

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

MARK GERMACK DDS, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

THE DENTISTS INSURANCE COMPANY,

Defendant.

No.

COMPLAINT—CLASS ACTION

JURY DEMAND

I. INTRODUCTION

Plaintiff, Mark Germack DDS (“Germack”), individually and on behalf of all other similarly situated members of the defined national class and the defined Washington subclasses (the “Class Members”), by and through the undersigned attorneys, brings this class action against Defendant The Dentists Insurance Company (“Defendant” or “TDIC”) 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 Class member is of diverse citizenship from Defendant, there are 100 or more Class members nationwide, and the aggregate amount in

1 controversy exceeds \$5,000,000. The Court has supplemental jurisdiction over Plaintiff's state
2 law claims under 28 U.S.C. § 1367.

3 2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(3) because the
4 Court has personal jurisdiction over Defendant, a substantial portion the alleged wrongdoing
5 occurred in this District and the state of Washington, and Defendant has sufficient contacts with
6 this District and the state of Washington.
7

8 3. Venue is proper in the Western District of Washington pursuant to 28 U.S.C.
9 §1391(b)(2) because a substantial part of the events or omissions giving rise to the claims at
10 issue in this Complaint arose in this District. Plaintiff's place of business is located in Seattle,
11 Washington, King County. This action is therefore appropriately filed in the Seattle Division
12 because a substantial portion of the events giving rise to this lawsuit arose in King County.
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14 **III. PARTIES**

15 4. Plaintiff Germack owns and operates a dentistry practice located at 720 Olive
16 Way Ste. 835, Seattle, WA 98101.

17 5. Defendant is an insurance carrier incorporated in California and whose
18 headquarters are located in Sacramento, California.

19 **IV. NATURE OF THE CASE**

20 6. Due to COVID-19 and a state-ordered mandated closure, Plaintiff cannot provide
21 dental services. Plaintiff intended to rely on its business insurance to keep the business operating
22 as a going concern. This lawsuit is filed to ensure that Plaintiff and other similarly-situated
23 policyholders receive the insurance benefits to which they are entitled and for which they paid.
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1 7. TDIC issued one or more insurance policies to Plaintiff, including an “all risk”
2 Businessowners Property Coverage and related endorsements, insuring Plaintiff’s property and
3 business practice and other coverages at all relevant times.

4 8. Plaintiff’s business property includes property owned and/or leased by Plaintiff
5 and used for general business purposes for the specific purpose of dental and other related
6 business activities.

7 9. TDIC Businessowners Property Coverage promises to pay Plaintiff for risks of
8 “[a]ll risk of direct physical loss” to covered property and includes coverage for risks of both
9 “loss of or damage to” covered property.

10 10. TDIC’s Businessowners Property Coverage provides Plaintiff with Business
11 Income Coverage, Extra Expense Coverage, Extended Business Income Coverage and Civil
12 Authority Coverage.

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

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

16 13. In light of this pandemic, Washington Governor Jay Inslee issued certain
17 proclamations and orders affecting many persons and businesses in Washington, whether
18 infected with COVID-19 or not, requiring certain public health precautions. Among other things,
19 Governor Inslee’s “Stay Home, Stay Healthy” order required the closure of all non-essential
20 businesses, including Plaintiff’s business.

21 14. By order of Governor Inslee, dentists including Plaintiff were prohibited from
22 practicing dental services but for urgent and emergency procedures.

1 15. Governor Inslee’s “PROCLAMATION BY THE GOVERNOR AMENDING
2 PROCLAMATION 20-05: 20-24 Restrictions on Non Urgent Medical Procedures,” dated March
3 19, 2020, also provides, in part:

4 WHEREAS, the health care person protective equipment supply chain in
5 Washington State has been severely disrupted by the significant increased use of
6 such equipment worldwide, such that there are now critical shortages of this
7 equipment for health care workers. To curtail the spread of the COVID-19
8 pandemic in Washington State and to protect our health care workers as they
9 provide health care services, it is necessary to immediately prohibit all hospitals,
10 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.

