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

KATHRYN L. JAGOW, DDS, 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, KATHRYN L. JAGOW, DDS (“Jagow”), individually and on behalf of all other similarly situated members of the defined national class (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 is a citizen of a state different from that of Defendant, the proposed Class has more than 100 class members,

1 13. Defendant Aspen’s policy issued to Plaintiff includes Practice Income Coverage,
2 Extra Expense Coverage, Extended Practice Income Coverage and Civil Authority Coverage.

3 14. Plaintiff paid all premiums for the coverage when due.

4 15. On or about January 2020, the United States of America saw its first cases of
5 persons infected by COVID-19, which has been designated a worldwide pandemic.
6

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

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

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

18. Proclamation 20-24 provides that one of the reasons it was issued was that “the
worldwide COVID-19 pandemic and its progression throughout Washington State continues to
threaten the life and health of our people as well as the economy of Washington State, and
remains a public disaster affecting life, health, property or the public peace.”

1 19. On information and belief, Proclamation 20-24 refers to property damage
2 throughout Washington State, including in Snohomish County where Plaintiff’s business is
3 located.

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

9 21. On March 25, 2020, the Washington State Dental Association recommended that
10 all dental practices follow the mandates and orders of the Washington Department of Health and
11 postpone all non-emergency or non-urgent dental procedures throughout the duration of the
12 catastrophic health emergency.
13

14 22. On March 30, 2020, Governor Inslee issued Order Number 20-03-30-01 affecting
15 persons and residents within the State of Washington, which includes a “Stay-at-Home Order”
16 requiring all persons living in Washington to stay in their homes or places of residences except
17 under certain specified circumstances.
18

19 23. Governor Inslee’s Proclamations and Orders related to COVID-19 have been
20 extended and modified from time to time.
21

22 24. Governors and civil authorities in other states have issued similar orders and
23 proclamations, for similar reasons.

24 25. Due to Governor Inslee’s order, beginning on or about March 19, 2020, Plaintiff
25 was unable to use her property for its intended and insured purpose.
26

1 26. Plaintiff's property sustained direct physical loss and/or damages related to
2 COVID-19 and/or the proclamations and orders.

3 27. Plaintiff's property will continue to sustain direct physical loss or damage covered
4 by the Aspen policy or policies, including but not limited to business interruption, extra expense,
5 interruption by civil authority, and other expenses.
6

7 28. Plaintiff submitted a claim for coverage for its losses covered by the Aspen Policy
8 on or about March 25, 2020.

9 29. By letter dated June 8, 2020, Defendant denied Plaintiff's claim.

10 30. Upon information and belief, Aspen has denied and will deny coverage to other
11 similarly situated policyholders.
12

13 V. CLASS ACTION ALLEGATIONS

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

16 32. The Classes that Plaintiff seeks to represent are defined as:

17 A. ***Practice Income Breach of Contract Class:*** All persons and entities in the
18 United States issued an Aspen policy with Practice Income Coverage who suffered a
19 suspension of their practice at the covered premises related to COVID-19 and/or orders
20 issued by Governor Inslee, other Governors, and/or other civil authorities and whose
21 Practice Income claim has been denied by Aspen.
22

23 B. ***Practice Income Declaratory Relief Class:*** All persons and entities in the
24 United States issued an Aspen policy with Practice Income Coverage who suffered a
25 suspension of their practice at the covered premises related to COVID-19 and/or orders
26 issued by Governor Inslee, other Governors, and/or other civil authorities.

1 C. ***Extra Expense Breach of Contract Class:*** All persons and entities in the
2 United States issued an Aspen policy with Extra Expense Coverage who incurred
3 expenses while seeking to minimize the suspension of business at the covered premises in
4 connection with COVID-19 and/or orders issued by Governor Inslee, other Governors,
5 and/or other civil authorities and whose Extra Expense claim has been denied by Aspen.
6

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

13 E. ***Extended Practice Income Breach of Contract Class:*** All persons and
14 entities in the United States issued an Aspen policy with Extended Practice Income
15 Coverage who suffered a suspension of their practice at the covered premises related to
16 COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil
17 authorities and whose Extended Practice Income claim has been denied by Aspen.
18

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

25 G. ***Civil Authority Breach of Contract Class:*** All persons and entities in the
26 United States issued an Aspen policy with Civil Authority Coverage who suffered a
suspension of their practice at the covered premises related to the impact of COVID-19

1 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities
2 and whose Civil Authority claim has been denied by Aspen.

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

8 33. Excluded from the Class are Defendant’s officers, directors, and employees; the
9 judicial officers and associated court staff assigned to this case; and the immediate family
10 members of such officers and staff. Plaintiff Jagow reserves the right to amend the Class
11 definition based on information obtained in discovery.

12 34. This action may properly be maintained on behalf of the Class under the criteria
13 of Rule 23 of the Federal Rules of Civil Procedure.
14

15 35. **Numerosity:** The members of the Class are so numerous that joinder of all
16 members would be impractical. Plaintiff is informed and believes that the proposed Class has
17 hundreds of members. The precise number of class members can be ascertained through
18 discovery, which will include Defendant’s records of policyholders.

