

HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

MARIO D. CHORAK, DMD, P.S., individually
and on behalf of all others similarly situated,

Plaintiff,

v.

HARTFORD CASUALTY INSURANCE
COMPANY,

Defendant.

No. 2:20-cv-00627-RSM-JRC

AMENDED CLASS ACTION
COMPLAINT

JURY DEMAND

I. INTRODUCTION

Plaintiff, MARIO D. CHORAK, DMD, P.S. (“CHORAK”), 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 Hartford Casualty Insurance Company (“Hartford” 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 Class member is of diverse citizenship

1 from Defendant, there are 100 or more Class members nationwide, and the aggregate amount in
2 controversy exceeds \$5,000,000. The Court has supplemental jurisdiction over Plaintiff's state
3 law claims under 28 U.S.C. § 1367.

4 2. This Court has personal jurisdiction over Defendant because Defendant is
5 registered to do business in Washington, has sufficient minimum contacts in Washington, and
6 otherwise intentionally avails itself of the markets within Washington through its business
7 activities, such that the exercise of jurisdiction by this Court is proper. Moreover, the claims of
8 Plaintiff and all of the Washington subclass members in this case arise out of and directly relate
9 to Defendant's contacts with Washington.
10

11 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(3) because the
12 Court has personal jurisdiction over Defendant, a substantial portion of the alleged wrongdoing
13 occurred in this District and the state of Washington, and Defendant has sufficient contacts with
14 this District and the state of Washington.
15

16 4. Venue is proper in the Western District of Washington pursuant to 28 U.S.C.
17 § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims at
18 issue in this Complaint arose in this District. Plaintiff's businesses are located in Seattle, King
19 County. This action is therefore appropriately filed in the Seattle Division because a substantial
20 portion of the events giving rise to this lawsuit arose in King County.
21

22 **III. PARTIES**

23 5. Plaintiff, Mario D. Chorak, DMD, P.S., is an orthodontic business with locations
24 at 14300 SE Petrovitsky Road, Renton, Washington, and 3022 78th Avenue SE, Mercer Island,
25 Washington.
26

1 6. Defendant Hartford Casualty Insurance Company is an insurance carrier
2 incorporated and domiciled in the State of Indiana, with its principal place of business in
3 Hartford, Connecticut.

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

8 IV. NATURE OF THE CASE

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

14 9. Defendant Hartford issued one or more insurance policies to Plaintiff, including
15 Spectrum Business Owners Policy and related endorsements, insuring Plaintiff's property and
16 business practice and other coverages, with effective dates of June 27, 2019 to June 27, 2020.
17

18 10. Plaintiff's business property includes property owned and/or leased by Plaintiff
19 and used for general business purposes for the specific purpose of dental orthodontics and other
20 related business activities.

21 11. Defendant Hartford's insurance policy issued to Plaintiff promises to pay
22 Plaintiff for "direct physical loss of or physical damage to" to covered property.
23

24 12. The Policy includes coverage for risks of both damage to and loss of covered
25 property.
26

1 13. Defendant Hartford's insurance policy issued to Plaintiff includes Business
2 Income Coverage, Extra Expense Coverage, Extended Business Income Coverage and Civil
3 Authority Coverage.

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

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

7 16. In light of this pandemic, Washington Governor Jay Inslee issued certain
8 proclamations and orders affecting many persons and businesses in Washington, whether
9 infected with COVID-19 or not, requiring certain public health precautions. Among other
10 things, Governor Inslee's "Stay Home, Stay Healthy" orders required the closure of all non-
11 essential businesses, including Plaintiff's business.
12

13 17. Governor Inslee's "PROCLAMATION BY THE GOVERNOR AMENDING
14 PROCLAMATION 20-05: 20-24 Restrictions on Non-Urgent Medical Procedures," dated
15 March 19, 2020, also provides, in part:
16

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

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

25 19. No COVID-19 virus has been detected on Plaintiff's business premises.
26

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

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

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

7 23. As a result of the above, Plaintiff has experienced and will experience loss
8 covered by the Hartford policy or policies.
9

10 24. After its business was shut down in March 2020, Plaintiff called Defendant to
11 inquire about coverage for its loss. Defendant told Plaintiff over the phone that its claim would
12 not be covered, and discouraged Plaintiff from filing any such claim.

13 25. Upon information and belief, Hartford has denied or will deny all similar claims
14 for coverage.
15

16 V. CLASS ACTION ALLEGATIONS

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

19 27. The Classes that Plaintiff seeks to represent are defined at this time as:

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

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

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

10 D. ***Business Income Declaratory Relief Washington Subclass:*** All persons
 11 and entities in the State of Washington insured under a Hartford policy with Business
 12 Income Coverage who suffered a suspension of their business at the covered premises
 13 related to COVID-19 and/or orders issued by Governor Inslee, and/or other civil
 14 authorities.
 15

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

23 F. ***Extended Business Income Breach of Contract Washington Subclass:***
 24 All persons and entities in the State of Washington insured under a Hartford policy with
 25 Extended Business Income Coverage who suffered a suspension of their business at the
 26

1 covered premises related to COVID-19 and/or orders issued by Governor Inslee, and/or
2 other civil authorities and whose Extended Business Income claim has been denied by
3 Hartford.

