

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

RYAN M. FOX, DDS,

Plaintiff,

v.

TRAVELERS CASUALTY INSURANCE
COMPANY OF AMERICA,

Defendant.

No. 2:20-cv-00598-RSM

AMENDED CLASS ACTION
COMPLAINT

JURY DEMAND

I. INTRODUCTION

Plaintiff, RYAN M. FOX, DDS, individually and on behalf of all other similarly situated members of the defined national class and Washington State subclasses (collectively, the “Class Members”), by and through the undersigned attorneys, brings this class action against Travelers Casualty Insurance Company of America (“Defendant” or “Travelers”) 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 Plaintiffs' state
2 law claims under 28 U.S.C. § 1367.

3 2. This Court has personal jurisdiction over Defendant because Defendant is
4 registered to do business in Washington, has sufficient minimum contacts in Washington, and
5 otherwise intentionally avails itself of the markets within Washington through its business
6 activities, such that the exercise of jurisdiction by this Court is proper. Moreover, the claims of
7 Plaintiff and all of the Washington subclass members in this case arise out of and directly relate
8 to Defendant's contacts with Washington.
9

10 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(3) because the
11 Court has personal jurisdiction over Defendant, a substantial portion of the alleged wrongdoing
12 occurred in this District and the state of Washington, and Defendant has sufficient contacts with
13 this District and the state of Washington.
14

15 4. Venue is proper in the Western District of Washington pursuant to 28 U.S.C.
16 § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims at
17 issue in this Complaint arose in this District. Plaintiff's place of business is located in Seattle,
18 WA, King County. This action is therefore appropriately filed in the Seattle Division because a
19 substantial portion of the events giving rise to this lawsuit arose in King County.
20

21 **III. PARTIES**

22 5. Plaintiff Ryan M. Fox, DDS, owns and operates a dentistry practice located at
23 12527 NE 144th St, Kirkland, WA 98034.

24 6. Defendant Travelers Casualty Insurance Company of America is an insurance
25 carrier incorporated and domiciled in the State of Connecticut, with its principal place of
26 business in Connecticut.

1 7. Defendant Travelers Casualty Insurance Company of America is authorized to
2 write, sell, and issue business insurance policies in all 50 states and the District of Columbia.
3 Defendant conducted business within Washington and these states by selling and issuing
4 business insurance policies to policyholders, including Plaintiff.
5

6 **IV. NATURE OF THE CASE**

7 8. This lawsuit is filed to ensure that Plaintiff and other similarly-situated
8 policyholders receive the insurance benefits to which they are entitled and for which they paid.

9 9. Defendant Travelers Casualty Insurance Company of America (Travelers) issued
10 one or more insurance policies to Plaintiff, including Businessowners Property Coverage and
11 related endorsements, insuring Plaintiff's property and business practice and other coverages,
12 with effective dates of February 7, 2020 to February 7, 2021.
13

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

17 11. Travelers' Businessowners Property Coverage promises to pay Plaintiff for risks
18 of "DIRECT PHYSICAL LOSS" to covered property and includes coverage for risks of both
19 "loss of or damage to" covered property.
20

21 12. Travelers' Businessowners Property Coverage provides Plaintiff with Business
22 Income Coverage, Extra Expense Coverage, Extended Business Income Coverage and Civil
23 Authority Coverage.

24 13. On information and belief, Defendant issued materially identical policy provisions
25 to other policyholders concerning business interruption coverage for the relevant period.

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

1 15. 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 16. In light of this pandemic, Washington Governor Jay Inslee issued 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. Among other things,
6 Governor Inslee's "Stay Home, Stay Healthy" order required the closure of all non-essential
7 businesses, including Plaintiff's dental practice.
8

9 17. Governor Inslee's "PROCLAMATION BY THE GOVERNOR AMENDING
10 PROCLAMATION 20-05: 20-24 Restrictions on Non-Urgent Medical Procedures," dated March
11 19, 2020, also provides, in part:

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

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

24 19. No COVID-19 virus has been detected on Plaintiff's business premises.

25 20. Plaintiff's property sustained direct physical loss and/or damage as a result of the
26 proclamations and orders.

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

1 22. Plaintiff's property cannot be used for its intended purposes.

2 23. As a result of the above, Plaintiff has experienced and will experience loss
3 covered by the Travelers policy or policies.