19 36. **Commonality and Predominance:** Common questions of law and fact
20 predominate over any questions affecting only individual members of the Class. Common
21 questions include, but are not limited to, the following:
22

23 A. Whether the class members suffered covered losses based on common
24 policies issued to members of the Class;

25 B. Whether Aspen acted in a manner common to the Class by wrongfully and
26 uniformly denying claims for coverage relating to COVID-19 and/or orders issued by

1 Governor Inslee, other Governors, and/or other civil authorities on the same grounds
2 and/or otherwise in breach of the law of contracts;

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

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

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

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

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

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

21 I. Whether, because of Defendant's conduct, Plaintiff and the class members
22 are entitled to equitable and declaratory relief, and if so, the nature of such relief.
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1 37. **Typicality:** Plaintiff’s claims are typical of the claims of the members of the
2 class. Plaintiff and all the members of the class have been injured by the same wrongful practices
3 of Defendant. Plaintiff’s claims arise from the same practices and course of conduct that give rise
4 to the claims of the members of the Class and are based on the same legal theories.

5 38. **Adequacy:** Plaintiff will fully and adequately assert and protect the interests of
6 the class and has retained class counsel who are experienced and qualified in prosecuting class
7 actions. Neither Plaintiff nor its attorneys have any interests contrary to or in conflict with the
8 Class.

9 39. **Federal Rule of Civil Procedure 23(b)(1), the Risk of Inconsistent or Varying**
10 **Adjudications and Impairment to Other Class Members’ Interests:** Plaintiff seeks
11 adjudication as to the interpretation, and resultant scope, of Defendant’s policies, which are
12 common to all members of the class. The prosecution of separate actions by individual members
13 of the class would risk inconsistent or varying interpretations of those policy terms and create
14 inconsistent standards of conduct for Defendant. The policy interpretations sought by Plaintiff
15 could also impair the ability of absent class members to protect their interests.

16 40. **Federal Rule of Civil Procedure 23(b)(2), Declaratory and Injunctive Relief:**
17 Defendant acted or refused to act on grounds generally applicable to Plaintiff and other members
18 of the class making injunctive relief and declaratory relief appropriate on a classwide basis.

19 41. **Federal Rule of Civil Procedure 23(b)(3), Superiority:** A class action is
20 superior to all other available methods of the fair and efficient adjudication of this lawsuit. While
21 the aggregate damages sustained by the class are likely to be in the millions of dollars, the
22 individual damages incurred by each class member may be too small to warrant the expense of
23 individual suits. Individual litigation creates a risk of inconsistent and/or contradictory decisions
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1 and the court system would be unduly burdened by individual litigation of such cases. A class
2 action would result in a unified adjudication, with the benefits of economies of scale and
3 supervision by a single court.

4 VI. CAUSES OF ACTION

5 Count One—Declaratory Judgment

6
7 *(Brought on behalf of the Practice Income Coverage Declaratory Relief Class, Extra*
8 *Expense Declaratory Relief Class, Extended Practice Income Declaratory Relief Class,*
9 *and Civil Authority Relief Class)*

10 42. Previous paragraphs alleged are incorporated herein.

11 43. This is a cause of action for declaratory judgment pursuant to the Declaratory
12 Judgment Act, codified at 28 U.S.C. § 2201.

13 44. Plaintiff Jagow brings this cause of action on behalf of the Practice Income
14 Coverage Declaratory Relief Class, , Extra Expense Declaratory Relief Class, Extended Practice
15 Income Declaratory Relief Class, and Civil Authority Declaratory Relief Class.

16 45. Plaintiff Jagow seeks a declaratory judgment declaring that Plaintiff Jagow's and
17 class members' losses and expenses resulting from the interruption of their business are covered
18 by the Policy.

19 46. Plaintiff Jagow seeks a declaratory judgment declaring that Aspen is responsible
20 for timely and fully paying all such claims.

21 Count Two—Breach of Contract

22
23 *(Brought on behalf of the Practice Income Coverage Breach of Contract Class, Extra*
24 *Expense Breach of Contract Class, Extended Practice Income Breach of Contract Class, , and*
25 *Civil Authority Breach of Contract Class)*

26 47. Previous paragraphs alleged are incorporated herein.

1 48. Plaintiff Jagow brings this cause of action on behalf of the Practice Income
2 Coverage Breach of Contract Class, Extra Expense Breach of Contract Class, Extended Practice
3 Income Breach of Contract Class, and Civil Authority Breach of Contract Class.

4 49. The Policy is a contract under which Plaintiff Jagow and the class paid premiums
5 to Aspen in exchange for Aspen's promise to pay Plaintiff Jagow and the class for all claims
6 covered by the Policy.

7 50. Plaintiff Jagow has paid its insurance premiums.

8 51. Plaintiff Jagow has been denied coverage for its losses covered by the Aspen
9 policy.

10 52. Upon information and belief, Aspen has denied, and will continue to deny
11 coverage for other similarly situated policyholders.

12 53. Denying coverage for the claim is a breach of the insurance contract.

13 54. Plaintiff Jagow is harmed by the breach of the insurance contract by Aspen.

14 **1. REQUEST FOR RELIEF**

15 1. Class action status under Fed. R. Civ. P. 23.

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

19 3. A declaratory judgment that the defendant is responsible for timely and fully
20 paying all such losses.

21 4. Damages.

22 5. Pre-judgment interest at the highest allowable rate.

23 6. Reasonable attorney fees and costs.

1 7. Such further and other relief as the Court shall deem appropriate.

2 **VII. JURY DEMAND**

3 Plaintiff demands a jury trial on all claims so triable.

4 DATED this 10th day of August, 2020.

5 KELLER ROHRBACK L.L.P.

6 By: s/ Amy Williams-Derry

7 By: s/ Lynn L. Sarko

8 By: s/ Ian S. Birk

9 By: s/ Gretchen Freeman Cappio

10 By: s/ Irene M. Hecht

11 By: s/ Karin B. Swope

12 By: s/ Maureen Falecki

13 By: s/ Nathan L. Nanfelt

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