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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

RYAN M. FOX, DDS,

Plaintiff,

No.

v.

COMPLAINT—CLASS ACTION

TRAVELERS CASUALTY INSURANCE
COMPANY OF AMERICA,

JURY DEMAND

Defendants.

I. INTRODUCTION

Plaintiff, RYAN M. FOX, DDS, individually and on behalf of all others similarly situated members of the defined national claims (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 7. Defendant Travelers Casualty Insurance Company of America (Travelers) issued
2 one or more insurance policies to Plaintiff, including Businessowners Property Coverage and
3 related endorsements, insuring Plaintiff's property and business practice and other coverages,
4 with effective dates of February 7, 2020 to February 7, 2021.

5 8. Plaintiff's business property includes property owned and leased by Plaintiff and
6 used for general business purposes for the specific purpose of dentistry and other business
7 activities.

8 9. Travelers' Businessowners Property Coverage promises to pay Plaintiff for risks
9 of "DIRECT PHYSICAL LOSS" to covered property and includes coverage for risks of both
10 "loss of or damage to" covered property.

11 10. Travelers' Businessowners Property Coverage provides Plaintiff with Business
12 Income Coverage, Extra Expense Coverage, Extended Business Income Coverage and Civil
13 Authority Coverage.

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

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

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

22 14. Plaintiff's property sustained direct physical loss or damage as a result of the
23 proclamations and orders.

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

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

5 17. As a result of the above, Plaintiff has experienced and will experience loss
6 covered by the Travelers policy or policies.

7 18. Plaintiff will soon make a claim with Travelers for its loss, and upon information
8 and belief, its claim will be denied.

9
10 **V. CLASS ACTION ALLEGATIONS**

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

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

14 A. ***Business Income Coverage Breach of Contract Class:*** All persons and
15 entities in the United States insured under a Travelers policy with Business Income
16 Coverage who suffered a suspension of their business at the covered premises due to
17 COVID-19 and whose Business Income claim was denied by Travelers.

18 B. ***Business Income Coverage Declaratory Relief Class:*** All persons and
19 entities in the United States insured under a Travelers policy with Business Income
20 Coverage who suffered a suspension of their business at the covered premises due to
21 COVID-19.

22 C. ***Extra Expense Breach of Contract Class:*** All persons and entities in the
23 United States insured under a Travelers policy with Extra Expense coverage who sought
24 to minimize the suspension of business at the covered premises in connection with
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1 COVID-19 and whose Extra Expense coverage claim was denied by Travelers despite
2 their efforts to minimize the suspension of their business.

3 D. ***Extra Expense Declaratory Relief Class:*** All persons and entities in the
4 United States insured under a Travelers policy with Extra Expense coverage who sought
5 to minimize losses from the suspension of their business at the covered premises due to
6 COVID-19.

7
8 E. ***Extended Business Income Breach of Contract Class:*** All persons and
9 entities in the United States insured under a Travelers policy with Extended Business
10 Income coverage who suffered a suspension of their business at the covered premises due
11 to COVID-19.

12
13 F. ***Extended Business Income Declaratory Relief Class:*** All persons and
14 entities in the United States insured under a Travelers policy with Extended Business
15 Income coverage who suffered a suspension of their business at the covered premises due
16 to COVID-19.

17 G. ***Civil Authority Breach of Contract Class:*** All persons and entities in the
18 United States insured under a Travelers policy with Civil Authority coverage who
19 suffered a loss of business income and/or extra expense due to the impact of COVID-19
20 and whose Civil Authority claim was denied by Travelers.

21
22 H. ***Civil Authority Declaratory Relief Class:*** All persons and entities in the
23 United States insured under a Travelers policy with Civil Authority coverage who
24 suffered a loss of business income and/or extra expense due to the impact of COVID-19.

25 21. Excluded from the Class are Defendant's officers, directors, and employees; the
26 judicial officers and associated court staff assigned to this case; and the immediate family

1 members of such officers and staff. Plaintiff Fox reserves the right to amend the Class definition
2 based on information obtained in discovery.