4 G. ***Extended Business Income Declaratory Relief Class:*** All persons and
5 entities in the United States insured under a Hartford policy with Extended Business
6 Income Coverage who suffered a suspension of their business at the covered premises
7 related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or
8 other civil authorities.
9

10 H. ***Extended Business Income Declaratory Relief Washington Subclass:***
11 All persons and entities in the State of Washington insured under a Hartford policy with
12 Extended Business Income coverage who suffered a suspension of their business at the
13 covered premises related to COVID-19 and/or orders issued by Governor Inslee, and/or
14 other civil authorities.
15

16 I. ***Extra Expense Breach of Contract Class:*** All persons and entities in the
17 United States insured under a Hartford policy with Extra Expense Coverage who sought
18 to minimize losses from the suspension of their business at the covered premises in
19 connection with COVID-19 and/or orders issued by Governor Inslee, other Governors,
20 and/or other civil authorities and whose Extra Expense claim has been denied by
21 Hartford.
22

23 J. ***Extra Expense Breach of Contract Washington Subclass:*** All persons
24 and entities in the State of Washington insured under a Hartford policy with Extra
25 Expense Coverage who sought to minimize losses from the suspension of their business
26 at the covered premises in connection with COVID-19 and/or orders issued by Governor

1 Inslee, and/or other civil authorities and whose Extra Expense claim has been denied by
2 Hartford.

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

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

14 M. ***Civil Authority Breach of Contract Class:*** All persons and entities in the
15 United States insured under a Hartford policy with Civil Authority Coverage who
16 suffered a suspension of their practice and/or extra expense at the covered premises
17 related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or
18 other civil authorities and whose Civil Authority claim has been denied by Hartford.
19

20 N. ***Civil Authority Breach of Contract Washington Subclass:*** All persons
21 and entities in the State of Washington insured under a Hartford policy with Civil
22 Authority coverage who suffered a suspension of their business and/or extra expense at
23 the covered premises related to COVID-19 and/or orders issued by Governor Inslee,
24 and/or other civil authorities and whose Civil Authority claim has been denied by
25 Hartford.
26

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

5 P. **Civil Authority Declaratory Relief Washington Subclass:** All persons
6 and entities in the State of Washington insured under a Hartford policy with Civil
7 Authority Coverage who suffered a suspension of their business at the covered premises
8 related to COVID-19 and/or orders issued by Governor Inslee, and/or other civil
9 authorities.
10

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

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

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

21 31. **Commonality and Predominance:** Common questions of law and fact
22 predominate over any questions affecting only individual members of the Class. Common
23 questions include, but are not limited to, the following:
24
25
26

1 A. Whether the Class Members suffered covered losses based on common
2 policies issued to members of the Class;

3 B. Whether Hartford acted in a manner common to the Class and wrongfully
4 denied claims for coverage relating to COVID-19 and/or orders issued by Governor
5 Inslee, other Governors, and/or other civil authorities;

6 C. Whether Business Income Coverage in Hartford's policies of insurance
7 applies to a suspension of practice relating to COVID-19 and/or orders issued by
8 Governor Inslee, other Governors, and/or other civil authorities;

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

12 E. Whether Extra Expense Coverage in Hartford's policies of insurance
13 applies to efforts to minimize a loss at the covered premises relating to COVID-19
14 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities;

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

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

22 H. Whether, because of Defendant's conduct, Plaintiff and the Class
23 Members have suffered damages; and if so, the appropriate amount thereof; and
24
25
26

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.

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

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

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

21 35. **Federal Rule of Civil Procedure 23(b)(2), Declaratory and Injunctive Relief:**
22 Defendant acted or refused to act on grounds generally applicable to Plaintiff and other
23 members of the proposed class making injunctive relief and declaratory relief appropriate on a
24 classwide basis.
25
26

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 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 Chorak 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.

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

4 41. Plaintiff Chorak seeks a declaratory judgment declaring that Hartford is
5 responsible for timely and fully paying all such claims.

6 **Count Two—Breach of Contract**

7 *(Brought on behalf of the Business Income Breach of Contract Class, Business*
8 *Income Breach of Contract Washington Subclass, Extended Business Income Breach*
9 *of Contract Class, Extended Business Income Breach of Contract Washington*
10 *Subclass, Extra Expense Breach of Contract Class, Extra Expense Breach of Contract*
11 *Washington Subclass, Civil Authority Breach of Contract Class, and Civil Authority*
12 *Breach of Contract Washington Subclass)*

13 42. Previous paragraphs alleged are incorporated herein.

14 43. Plaintiff Chorak brings this cause of action on behalf of the Business Income
15 Breach of Contract Class, Business Income Breach of Contract Washington Subclass, Extended
16 Business Income Breach of Contract Class, Extended Business Income Breach of Contract
17 Washington Subclass, Extra Expense Breach of Contract Class, Extra Expense Breach of
18 Contract Washington Subclass, Civil Authority Breach of Contract Class and Civil Authority
19 Breach of Contract Washington Subclass.

20 44. The Policy is a contract under which Plaintiff Chorak and the Class Members
21 paid premiums to Hartford in exchange for Hartford's promise to pay plaintiff and the Class
22 Members for all claims covered by the Policy.

23 45. Plaintiff Chorak has paid its insurance premiums.

24 46. Plaintiff attempted to submit a claim to Hartford by telephone and Hartford told
25 Plaintiff in response that its claim would be denied. By doing so, Hartford denied Plaintiff's
26

1 claim for coverage. On information and belief, Hartford has denied coverage for other similarly
2 situated policyholders.

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

4 48. Plaintiff Chorak is harmed by the breach of the insurance contract by Hartford.

5 **VII. PRAYER FOR RELIEF**

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

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

11 3. Damages.

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

13 5. Reasonable attorney fees and costs.

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

15 **VIII. JURY TRIAL DEMANDED**

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

17 DATED this 22nd day of May, 2020.

KELLER ROHRBACK L.L.P.

By: s/ Amy Williams-Derry
By: s/ Lynn L. Sarko
By: s/ Ian S. Birk
By: s/ Gretchen Freeman Cappio
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CERTIFICATE OF SERVICE

I certify that on 22nd day of May, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, and served a true and correct copy by email on:

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