11 16. No COVID-19 virus has been detected on Plaintiff’s business premises.

12 17. Plaintiff’s property has sustained direct physical loss and/or damages related to
13 COVID-19 and/or the proclamations and orders.

14 18. Plaintiff’s property will continue to sustain direct physical loss or damage covered
15 by the TDIC policy or policies, including but not limited to business interruption, extra expense,
16 interruption by civil authority, and other expenses.

17 19. Plaintiff’s property cannot be used for its intended purposes.

18 20. As a result of the above, Plaintiff has experienced and will experience loss
19 covered by the TDIC policy or policies.

20 21. Plaintiff called its insurance broker to inquire about business interruption
21 coverage under its business coverage policy and received a responsive email stating “there is no
22 coverage for a pandemic.”
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22. TDIC notified its policyholders, including Plaintiff, by letter dated April 1, 2020, that “any Business Income losses or Extra Expenses that are incurred as a result of COVID-19 outbreaks are specifically excluded[.]”

23. Upon information and belief, TDIC has denied and will deny coverage.

V. CLASS ACTION ALLEGATIONS

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

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

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

B. ***Business Income Coverage Breach of Contract Washington Subclass:*** All persons and entities in the State of Washington insured under a TDIC policy with Business Income Coverage who suffered a suspension of their business at the covered premises related to COVID-19 and/or orders issued by Governor Inslee, and/or other civil authorities and whose Business Income claim has been denied by TDIC.

C. ***Business Income Coverage Declaratory Relief Class:*** All persons and entities in the United States insured under a TDIC policy with Business Income Coverage who suffered a suspension of their business at the covered premises related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities.

1 D. ***Business Income Coverage Declaratory Relief Washington Subclass:*** All
2 persons and entities in the State of Washington insured under a TDIC policy with
3 Business Income Coverage who suffered a suspension of their business at the covered
4 premises related to COVID-19 and/or orders issued by Governor Inslee, and/or other civil
5 authorities.

6
7 E. ***Extra Expense Breach of Contract Class:*** All persons and entities in the
8 United States insured under a TDIC policy with Extra Expense coverage who incurred
9 expenses while seeking to minimize losses from the suspension of business at the covered
10 premises in connection with COVID-19 and/or orders issued by Governor Inslee, other
11 Governors, and/or other civil authorities and whose Extra Expense claim has been denied
12 by TDIC.

13
14 F. ***Extra Expense Breach of Contract Washington Subclass:*** All persons
15 and entities in the State of Washington insured under a TDIC policy with Extra Expense
16 coverage who incurred expenses while seeking to minimize losses from the suspension of
17 business at the covered premises in connection with COVID-19 and/or orders issued by
18 Governor Inslee, and/or other civil authorities and whose Extra Expense claim has been
19 denied by TDIC.

20
21 G. ***Extra Expense Declaratory Relief Class:*** All persons and entities in the
22 United States insured under a TDIC policy with Extra Expense coverage who incurred
23 expenses while seeking to minimize losses from the suspension of their business at the
24 covered premises in connection with COVID-19 and/or orders issued by Governor Inslee,
25 other Governors, and/or other civil authorities.
26