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

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

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

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

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

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

21 D. Whether Travelers' Extra Expense coverage applies to efforts to minimize
22 a loss relating to COVID-19 and/or closure orders issued by Governor Inslee and others
23 civil authorities;
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1 E. Whether Travelers' Extended Business Income coverage applies to a
2 suspension of business relating to COVID-19 and/or closure orders issued by Governor
3 Inslee and others civil authorities;

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

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

11 H. Whether, because of Defendant's conduct, Plaintiff Fox and the class
12 members have suffered damages; and if so, the appropriate amount thereof; and
13

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

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

24 26. **Adequacy:** Plaintiff Fox will fully and adequately assert and protect the interests
25 of the classes and has retained class counsel who are experienced and qualified in prosecuting
26

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

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

11 28. **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

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

2 **Count One—Declaratory Judgment**

3 *(Brought on behalf of the Business Income Coverage Declaratory Relief Class,*
4 *Extended Business Income Declaratory Relief Class, Civil Authority Declaratory Relief Class,*
5 *and Extra Expense Declaratory Relief Class)*

6 30. Previous paragraphs alleged are incorporated herein.

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

9 32. Plaintiff Fox brings this cause of action on behalf of the Business Income
10 Coverage Declaratory Relief Class, Extended Business Income Declaratory Relief Class, Civil
11 Authority Declaratory Relief Class, and Extra Expense Declaratory Relief Class.

12 33. Plaintiff Fox seeks a declaratory judgment declaring that Plaintiff Fox’s and class
13 members losses and expenses resulting from the interruption of their business are covered by the
14 Policy.

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

17 **Count Two—Breach of Contract**

18 *(Brought on behalf of the Business Income Coverage Breach of Contract Class,*
19 *Extended Business Income Breach of Contract Class, Civil Authority Breach of Contract*
20 *Class, and Extra Expense Breach of Contract Class)*

21 35. Previous paragraphs alleged are incorporated herein.

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

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

7 38. Plaintiff Fox has paid its insurance premiums.

8 39. Plaintiff Fox will soon file a written claim for her loss covered by the Policy.
9 Upon information and belief, Travelers has denied coverage for other similarly situated
10 policyholders and will again deny Plaintiff Fox's claim.

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

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

13 **VII. PRAYER FOR RELIEF**

14 1. A declaratory judgment that the policy or policies cover the plaintiff's losses and
15 expenses resulting from the interruption of the plaintiff's business by COVID-19.

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

18 3. Damages.

19 4. Pre-judgment interest.

20 5. Reasonable attorney fees and costs.

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

22 **VIII. JURY DEMAND**

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

1 DATED this 21st day of April, 2020.

2 KELLER ROHRBACK L.L.P.

3
4 By: s/ Ian S. Birk

By: s/ Lynn L. Sarko

By: s/ Gretchen Freeman Cappio

By: s/ Irene M. Hecht

By: s/ Maureen Falecki

6 Ian S. Birk, WSBA #31431

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18 *Attorneys for Plaintiff*

19
20
21 4832-7287-2122, v. 1

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

RYAN M. FOX, DDS,

(b) County of Residence of First Listed Plaintiff King County, WA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

KELLER ROHRBACK L.L.P. 1201 Third Avenue, Suite 3200, Seattle, WA 98101 (206) 623-1900

DEFENDANTS

TRAVELERS CASUALTY INSURANCE COMPANY OF AMERICA

County of Residence of First Listed Defendant Hartford County, CT (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Property, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1391(b)(3)

Brief description of cause: INSURANCE BAD FAITH

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 04/21/2020 SIGNATURE OF ATTORNEY OF RECORD /s/ Ian S. Birk

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Washington

RYAN M. FOX, DDS,

Plaintiff(s)

v.

TRAVELERS CASUALTY INSURANCE COMPANY OF AMERICA,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) TRAVELERS CASUALTY INSURANCE COMPANY OF AMERICA ONE TOWER SQUARE HARTFORD, CT 06183

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Ian S. Birk, Lynn L. Sarko, Gretchen Freeman Cappio, Irene M. Hecht, Amy Williams Derry, Maureen Falecki, and Alison Chase KELLER ROHRBACK L.L.P. 1201 Third Avenue, Suite 3200 Seattle, WA 98101

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: