

SUPERIOR COURT OF WASHINGTON IN AND FOR THURSTON COUNTY

SUNEET S. BATH, DMD PS d/b/a Impressions  
Dentistry Family Cosmetics, individually and on  
behalf of others similarly situated,

Plaintiff,

v.

TRAVELERS CASUALTY INSURANCE  
COMPANY OF AMERICA, an insurance  
company,

Defendant.

No. 20-2-01421-34

AMENDED COMPLAINT—CLASS  
ACTION

**I. INTRODUCTION**

Plaintiff Suneet S. Bath DMD PS d/b/a Impressions Dentistry Family Cosmetics (“Bath” or “Plaintiff”), 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 TCICA Casualty Insurance Company of America (“TCICA” or “Defendant”) and alleges as follows based on personal knowledge and information and belief:

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## II. JURISDICTION

1. This Court has original jurisdiction pursuant to RCW 2.08.010 because the case originates in Washington and amount in controversy exceeds the jurisdictional threshold.

2. This Court has personal jurisdiction over Defendant because Defendant registered to do business in Washington, has sufficient minimum contacts with Washington, and otherwise intentionally avails itself of the markets within Washington through its business activities, such that the exercise of jurisdiction by this Court is proper pursuant to RCW 4.28.185. Moreover, the claims of Plaintiff and all of the Washington subclass members in this case arise out of and directly relate to Defendant's contacts with Washington.

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## III. PARTIES

3. Plaintiff Suneet S. Bath, DMD PS d/b/a Impressions Dentistry Family Cosmetics (Bath) owns and operates a dental business with its principal place of business located at 4538 Martin Way E., Olympia, WA 98516.

4. Defendant TCICA Casualty Insurance Company of America is an insurance carrier domiciled in Connecticut and whose headquarters are located in Hartford, Connecticut.

5. Defendant is authorized to write, sell, and issue business insurance policies in all fifty states and the District of Columbia. Defendant conducted business within Washington by selling and issuing business insurance policies to policyholders, including Bath.

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## IV. NATURE OF THE CASE

6. Due to COVID-19 and proclamations and orders by Washington Governor Jay Inslee and/or other civil authorities, Plaintiff was forced to suspend or dramatically limit its dental business.

1           7.       Plaintiff intended to rely on its business insurance to maintain income in case of  
2 an insured loss. This lawsuit is filed to ensure that Plaintiff and other similarly-situated  
3 policyholders receive the insurance benefits to which they are entitled and for which they paid.  
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5           8.       Defendant issued one or more insurance policies to Plaintiff, including a  
6 Businessowners Coverage Policy and related endorsements (“the Policy”), insuring Plaintiff’s  
7 property and business practice at all relevant times, including the periods of January 1 to  
8 December 31, 2019, and January 1 to December 31, 2020.

9           9.       Plaintiff’s business property includes property owned and/or leased by Plaintiff  
10 and used for general business purposes for the specific purpose of dental services and other  
11 related business activities.

12           10.     Defendant promises to pay Plaintiff for risks of “direct physical loss of or  
13 damage to” covered property.  
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15           11.     The Policy includes coverage for risks of both damage to and loss of covered  
16 property.

17           12.     The Policy expressly defines property damage as including “loss of use” of  
18 property.  
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20           13.     Defendant’s Businessowners Coverage Form provides Plaintiff with Business  
21 Income Coverage, Extra Expense Coverage, Extended Business Income Coverage, and Civil  
22 Authority Coverage.

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

24           15.     On or about January 2020, the United States of America saw its first cases of  
25 persons infected by COVID-19, which has been designated a worldwide pandemic.  
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1           16.     In light of this pandemic, on February 29, 2020, Washington Governor Jay Inslee  
2 issued Proclamation 20-5, declaring a State of Emergency for all counties in the state of  
3 Washington as the result of COVID-19. Thereafter, Governor Inslee issued a series of certain  
4 proclamations and orders affecting many persons and businesses in Washington, whether  
5 infected with COVID-19 or not, requiring certain public health precautions.  
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7           17.     On March 19, 2020, Governor Inslee issued Proclamation 20-24, “Restrictions on  
8 Non Urgent Medical Procedures.” The proclamation provides, in part:

9           WHEREAS, the health care person protective equipment supply chain in Washington  
10 State has been severely disrupted by the significant increased use of such equipment  
11 worldwide, such that there are now critical shortages of this equipment for health care  
12 workers. To curtail the spread of the COVID-19 pandemic in Washington State and to  
13 protect our health care workers as they provide health care services, it is necessary to  
14 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[.]