1 H. ***Extra Expense Declaratory Relief Washington Subclass:*** All persons and
 2 entities in the State of Washington insured under a TDIC policy with Extra Expense
 3 coverage who incurred expenses while seeking to minimize losses from the suspension of
 4 their business at the covered premises in connection with COVID-19 and/or orders issued
 5 by Governor Inslee, and/or other civil authorities.
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7 I. ***Extended Business Income Breach of Contract Class:*** All persons and
 8 entities in the United States insured under a TDIC policy with Extended Business Income
 9 coverage who suffered a suspension of their business at the covered premises related to
 10 COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil
 11 authorities and whose Extended Business Income claim has been denied by TDIC.
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13 J. ***Extended Business Income Breach of Contract Washington Subclass:***
 14 All persons and entities in the State of Washington insured under a TDIC policy with
 15 Extended Business Income coverage who suffered a suspension of their business at the
 16 covered premises related to COVID-19 and/or orders issued by Governor Inslee, and/or
 17 other civil authorities and whose Extended Business Income claim has been denied by
 18 TDIC.
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20 K. ***Extended Business Income Declaratory Relief Class:*** All persons and
 21 entities in the United States insured under a TDIC policy with Extended Business Income
 22 coverage who suffered a suspension of their business at the covered premises due to
 23 COVID-19 related to COVID-19 and/or orders issued by Governor Inslee, other
 24 Governors, and/or other civil authorities.
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26 L. ***Extended Business Income Declaratory Relief Washington Subclass:*** All
 persons and entities in the State of Washington insured under a TDIC policy with

1 Extended Business Income coverage who suffered a suspension of their business at the
2 covered premises due to COVID-19 related to COVID-19 and/or orders issued by
3 Governor Inslee, and/or other civil authorities

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5 M. ***Civil Authority Breach of Contract Class:*** All persons and entities in the
6 United States insured under a TDIC policy with Civil Authority coverage who suffered a
7 loss of business income and/or extra expense related to the impact of COVID-19 and/or
8 orders issued by Governor Inslee, other Governors, and/or other civil authorities and
9 whose Civil Authority claim has been denied by TDIC.

10 N. ***Civil Authority Breach of Contract Washington Subclass:*** All persons
11 and entities in the State of Washington insured under a TDIC policy with Civil Authority
12 coverage who suffered a loss of business income and/or extra expense related to the
13 impact of COVID-19 and/or orders issued by Governor Inslee, and/or other civil
14 authorities and whose Civil Authority claim has been denied by TDIC.

15
16 O. ***Civil Authority Declaratory Relief Class:*** All persons and entities in the
17 United States insured under a TDIC policy with Civil Authority coverage who suffered a
18 loss of business income and/or extra expense related to COVID-19 and/or orders issued
19 by Governor Inslee, other Governors, and/or other civil authorities.

20
21 P. ***Civil Authority Declaratory Relief Washington Subclass:*** All persons and
22 entities in the State of Washington insured under a TDIC policy with Civil Authority
23 coverage who suffered a loss of business income and/or extra expense related to the
24 impact of COVID-19 19 and/or orders issued by Governor Inslee, and/or other civil
25 authorities.
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1 26. Excluded from the Classes and Subclasses are Defendant's officers, directors, and
2 employees; the judicial officers and associated court staff assigned to this case; and the
3 immediate family members of such officers and staff. Plaintiff reserves the right to amend the
4 Class definition based on information obtained in discovery.

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

7 28. **Numerosity:** The members of the Class are so numerous that joinder of all
8 members would be impractical. Plaintiff is informed and believes that the proposed Class
9 contains thousands of members. The precise number of class members can be ascertained
10 through discovery, which will include Defendant's records of policyholders.

11 29. **Commonality and Predominance:** Common questions of law and fact
12 predominate over any questions affecting only individual members of the Class. Common
13 questions include, but are not limited to, the following:
14

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

17 B. Whether TDIC acted in a manner common to the class and wrongfully
18 denied claims for coverage relating to COVID-19 and/or orders issued by Governor
19 Inslee, other Governors, and/or other civil authorities;

20 C. Whether Business Income coverage in TDIC's policies of insurance
21 applies to a suspension of practice relating to COVID-19 and/or orders issued by
22 Governor Inslee, other Governors, and/or other civil authorities;
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1 D. Whether Extra Expense coverage in TDIC's policies of insurance applies
2 to efforts to minimize a loss relating to COVID-19 and/or orders issued by Governor
3 Inslee, other Governors, and/or other civil authorities;

4 E. Whether Extended Business Income coverage in TDIC's policies of
5 insurance applies to a suspension of practice relating to COVID-19 and/or orders issued
6 by Governor Inslee, other Governors, and/or civil authorities;

7 F. Whether Civil Authority coverage in TDIC's policies of insurance applies
8 to a suspension of practice relating to COVID-19 and/or orders issued by Governor
9 Inslee, other Governors, and/or civil authorities;

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

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

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

18 30. **Typicality:** Plaintiff's claims are typical of the claims of the members of the
19 classes. Plaintiff and all the members of the classes have been injured by the same wrongful
20 practices of TDIC. Plaintiff's claims arise from the same practices and course of conduct that
21 give rise to the claims of the members of the Class and are based on the same legal theories.

22 31. **Adequacy:** Plaintiff will fully and adequately assert and protect the interests of
23 the classes and has retained class counsel who are experienced and qualified in prosecuting class
24

1 actions. Neither Plaintiff nor its attorneys have any interests contrary to or in conflict with the
2 Class.

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

11 **33. Federal Rule of Civil Procedure 23(b)(2), Declaratory and Injunctive Relief:**
12 Defendant acted or refused to act on grounds generally applicable to Plaintiff and other members
13 of the proposed classes making injunctive relief and declaratory relief appropriate on a classwide
14 basis.
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16 **34. Federal Rule of Civil Procedure 23(b)(3), Superiority:** A class action is
17 superior to all other available methods of the fair and efficient adjudication of this lawsuit. While
18 the aggregate damages sustained by the classes are likely to be in the millions of dollars, the
19 individual damages incurred by each class member may be too small to warrant the expense of
20 individual suits. Individual litigation creates a risk of inconsistent and/or contradictory decisions
21 and the court system would be unduly burdened by individual litigation of such cases. A class
22 action would result in a unified adjudication, with the benefits of economies of scale and
23 supervision by a single court.
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VI. CAUSES OF ACTION

Count One—Declaratory Judgment

(Brought on behalf of the Business Income Coverage Declaratory Relief Class, Business Income Coverage Declaratory Relief Washington Subclass, Extended Business Income Declaratory Relief Class, Extended Business Income Declaratory Relief Washington Subclass, Civil Authority Declaratory Relief Class, Civil Authority Declaratory Relief Washington Subclass, Extra Expense Declaratory Relief Class, and Extra Expense Declaratory Relief Washington Subclass)

35. Previous paragraphs alleged are incorporated herein.

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

37. Plaintiff brings this cause of action on behalf of the Business Income Coverage Declaratory Relief Class, Business Income Coverage Declaratory Relief Washington Subclass, Extended Business Income Declaratory Relief Class, Extended Business Income Declaratory Relief Washington Subclass, Civil Authority Declaratory Relief Class, Civil Authority Declaratory Relief Washington Subclass, Extra Expense Declaratory Relief Class, and Extra Expense Declaratory Relief Washington Subclass.

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

39. Plaintiff seeks a declaratory judgment declaring that TDIC is responsible for timely and fully paying all such claims.

Count Two—Breach of Contract

(Brought on behalf of the Business Income Coverage Breach of Contract Class, Business Income Coverage Breach of Contract Washington Subclass, Extended Business Income Breach of Contract Class, Extended Business Income Breach of Contract Washington Subclass, Civil Authority Breach of Contract Class, Civil Authority Breach of Contract Washington Subclass, Extra Expense Breach of Contract Class, and Extra Expense Breach of Contract Washington Subclass)

5. Reasonable attorney fees and costs.
6. Such further and other relief as the Court shall deem appropriate.

VIII. JURY DEMAND

Plaintiff demands a jury trial on all claims so triable.

DATED this 30th day of April, 2020.

KELLER ROHRBACK L.L.P.

By: s/ Ian S. Birk

By: s/ Lynn L. Sarko

By: s/ Gretchen Freeman Cappio

By: s/ Irene M. Hecht

By: s/ Maureen Falecki

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By: s/ Nathan Nanfelt

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COMPLAINT—CLASS ACTION - 14

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