chapter
20 284-30 of the Washington Administrative Code, imposes duties on insurance companies.
21 Defendant owes those duties to plaintiffs. The Unfair Claims Settlement Practices Regulation is
22 incorporated herein by reference. *See* WAC 284-30-330 to -380.
23

24 35. Insurance industry standards in the State of Washington require insurers to
25 comply with the Unfair Claim Settlement Practices Regulations. The regulations reflect
26 minimum industry standards.

1 36. Upon information and belief, Aspen American violated some or all of these
2 regulations and standards.

3
4 **V. CAUSES OF ACTION**

5 **CLAIM NO. 1. DECLARATORY JUDGMENT**

6 37. Dr. Tabaraie incorporates all preceding paragraphs as if fully set forth herein.

7 38. This is a cause for declaratory judgment pursuant to the Declaratory Judgment
8 Act, 28 USC § 2201.

9 39. Dr. Tabaraie seeks a judgment:

- 10 • declaring that she is entitled to every coverage that applies under the policy;
- 11 • declaring the benefits to which Dr. Tabaraie is entitled.

12 40. Aspen American is liable for Dr. Tabaraie’s reasonable attorney fees and costs
13 under *Olympic Steamship Co. v. Centennial Insurance Co.*, 117 Wn.2d 37, 51-53, 811 P.2d 673
14 (1991), *McGreevy v. Oregon Mutual Insurance Co.*, 128 Wn.2d 26, 37, 904 P.2d 731 (1995).
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16 **CLAIM NO. 2. BREACH OF CONTRACT**

17 41. Dr. Tabaraie incorporates all the preceding paragraphs as if fully set forth herein.

18 42. The policy is a valid, enforceable contract.

19 43. Dr. Tabaraie is entitled to full compliance with the policy.

20 44. Dr. Tabaraie is entitled to coverage and every benefit available to her under the
21 policy.
22

23 45. Dr. Tabaraie seeks judgment with respect to all coverages and benefits that apply
24 to the facts of this case.

25 46. Under Washington law, “An insurance policy is construed as a whole, with the
26 policy being given a fair, reasonable, and sensible construction as would be given to the contract

1 by the average person purchasing insurance.” *Am. Nat’l Fire Ins. Co. v. B & L Trucking &*
2 *Const. Co.*, 134 Wn.2d 413, 427–28, 951 P.2d 250 (1998). “Any ambiguities remaining after
3 examining applicable extrinsic evidence are resolved against the drafter-insurer and in favor of
4 the insured.” *Id.* at 428 (citation omitted). “A clause is ambiguous when, on its face, it is fairly
5 susceptible to two different interpretations, both of which are reasonable.” *Id.* (citation omitted).
6 Further “exclusionary clauses are to be most strictly construed against the insurer.” *Phil*
7 *Schroeder, Inc. v. Royal Globe Ins. Co.*, 99 Wn.2d 65, 68, 659 P.2d 509 (1983).

9 47. Aspen American breached its obligations under the policy as alleged throughout
10 this Complaint, including but not limited to when it denied coverage for Dr. Tabaraie’s claim.

11 48. As a result of Aspen American’s breach, Dr. Tabaraie has sustained and is
12 sustaining damage in an amount to be proven at trial.

13 49. In addition to Dr. Tabaraie’s damages, Aspen American is liable for reasonable
14 attorney fees and costs under *Olympic Steamship Co. v. Centennial Insurance Co.*, 117 Wn.2d
15 37, 51–53, 811 P.2d 673 (1991).

17 **CLAIM NO. 3. VIOLATION OF DUTY OF GOOD FAITH**

18 50. Dr. Tabaraie incorporates all the preceding paragraphs as if fully set forth herein.

19 51. Aspen American violated its duty of good faith as alleged throughout this
20 Complaint.

21 52. Aspen American’s conduct as alleged throughout this Complaint was
22 unreasonable, frivolous, or unfounded.

23 53. Aspen American violated the Unfair Claim Settlement Practices regulations.

24 54. Aspen American violated industry standards for the handling of insurance claims.
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1 55. Dr. Tabaraie sustained damage because of Aspen American’s conduct or the
2 conduct of its agents and representatives.

3 56. Aspen American is liable for Dr. Tabaraie’s consequential economic and
4 noneconomic damages in addition to reasonable attorney fees and costs under *McGreevy v.*
5 *Oregon Mutual Insurance Co.*, 128 Wn.2d 26, 37, 904 P.2d 731 (1995).
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7 **CLAIM NO. 4. CONSUMER PROTECTION ACT (CPA), RCW 19.86.090**

8 57. Dr. Tabaraie incorporates all the preceding paragraphs as if fully set forth herein.

9 58. Aspen American engaged in unfair or deceptive acts or practices.

10 59. Aspen American’s conduct occurred in trade or commerce.

11 60. Aspen American is in violation of the Unfair Claims Settlement Practices
12 regulations.

13 61. Aspen American violated its duty of good faith.

14 62. Aspen American’s conduct affected the public interest.

15 63. Aspen American’s conduct caused injury to Dr. Tabaraie’s “business or
16 property,” as those terms are defined for purposes of the CPA.
17

18 64. Dr. Tabaraie sustained damage because of Aspen American’s conduct.

19 65. In addition to Dr. Tabaraie’s damages, Aspen American is liable for attorney fees
20 and costs under RCW 19.86.090.
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22 66. The Court should order defendant to pay enhanced damages under
23 RCW 19.86.090.

24 **CLAIM NO. 6. CPA INJUNCTION**

25 67. Dr. Tabaraie incorporates all the preceding paragraphs as if fully set forth herein.

26 68. Dr. Tabaraie asserts a claim for injunctive relief under the CPA.

- Otherwise award Plaintiffs' attorney fees and costs; and
- Award such other relief as is just and proper.

RESPECTFULLY SUBMITTED this 2nd day of July, 2020.

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