4 24. Upon information and belief, Travelers intends to deny or has denied Plaintiff
5 Fox's claim for coverage and has or will continue to deny coverage for other similarly situated
6 policyholders.
7

8 **V. CLASS ACTION ALLEGATIONS**

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

11 26. The Classes that Plaintiff Fox seek to represent are defined at this time as:

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

18 B. ***Business Income Breach of Contract Washington Subclass:*** All persons
19 and entities in the State of Washington issued a Travelers 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, and/or other civil authorities and
22 whose Business Income claim has been denied by Travelers.
23

24 C. ***Business Income Declaratory Relief Class:*** All persons and entities in the
25 United States issued a Travelers policy with Business Income Coverage who suffered a
26

1 suspension of their business at the covered premises related to COVID-19 and/or orders
2 issued by Governor Inslee, other Governors, and/or other civil authorities.

3 D. ***Business Income Declaratory Relief Washington Subclass:*** All persons
4 and entities in the State of Washington issued a Travelers 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, and/or other civil authorities.

7
8 E. ***Extended Business Income Breach of Contract Class:*** All persons and
9 entities in the United States issued a Travelers policy with Extended Business Income
10 Coverage who suffered a suspension of their business at the covered premises related to
11 COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil
12 authorities and whose Extended Business Income claim has been denied by Travelers.

13
14 F. ***Extended Business Income Breach of Contract Washington Subclass:***
15 All persons and entities in the State of Washington issued a Travelers policy with
16 Extended Business Income Coverage who suffered a suspension of their business at the
17 covered premises related to COVID-19 and/or orders issued by Governor Inslee, and/or
18 other civil authorities and whose Extended Business Income claim has been denied by
19 Travelers.

20
21 G. ***Extended Business Income Declaratory Relief Class:*** All persons and
22 entities in the United States issued a Travelers policy with Extended Business Income
23 Coverage who suffered a suspension of their business at the covered premises related to
24 COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil
25 authorities.
26

1 H. ***Extended Business Income Declaratory Relief Washington Subclass:*** All
2 persons and entities in the State of Washington issued a Travelers policy with Extended
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 I. ***Extra Expense Breach of Contract Class:*** All persons and entities in the
8 United States issued a Travelers policy with Extra Expense Coverage who sought to
9 minimize losses from the suspension of their 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 and whose Extra Expense claim has been denied by
12 Travelers.
13

14 J. ***Extra Expense Breach of Contract Washington Subclass:*** All persons
15 and entities in the State of Washington issued a Travelers policy with Extra Expense
16 Coverage who sought to minimize losses from the suspension of their business at the
17 covered premises in connection with COVID-19 and/or orders issued by Governor Inslee,
18 and/or other civil authorities and whose Extra Expense claim has been denied by
19 Travelers.
20

21 K. ***Extra Expense Declaratory Relief Class:*** All persons and entities in the
22 United States issued a Travelers policy with Extra Expense Coverage who sought to
23 minimize losses from the suspension of their business at the covered premises in
24 connection with COVID-19 and/or orders issued by Governor Inslee, other Governors,
25 and/or other civil authorities.
26

1 L. ***Extra Expense Declaratory Relief Washington Subclass:*** All persons and
 2 entities in the State of Washington issued a Travelers policy with Extra Expense
 3 Coverage who sought to minimize losses from the suspension of their business at the
 4 covered premises in connection with COVID-19 and/or orders issued by Governor Inslee,
 5 and/or other civil authorities.
 6

7 M. ***Civil Authority Breach of Contract Class:*** All persons and entities in the
 8 United States issued a Travelers policy with Civil Authority Coverage who suffered a
 9 suspension of their business and/or extra expense 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 Civil Authority claim has been denied by Travelers.
 12

13 N. ***Civil Authority Breach of Contract Washington Subclass:*** All persons
 14 and entities in the State of Washington issued a Travelers policy with Civil Authority
 15 coverage who suffered a suspension of their business and/or extra expense at the covered
 16 premises related to COVID-19 and/or orders issued by Governor Inslee, and/or other civil
 17 authorities and whose Civil Authority claim has been denied by Travelers.
 18

19 O. ***Civil Authority Declaratory Relief Class:*** All persons and entities in the
 20 United States issued a Travelers policy with Civil Authority Coverage who suffered a
 21 suspension of their business at the covered premises related to COVID-19 and/or orders
 22 issued by Governor Inslee, other Governors, and/or other civil authorities.
 23

24 P. ***Civil Authority Declaratory Relief Washington Subclass:*** All persons and
 25 entities in the State of Washington issued a Travelers policy with Civil Authority
 26 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.

1 27. Excluded from the Classes are Defendant's officers, directors, and employees; the
2 judicial officers and associated court staff assigned to this case; and the immediate family
3 members of such officers and staff.

