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ØŚÖÖ G€GGÁT CEÜÁEI ÁFGAFI ÁÚT SOÞ ÕÁÔUWÞVŸ ÙWÚÒÜOUÜÁÔUWÜVÁÔŠÒÜS ÒĒZÓŠÒÖ ÔOEÙÒÁNÁGGGĒGĒEHFÌÎĒI ÁÙÒCE

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

H & H ENTERPRISES INC. d.b.a. 3 PIGS BARBECUE,

No.

Plaintiff.

COMPLAINT

v.

MUTUAL OF ENUMCLAW INSURANCE COMPANY, a Washington insurance company,

Defendant.

I. INTRODUCTION

Plaintiff H & H Enterprises Inc. d.b.a. 3 Pigs Barbecue ("Plaintiff"), by and through the undersigned attorneys, brings this action for business interruption insurance coverage against Defendant Mutual of Enumclaw Insurance Company ("Defendant" or "MOE"). Plaintiff alleges as follows based on personal knowledge and information and belief:

II. JURISDICTION

- 1. This Court has original jurisdiction pursuant to RCW 2.08.010 because the action originates in Washington and the amount in controversy exceeds the jurisdictional threshold.
- 2. This Court has personal jurisdiction over Defendant because Defendant is registered to do business in Washington, has sufficient minimum contacts with Washington, and

otherwise intentionally avails itself of the markets within Washington through its business activities, such that the exercise of jurisdiction by this Court is proper pursuant to RCW 48.05.200. Moreover, Plaintiff's claims arise out of and directly relate to Defendant's contacts with Washington.

- 3. This case is filed within two years of the onset of Plaintiff's loss, in accordance with the contractual limitation on suit in Plaintiff's business interruption insurance policies.
- 4. A matter currently on direct review to the Washington State Supreme Court, *Hill* & Stout PLLC v. Mutual of Enumclaw Insurance Co., No. 100211-4 (Wash. review granted Jan. 5, 2022), addresses similar insurance coverage arising from similar facts, similar case theories, and virtually identical insuring language. In light of the pending *Hill & Stout* appeal, Plaintiff contends this action should be stayed after filing and service until 60 days after the Washington State Supreme Court issues a decision in *Hill & Stout*.

III. PARTIES

- 5. Plaintiff H & H Enterprises Inc. d.b.a. 3 Pigs Barbecue owns and operates a restaurant located at 1048 116th Ave. NE, Suite 150, Bellevue, Washington.
- 6. Defendant Mutual of Enumclaw Insurance Company ("MOE") is a Washington corporation with its principal place of business in Enumclaw, Washington. Defendant does business in King County, Washington, including selling insurance policies in King County, Washington.
- 7. Defendant is vicariously liable for the acts and omissions of its employees and agents.

IV. NATURE OF THE CASE

- 8. Defendant issued one or more "all-risk" insurance policies to Plaintiff, including a businessowners policy and related endorsements (collectively, "the Policies"), which provide broad property and business interruption coverage of Plaintiff's property and business at all relevant times.
- Defendant issued the Policies in Washington covering property situated in Washington.
- 10. The business property of Plaintiff includes property and equipment owned and/or leased by it and used for operating a dine-in restaurant and related business activities.
- 11. Defendant promised to pay Plaintiff for loss of business income because of direct physical loss or damage of property. The Policies do not define the key coverage terms.
- 12. In general, courts have found coverage under business interruption policies when the policyholder has lost the functional use of their business property. This occurred to Plaintiff.
 - 13. Plaintiff paid all premiums for the coverage when due.
- 14. Plaintiff seeks all coverage due under its Policies, including without limitation with Business Income Coverage, Extra Expense Coverage, Extended Business Income Coverage, and Civil Authority Coverage, to whatever extent provided.
- 15. 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.
- 16. It is now known that COVID-19 spreads through airborne transmission, and, in some cases in conjunction with governmental responses, leads to loss of functional use of business property for ordinary business purposes.

