

HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

PACIFIC ENDODONTICS, P.S., individually
and on behalf of all others similarly situated,

Plaintiff,

v.

THE OHIO CASUALTY INSURANCE
COMPANY,

Defendant.

No. 2:20-cv-00620-RSM

AMENDED CLASS ACTION
COMPLAINT

JURY DEMAND

I. INTRODUCTION

Plaintiff, PACIFIC ENDODONTICS, P.S. (“Pacific”), 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 Defendant The Ohio Casualty Insurance Company (“OCIC” 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 and

1 6. Defendant OCIC is an insurance carrier incorporated and domiciled in the State
2 of New Hampshire, with its principal place of business in the Commonwealth of Massachusetts.
3 Defendant is a subsidiary of Liberty Mutual Insurance (“Liberty Mutual”).

4 7. Defendant OCIC is authorized to write, sell, and issue business insurance policies
5 in all 50 states and the District of Columbia. Defendant conducted business within Washington
6 and these states by selling and issuing business insurance policies to policyholders, including
7 Plaintiff.
8

9 IV. NATURE OF THE CASE

10 8. Due to COVID-19 and a state-ordered mandated closure, Plaintiff cannot provide
11 dental endodontist services. Plaintiff intended to rely on its business insurance to maintain
12 business income in case of an insured loss. This lawsuit is filed to ensure that Plaintiff and other
13 similarly-situated policyholders receive the insurance benefits to which they are entitled and for
14 which they paid.

15 9. Defendant OCIC issued one or more insurance policies to Plaintiff, including
16 Business Owners Coverage and related endorsements, insuring Plaintiff’s property and business
17 practice and other coverages, with effective dates of June 21, 2019 to June 21, 2020.
18

19 10. Plaintiff’s business property includes property owned and/or leased by Plaintiff
20 and used for general business purposes for the specific purpose of dental endodontistry and
21 other business activities.

22 11. Defendant OCIC’s insurance policy issued to Plaintiff promises to pay Plaintiff
23 for “DIRECT PHYSICAL LOSS” to covered property and includes coverage for risks of both
24 “loss of or damage to” covered property.
25
26

12. Defendant OCIC's insurance policy issued to Plaintiff includes Business Income Coverage, Extended Business Income Coverage, Extra Expense Coverage and Civil Authority Coverage.

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

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

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

16. By order of Governor Inslee, practitioners including Plaintiff were prohibited from practicing dental endodontistry but for urgent and emergency procedures.

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

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

18. By order of Governor Inslee, dentists and endodontists including Plaintiff have been prohibited from providing services but for urgent and emergency procedures.

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

20. Plaintiff's property sustained direct physical loss and/or damage related to COVID-19 and/or the proclamations and orders.

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

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

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

24. Plaintiff submitted a claim to OCIC for the direct physical loss or damage to Plaintiff's property covered under the OCIC policy related to COVID-19 and/or the proclamations and orders; OCIC denied Plaintiff's claim for coverage.

25. On information and belief, OCIC intends to deny, has denied, and/or will deny all similar claims for coverage.

V. CLASS ACTION ALLEGATIONS

26. 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).

27. The Classes and Subclasses that Plaintiff seek to represent are defined at this time as:

A. ***Business Income Breach of Contract Class:*** All persons and entities in the United States insured under an OCIC policy with Business Income coverage who suffered a suspension of their practice at the covered premises related to COVID-19

1 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities
2 and whose Business Income claim has been denied by OCIC.

3 B. ***Business Income Breach of Contract Washington Subclass:*** All persons
4 and entities in the State of Washington insured under an OCIC policy with Business
5 Income Coverage who suffered a suspension of their business at the covered premises
6 related to COVID-19 and/or orders issued by Governor Inslee, and/or other civil
7 authorities and whose Business Income claim has been denied by OCIC.
8

9 C. ***Business Income Declaratory Relief Class:*** All persons and entities in
10 the United States insured under an OCIC policy with Business Income coverage who
11 suffered a suspension of their practice at the covered premises related to COVID-19
12 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities.
13

14 D. ***Business Income Declaratory Relief Washington Subclass:*** All persons
15 and entities in the State of Washington insured under an OCIC policy with Business
16 Income Coverage who suffered a suspension of their business at the covered premises
17 related to COVID-19 and/or orders issued by Governor Inslee, and/or other civil
18 authorities.
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20 E. ***Extended Business Income Breach of Contract Class:*** All persons and
21 entities in the United States insured under an OCIC policy with Extended Business
22 Income Coverage who suffered a suspension of their business at the covered premises
23 related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or
24 other civil authorities and whose Extended Business Income claim has been denied by
25 OCIC.
26

F. ***Extended Business Income Breach of Contract Washington Subclass:***

All persons and entities in the State of Washington insured under an OCIC policy with Extended 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 Extended Business Income claim has been denied by OCIC.

G. ***Extended Business Income Declaratory Relief Class:*** All persons and

entities in the United States insured under an OCIC policy with Extended 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.

H. ***Extended Business Income Declaratory Relief Washington Subclass:***

All persons and entities in the State of Washington insured under an OCIC policy with Extended 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.

I. ***Extra Expense Breach of Contract Class:*** All persons and entities in the

United States insured under an OCIC policy with Extra Expense Coverage who sought to minimize losses from the suspension of their business at the covered premises in connection with COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities and whose Extra Expense claim has been denied by OCIC.