15           18.     On March 23, 2020, Governor Inslee issued Proclamation 20-25, “Stay Home—  
16 State Healthy.” The proclamation requires that “[a]ll people in Washington State [ ]  
17 immediately cease leaving their home or place of residence except: (1) to conduct or participate  
18 in essential activities, and/or (2) for employment in essential business activities.” The  
19 proclamation prohibits “all non-essential businesses in Washington State from conducting  
20 business, within the limitations provided herein.”  
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22           19.     Governor Inslee has extended Proclamation until May 31, 2020.

23           20.     By order of Governor Inslee, dentists including Plaintiff were prohibited from  
24 providing services but for urgent and emergency procedures.

25           21.     No COVID-19 virus has been detected on Plaintiff’s business premises.  
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1           22.     Plaintiff's property has sustained direct physical loss and/or damages related to  
2 COVID-19 and/or the proclamations and orders.

3           23.     Plaintiff's property will continue to sustain direct physical loss or damage  
4 covered by the TCICA policy or policies, including but not limited to business interruption,  
5 extra expense, extended business interruption, interruption by civil authority, and other  
6 expenses.  
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8           24.     Plaintiff's property cannot be used for its intended purposes.

9           25.     As a result of the above, Plaintiff has experienced and will experience loss  
10 covered by the TCICA policy or policies.

11           26.     TCICA denied coverage for Bath's loss on April 1, 2020. Upon information and  
12 belief, TCICA has denied and will deny coverage for other similarly situated policyholders.  
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#### 14                               V.     CLASS ACTION ALLEGATIONS

15           27.     This matter is brought by Plaintiff on behalf of itself and those similarly situated,  
16 under Washington Civil Rules 23(b)(1), 23(b)(2), and 23(b)(3).

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

18               A.     ***Business Income Coverage Breach of Contract Class:*** All persons and  
19 entities in the United States insured under a TCICA policy with Business Income  
20 Coverage who suffered a suspension of their business at the covered premises related to  
21 COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil  
22 authorities and whose Business Income claim was denied by TCICA.  
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24               B.     ***Business Income Coverage Breach of Contract Washington Subclass:***  
25 All persons and entities in the State of Washington insured under a TCICA policy with  
26 Business Income Coverage who suffered a suspension of their business at the covered

1 premises related to COVID-19 and/or orders issued by Governor Inslee, and/or other  
2 civil authorities and whose Business Income claim was denied by TCICA.

3 C. ***Business Income Coverage Declaratory Relief Class:*** All persons and  
4 entities in the United States insured under a TCICA policy with Business Income  
5 Coverage who suffered a suspension of their business at the covered premises related to  
6 COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil  
7 authorities.  
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9 D. ***Business Income Coverage Declaratory Relief Washington Subclass:***  
10 All persons and entities in the State of Washington insured under a TCICA policy with  
11 Business Income Coverage who suffered a suspension of their business at the covered  
12 premises related to COVID-19 and/or orders issued by Governor Inslee, and/or other  
13 civil authorities.  
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15 E. ***Extra Expense Breach of Contract Class:*** All persons and entities in the  
16 United States insured under a TCICA policy with Extra Expense coverage who incurred  
17 expenses while seeking to minimize losses from the suspension of business at the  
18 covered premises in connection with COVID-19 and/or orders issued by Governor  
19 Inslee, other Governors, and/or other civil authorities and whose Extra Expense claim  
20 was denied by TCICA.  
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22 F. ***Extra Expense Breach of Contract Washington Subclass:*** All persons  
23 and entities in the State of Washington insured under a TCICA policy with Extra  
24 Expense coverage who incurred expenses while seeking to minimize losses from the  
25 suspension of business at the covered premises in connection with COVID-19 and/or  
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1 orders issued by Governor Inslee, and/or other civil authorities and whose Extra Expense  
2 claim was denied by TCICA.

3 G. ***Extra Expense Declaratory Relief Class:*** All persons and entities in the  
4 United States insured under a TCICA policy with Extra Expense coverage who incurred  
5 expenses while seeking to minimize losses from the suspension of their business at the  
6 covered premises in connection with COVID-19 and/or orders issued by Governor  
7 Inslee, other Governors, and/or other civil authorities.

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9 H. ***Extra Expense Declaratory Relief Washington Subclass:*** All persons  
10 and entities in the State of Washington insured under a TCICA policy with Extra  
11 Expense coverage who incurred expenses while seeking to minimize losses from the  
12 suspension of their business at the covered premises in connection with COVID-19  
13 and/or orders issued by Governor Inslee, and/or other civil authorities.