4 28. Plaintiff reserves the right to amend the Class definition based on information
5 obtained in discovery, including Defendant's internal records presently unavailable to Plaintiff.
6

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

9 30. **Numerosity:** The members of the Class are so numerous that joinder of all
10 members would be impractical. Plaintiff is informed and believes that the proposed Class
11 contains thousands of members. The precise number of class members can be ascertained
12 through discovery, which will include Defendant's records of policyholders.
13

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

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

19 B. Whether Travelers acted in a manner common to the class and wrongfully
20 denied claims for coverage relating to COVID-19 and/or closure orders issued by
21 Governor Inslee and others civil authorities;

22 C. Whether Business Income coverage in Travelers' policies of insurance
23 applies to a suspension of business relating to COVID-19 and/or closure orders issued by
24 Governor Inslee and others civil authorities;
25
26

1 D. Whether Travelers' Extra Expense Coverage applies to efforts to minimize
2 a loss relating to COVID-19 and/or closure orders issued by Governor Inslee and others
3 civil authorities;

4 E. Whether Travelers' Extended Business Income Coverage applies to a
5 suspension of business relating to COVID-19 and/or closure orders issued by Governor
6 Inslee and others civil authorities;

7 F. Whether Travelers' Civil Authority Coverage applies to a suspension of
8 business relating to the impact of COVID-19 and/or closure orders issued by Governor
9 Inslee and others civil authorities;

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

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

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

19
20
21
22 32. **Typicality:** Plaintiff Fox's claims are typical of the claims of the members of the
23 classes. Plaintiff Fox and all the members of the classes have been injured by the same wrongful
24 practices of Defendant. Plaintiff Fox's claims arise from the same practices and course of
25 conduct that give rise to the claims of the members of the Class and are based on the same legal
26 theories.

1 33. **Adequacy:** Plaintiff Fox will fully and adequately assert and protect the interests
 2 of the classes and has retained class counsel who are experienced and qualified in prosecuting
 3 class actions. Neither Plaintiff Fox nor his attorneys have any interests contrary to or in conflict
 4 with the Class.

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

11 35. **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.

15 36. **Federal Rule of Civil Procedure 23(b)(3), Superiority:** A class action is
 16 superior to all other available methods of the fair and efficient adjudication of this lawsuit. While
 17 the aggregate damages sustained by the classes are likely to be in the millions of dollars, the
 18 individual damages incurred by each class member may be too small to warrant the expense of
 19 individual suits. Individual litigation creates a risk of inconsistent and/or contradictory decisions
 20 and the court system would be unduly burdened by individual litigation of such cases. A class
 21 action would result in a unified adjudication, with the benefits of economies of scale and
 22 supervision by a single court.
 23
 24
 25
 26

VI. CAUSES OF ACTION

Count One—Declaratory Judgment

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

37. Previous paragraphs alleged are incorporated herein.

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

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

40. Plaintiff Fox seeks a declaratory judgment declaring that Plaintiff and Class Members' losses and expenses resulting from the interruption of their business are covered by the Policy.

41. Plaintiff Fox seeks a declaratory judgment declaring that Travelers is responsible for timely and fully paying all such losses.

Count Two—Breach of Contract

(Brought on behalf of the Business Income Breach of Contract Class, Business Income Breach of Contract Washington Subclass, Extended Business Income Breach of Contract Class, Extended Business Income Breach of Contract Washington Subclass, Extra Expense Breach of Contract Class, Extra Expense Breach of Contract Washington Subclass,

Civil Authority Breach of Contract Class, and Civil Authority Breach of Contract Washington Subclass)

42. Previous paragraphs alleged are incorporated herein.

43. Plaintiff Fox brings this cause of action on behalf of the Business Income Coverage Breach of Contract Class, Extended Business Income Breach of Contract Class, Civil Authority Breach of Contract Class, and Extra Expense Breach of Contract Class.

44. The Policy is a contract under which Plaintiff Fox and the class paid premiums to Travelers in exchange for Travelers's promise to pay Plaintiff Fox and the class for all claims covered by the Policy.

45. Plaintiff Fox has paid its insurance premiums.

46. On information and belief, Travelers intends to deny or has denied Plaintiff's claim for coverage and has or will continue to deny coverage for other similarly situated policyholders.

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

48. Plaintiff Fox is harmed by the breach of the insurance contract by Travelers.

VII. REQUEST FOR RELIEF

1. A declaratory judgment that the policy or policies cover Plaintiff's losses and expenses resulting from the interruption of the 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. Class action status under Fed. R. Civ. P. 23.

5. Pre-judgment interest.

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

VIII. JURY DEMAND

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

DATED this 3rd day of June, 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

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CERTIFICATE OF SERVICE

I certify that on 3rd day of June, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to the following:

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s/ Chris Jarman
Chris Jarman, Legal Assistant

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