J. ***Extra Expense Breach of Contract Washington Subclass:*** All persons

and entities in the State of Washington insured under an OCIC policy with Extra

1 Expense Coverage who sought to minimize losses from the suspension of their business
2 at the covered premises in connection with COVID-19 and/or orders issued by Governor
3 Inslee, and/or other civil authorities and whose Extra Expense claim has been denied by
4 OCIC.

5 K. ***Extra Expense Declaratory Relief Class:*** All persons and entities in the
6 United States insured under an OCIC policy with Extra Expense Coverage who sought
7 to minimize losses from the suspension of their business at the covered premises in
8 connection with COVID-19 and/or orders issued by Governor Inslee, other Governors,
9 and/or other civil authorities.
10

11 L. ***Extra Expense Declaratory Relief Washington Subclass:*** All persons
12 and entities in the State of Washington insured under an OCIC policy with Extra
13 Expense coverage who sought to minimize losses from the suspension of their business
14 at the covered premises in connection with COVID-19 and/or orders issued by Governor
15 Inslee, and/or other civil authorities.
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17 M. ***Civil Authority Breach of Contract Class:*** All persons and entities in the
18 United States insured under an OCIC policy with Civil Authority Coverage who suffered
19 a suspension of their business and/or extra expense at the covered premises related to
20 COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil
21 authorities and whose Civil Authority claim has been denied by OCIC.
22

23 N. ***Civil Authority Breach of Contract Washington Subclass:*** All persons
24 and entities in the State of Washington insured under an OCIC policy with Civil
25 Authority Coverage who suffered a suspension of their business and/or extra expense at
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the covered premises related to COVID-19 and/or orders issued by Governor Inslee, and/or other civil authorities and whose Civil Authority claim has been denied by OCIC.

O. **Civil Authority Declaratory Relief Class:** All persons and entities in the United States insured under an OCIC policy with Civil Authority 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.

P. **Civil Authority Declaratory Relief Washington Subclass:** All persons and entities in the State of Washington insured under an OCIC policy with Civil Authority 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.

28. Excluded from the Classes and Subclasses are Defendant's officers, directors, and employees; the judicial officers and associated court staff assigned to this case; and the immediate family members of such officers and staff. Plaintiff reserves the right to amend the Class definition based on information obtained in discovery.

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

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

1 31. **Commonality and Predominance:** Common questions of law and fact
2 predominate over any questions affecting only individual members of the Class or subclass.
3 Common questions include, but are not limited to, the following:

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

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

9 C. Whether Business Income coverage in OCIC's policies of insurance
10 applies to a suspension of practice relating to COVID-19 and/or orders issued by
11 Governor Inslee, other Governors, and/or other civil authorities;

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

15 E. Whether Extra Expense coverage in OCIC's policies of insurance applies
16 to efforts to minimize a loss at the covered premises relating to COVID-19 and/or orders
17 issued by Governor Inslee, other Governors, and/or other civil authorities;

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

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

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

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

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

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

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

35. **Federal Rule of Civil Procedure 23(b)(2), Declaratory and Injunctive Relief:**

Defendant acted or refused to act on grounds generally applicable to Plaintiff and other members of the proposed classes making injunctive relief and declaratory relief appropriate on a classwide basis.

36. **Federal Rule of Civil Procedure 23(b)(3), Superiority:** A class action is

superior to all other available methods of the fair and efficient adjudication of this lawsuit.

While the aggregate damages sustained by the classes are likely to be in the millions of dollars,

the individual damages incurred by each class member may be too small to warrant the expense

of individual suits. Individual litigation creates a risk of inconsistent and/or contradictory

decisions and the court system would be unduly burdened by individual litigation of such cases.

A class action would result in a unified adjudication, with the benefits of economies of scale and

supervision by a single court.

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)

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 Pacific Endodontics, P.S., 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.

40. Plaintiff Pacific Endodontics, P.S., seeks a declaratory judgment declaring that Plaintiff Pacific Endodontics' and class members' losses and expenses resulting from the interruption of their business are covered by the Policy.

41. Plaintiff Pacific Endodontics, P.S., seeks a declaratory judgment declaring that Defendant 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)

42. Previous paragraphs alleged are incorporated herein.

43. Plaintiff Pacific Endodontics, P.S., brings this cause of action 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.

44. The Policy is a contract under which Plaintiff Pacific Endodontics, P.S., and the class paid premiums to OCIC in exchange for OCIC's promise to pay Plaintiff Pacific Endodontics, P.S., and the class for all claims covered by the Policy.

45. Plaintiff Pacific Endodontics, P.S. has paid its insurance premiums.

1 46. Plaintiff submitted a claim to OCIC for the direct physical loss or damage to
2 Plaintiff's property covered under the OCIC policy related to COVID-19 and/or the
3 proclamations and orders; OCIC denied Plaintiff's claim for coverage.

4 47. On information and belief, OCIC has denied coverage for other similarly situated
5 policyholders.

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

7 49. Plaintiff Pacific Endodontics, P.S., is harmed by the breach of the insurance
8 contract by OCIC.
9

10 **VII. PRAYER FOR RELIEF**

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

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

16 3. Damages.

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

18 5. Reasonable attorney fees and costs.

19 6. Such further and other relief as the Court shall deem appropriate.
20

21 **VIII. JURY TRIAL DEMANDED**

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

23 DATED this 21st day of May, 2020.
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25
26

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/ Amy Williams-Derry

By: s/ Maureen Falecki

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