- 17. The first confirmed case of COVID-19 in King County, Washington was noted on January 21, 2020.
- 18. On February 29, 2020, Washington Governor Jay Inslee issued Proclamation 20-5, declaring a State of Emergency for all counties in the state of Washington as the result of COVID-19.
- 19. Thereafter, Governor Inslee issued a series of 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 here.
- 20. Issued March 12, 2020, Proclamation 20-08 closed all public and private K-12 schools in King, Pierce, and Snohomish counties. Issued March 13, 2020, Proclamation 20-09 extended the school closure to the entire state.
- 21. Issued March 16, 2020, Proclamation 20-13 closed theaters, gyms, performance venues, dance studios, bowling alleys, bars, and indoor dining at restaurants.
- 22. Proclamation 20-13 prohibited "any number of people from gathering in any public venue in which people congregate for purposes of public entertainment, recreation, food and beverage service, . . . to include all public venues in which the serving, provision, or consumption of prepared food or beverages occurs at a table, bar, or for consumption within."
- 23. Proclamation 20-13 states that one of the reasons for its restrictions is that "the worldwide COVID-19 pandemic and its progression in Washington State continues to threaten the life and health of our people as well as the economy of Washington State, and remains a public disaster affecting life, health, property, or the public peace."

- 24. The COVID-19 related proclamations in Washington, including at least Proclamation 20-05 and Proclamation 20-13, refer to property damage throughout the State of Washington, including where Plaintiff's business is located.
- 25. The various orders issued in Washington in connection with the COVID-19 global pandemic led to Plaintiff experiencing a loss of functionality of its business property.
- 26. Other premises, schools, and businesses in immediate close proximity to Plaintiff were closed and suffered direct physical loss as a result of these and similar governmental orders.
- 27. The property of Plaintiff has sustained direct physical loss and/or damages related to COVID-19 and/or the proclamations and orders.
- 28. The property of Plaintiff sustained direct physical loss or damage covered by the Policies, including but not limited to business interruption, extra expense, extended business interruption, interruption by civil authority, and other expenses.
- 29. These governmental ordinances and other similar ones directly affected Plaintiff's ability to operate its normal business. As a result, Plaintiff was prohibited from using its property for its intended purposes and suffered a physical loss of property and business income interruption.
- 30. As a result of the above, Plaintiff has experienced and will experience losses covered by the Policies.
 - 31. MOE has denied coverage to Plaintiff.

V. CAUSES OF ACTION

Count One—Declaratory Judgment

32. Previous paragraphs alleged are incorporated herein.

- 33. This is a cause of action for declaratory judgment pursuant to the Uniform Declaratory Judgments Act, RCW 7.24.010 *et seq*.
- 34. Plaintiff seeks a declaratory judgment declaring that losses and expenses resulting from the interruption of its business are covered by the Policies issued by Defendant.
- 35. Plaintiff seeks a declaratory judgment declaring that Defendant is responsible for timely and fully paying Plaintiff's claims.

Count Two—Breach of Contract

- 36. Previous paragraphs alleged are incorporated herein.
- 37. The Policies issued by MOE are contracts under which Plaintiff paid premiums to MOE in exchange for its promise to pay Plaintiff for all claims covered by the Policies.
 - 38. Plaintiff has paid its insurance premiums.
 - 39. MOE has denied coverage to Plaintiff.
- 40. MOE's failure to provide coverage for the claims is a breach of the insurance contract.
 - 41. Plaintiff is harmed by the breach of the insurance contract by MOE.

VI. REQUEST FOR RELIEF

- 1. A declaratory judgment that the Policies cover Plaintiff's losses and expenses resulting from the interruption of Plaintiff's business related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other authorities.
- 2. A declaratory judgment that Defendant is responsible for timely and fully paying all such losses.
 - 3. Damages.
 - 4. Pre- and post-judgment interest at the highest allowable rate.

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5. Attorney fees and costs under *Olympic Steamship Co. v. Centennial Insurance Co.*, 117 Wn.2d 37 (1991) and/or other applicable law.

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

DATED this 4th day of March, 2022.

KELLER ROHRBACK L.L.P.

By: s/ Ian S. Birk

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