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15 I. ***Extended Business Income Breach of Contract Class:*** All persons and  
16 entities in the United States insured under a TCICA policy with Extended Business  
17 Income coverage who suffered a suspension of their business at the covered premises  
18 related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or  
19 other civil authorities and whose Extended Business Income claim was denied by  
20 TCICA.

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22 J. ***Extended Business Income Breach of Contract Washington Subclass:***  
23 All persons and entities in the State of Washington insured under a TCICA policy with  
24 Extended Business Income coverage who suffered a suspension of their business at the  
25 covered premises related to COVID-19 and/or orders issued by Governor Inslee, and/or  
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1 other civil authorities and whose Extended Business Income claim was denied by  
2 TCICA.

3 K. ***Extended Business Income Declaratory Relief Class:*** All persons and  
4 entities in the United States insured under a TCICA policy with Extended Business  
5 Income coverage who suffered a suspension of their business at the covered premises  
6 due to COVID-19 related to COVID-19 and/or orders issued by Governor Inslee, other  
7 Governors, and/or other civil authorities.  
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9 L. ***Extended Business Income Declaratory Relief Washington Subclass:***  
10 All persons and entities in the State of Washington insured under a TCICA policy with  
11 Extended Business Income coverage who suffered a suspension of their business at the  
12 covered premises due to COVID-19 related to COVID-19 and/or orders issued by  
13 Governor Inslee, and/or other civil authorities.  
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15 M. ***Civil Authority Breach of Contract Class:*** All persons and entities in the  
16 United States insured under a TCICA policy with Civil Authority coverage who suffered  
17 a loss of business income and/or extra expense related to the impact of COVID-19  
18 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities  
19 and whose Civil Authority claim was denied by TCICA.  
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21 N. ***Civil Authority Breach of Contract Washington Subclass:*** All persons  
22 and entities in the State of Washington insured under a TCICA policy with Civil  
23 Authority coverage who suffered a loss of business income and/or extra expense related  
24 to the impact of COVID-19 and/or orders issued by Governor Inslee, and/or other civil  
25 authorities and whose Civil Authority claim was denied by TCICA.  
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1           O.     **Civil Authority Declaratory Relief Class:** All persons and entities in the  
2 United States insured under a TCICA policy with Civil Authority coverage who suffered  
3 a loss of business income and/or extra expense related to COVID-19 and/or orders  
4 issued by Governor Inslee, other Governors, and/or other civil authorities.  
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6           P.     **Civil Authority Declaratory Relief Washington Subclass:** All persons  
7 and entities in the State of Washington insured under a TCICA policy with Civil  
8 Authority coverage who suffered a loss of business income and/or extra expense related  
9 to the impact of COVID-19 19 and/or orders issued by Governor Inslee, and/or other  
10 civil authorities.  
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12           29.    Excluded from the Classes and Subclasses are Defendant's officers, directors,  
13 and employees; the judicial officers and associated court staff assigned to this case; and the  
14 immediate family members of such officers and staff. Plaintiff reserves the right to amend the  
15 Class definition based on information obtained in discovery.

16           30.    This action may properly be maintained on behalf of each proposed Class under  
17 the criteria of CR 23.

18           31.    **Numerosity:** The members of the Class are so numerous that joinder of all  
19 members would be impractical. Plaintiff is informed and believes that the proposed Class and  
20 Subclass contains hundreds of members. The precise number of class members can be  
21 ascertained through discovery, which will include Defendant's records of policyholders.  
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23           32.    **Commonality and Predominance:** Common questions of law and fact  
24 predominate over any questions affecting only individual members of the Class. Common  
25 questions include, but are not limited to, the following:  
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1           A.     Whether the class members suffered covered losses based on common  
2 policies issued to members of the Class and Subclass;

3           B.     Whether TCICA acted in a manner common to the Class and Subclass  
4 and wrongfully denied claims for coverage relating to COVID-19 and/or orders issued  
5 by Governor Inslee, other Governors, and/or other civil authorities;  
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7           C.     Whether Business Income coverage in TCICA's policies of insurance  
8 applies to a suspension of business relating to COVID-19 and/or orders issued by  
9 Governor Inslee, other Governors, and/or other civil authorities;

10          D.     Whether Extra Expense coverage in TCICA's policies of insurance  
11 applies to efforts to minimize a loss relating to COVID-19 and/or orders issued by  
12 Governor Inslee, other Governors, and/or other civil authorities;

13          E.     Whether Extended Business Income coverage in TCICA's policies of  
14 insurance applies to a suspension of business relating to COVID-19 and/or orders issued  
15 by Governor Inslee, other Governors, and/or civil authorities;

16          F.     Whether Civil Authority coverage in TCICA's policies of insurance  
17 applies to a suspension of business relating to COVID-19 and/or orders issued by  
18 Governor Inslee, other Governors, and/or civil authorities;

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

23          H.     Whether, because of Defendant's conduct, Plaintiff and the class  
24 members have suffered damages; and if so, the appropriate amount thereof; and  
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1 I. Whether, because of Defendant's conduct, Plaintiff and the class  
2 members are entitled to equitable and declaratory relief, and if so, the nature of such  
3 relief.

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

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

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

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22 36. **CR 23(b)(2), Declaratory and Injunctive Relief:** Defendant acted or refused to  
23 act on grounds generally applicable to Plaintiff and other members of the proposed classes  
24 making injunctive relief and declaratory relief appropriate on a classwide basis.

25 37. **CR 23(b)(3), Superiority:** A class action is superior to all other available  
26 methods of the fair and efficient adjudication of this lawsuit. While the aggregate damages

1 sustained by the classes are likely to be in the millions of dollars, the individual damages  
2 incurred by each class member may be too small to warrant the expense of individual suits.  
3 Individual litigation creates a risk of inconsistent and/or contradictory decisions and the court  
4 system would be unduly burdened by individual litigation of such cases. A class action would  
5 result in a unified adjudication, with the benefits of economies of scale and supervision by a  
6 single court.  
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## 8 VI. CAUSES OF ACTION

### 9 Count One—Declaratory Judgment

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

14 38. Previous paragraphs alleged are incorporated herein.

15 39. This is a cause of action for declaratory judgment pursuant to the Uniform  
16 Declaratory Judgments Act, RCW 7.24.010 *et seq.*

17 40. Plaintiff brings this cause of action on behalf of the Business Income Coverage  
18 Declaratory Relief Class, Business Income Coverage Declaratory Relief Washington Subclass,  
19 Extra Expense Declaratory Relief Class, Extra Expense Declaratory Relief Washington  
20 Subclass, Extended Business Income Declaratory Relief Class, Extended Business Income  
21 Declaratory Relief Washington Subclass, Civil Authority Declaratory Relief Class, and Civil  
22 Authority Declaratory Relief Washington Subclass.  
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24 41. Plaintiff seeks a declaratory judgment declaring that Plaintiff's and class  
25 members losses and expenses resulting from the interruption of their business are covered by the  
26 Policy.

1           42.     Plaintiff seeks a declaratory judgment declaring that TCICA is responsible for  
2 timely and fully paying all such claims.

3                                 **Count Two—Breach of Contract**

4                                 *(Brought on behalf of the Business Income Coverage Breach of Contract Class,  
5 Business Income Coverage Breach of Contract Washington Subclass, Extra Expense Breach  
6 of Contract Class, Extra Expense Breach of Contract Washington Subclass, Extended  
7 Business Income Breach of Contract Class, Extended Business Income Breach of Contract  
Washington Subclass, Civil Authority Breach of Contract Class, and Civil Authority Breach  
8 of Contract Washington Subclass)*

9           43.     Previous paragraphs alleged are incorporated herein.

10          44.     Plaintiff brings this cause of action on behalf of the Business Income Coverage  
11 Breach of Contract Class, Business Income Coverage Breach of Contract Washington Subclass,  
12 Extended Business Income Breach of Contract Class, Extended Business Income Breach of  
13 Contract Washington Subclass, Civil Authority Breach of Contract Class, Civil Authority  
14 Breach of Contract Washington Subclass, Extra Expense Breach of Contract Class, and Extra  
15 Expense Breach of Contract Washington Subclass.

16          45.     The Policy is a contract under which Plaintiff and the class paid premiums to  
17 TCICA in exchange for TCICA's promise to pay Plaintiff and the class for all claims covered  
18 by the Policy.

19          46.     Plaintiff has paid its insurance premiums.

20          47.     Upon information and belief, TCICA has denied, and will continue to deny  
21 coverage for other similarly situated policyholders.

22          48.     Denying coverage for the claim is a breach of the insurance contract.

23          49.     Plaintiff is harmed by the breach of the insurance contract by TCICA.  
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**VII. PRAYER**

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

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

3. Damages.

4. Pre- and post-judgment interest at the highest allowable rate.

5. Reasonable attorney fees and costs.

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

DATED this 13th day of May, 2020.

KELLER ROHRBACK L.L.P.

By: s/ Ian S. Birk

Ian S. Birk, WSBA #31431

GORDON TILDEN THOMAS & CORDELL

By: s/Mark A. Wilner

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**Attorneys for Plaintiffs**

4841-0638-3548, v. 3