

0300
GEGGAT OEJAE ÁFKI ÁJT
SQ ÓÁOUWVY
UMUOUUUAUWUVÁŠÖUS
0300
OEJÓÁKGEHFI Î Ě ÁJÖE

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

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

Plaintiff,

v.

MUTUAL OF ENUMCLAW INSURANCE
COMPANY, a Washington insurance company,

Defendant.

No.

COMPLAINT

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

1 otherwise intentionally avails itself of the markets within Washington through its business
2 activities, such that the exercise of jurisdiction by this Court is proper pursuant to RCW
3 48.05.200. Moreover, Plaintiff's claims arise out of and directly relate to Defendant's contacts
4 with Washington.

5
6 3. This case is filed within two years of the onset of Plaintiff's loss, in accordance
7 with the contractual limitation on suit in Plaintiff's business interruption insurance policies.

8 4. A matter currently on direct review to the Washington State Supreme Court, *Hill*
9 & *Stout PLLC v. Mutual of Enumclaw Insurance Co.*, No. 100211-4 (Wash. review granted Jan.
10 5, 2022), addresses similar insurance coverage arising from similar facts, similar case theories,
11 and virtually identical insuring language. In light of the pending *Hill & Stout* appeal, Plaintiff
12 contends this action should be stayed after filing and service until 60 days after the Washington
13 State Supreme Court issues a decision in *Hill & Stout*.

14 III. PARTIES

15
16 5. Plaintiff H & H Enterprises Inc. d.b.a. 3 Pigs Barbecue owns and operates a
17 restaurant located at 1048 116th Ave. NE, Suite 150, Bellevue, Washington.

18 6. Defendant Mutual of Enumclaw Insurance Company ("MOE") is a Washington
19 corporation with its principal place of business in Enumclaw, Washington. Defendant does
20 business in King County, Washington, including selling insurance policies in King County,
21 Washington.

22
23 7. Defendant is vicariously liable for the acts and omissions of its employees and
24 agents.

1 **IV. NATURE OF THE CASE**

2 8. Defendant issued one or more “all-risk” insurance policies to Plaintiff, including
3 a businessowners policy and related endorsements (collectively, “the Policies”), which provide
4 broad property and business interruption coverage of Plaintiff’s property and business at all
5 relevant times.

6
7 9. Defendant issued the Policies in Washington covering property situated in
8 Washington.

9 10. The business property of Plaintiff includes property and equipment owned and/or
10 leased by it and used for operating a dine-in restaurant and related business activities.

11 11. Defendant promised to pay Plaintiff for loss of business income because of direct
12 physical loss or damage of property. The Policies do not define the key coverage terms.

13 12. In general, courts have found coverage under business interruption policies when
14 the policyholder has lost the functional use of their business property. This occurred to Plaintiff.

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

16 14. Plaintiff seeks all coverage due under its Policies, including without limitation
17 with Business Income Coverage, Extra Expense Coverage, Extended Business Income
18 Coverage, and Civil Authority Coverage, to whatever extent provided.
19

20 15. On or about January 2020, the United States of America saw its first cases of
21 persons infected by COVID-19, which has been designated a worldwide pandemic.
22

23 16. It is now known that COVID-19 spreads through airborne transmission, and, in
24 some cases in conjunction with governmental responses, leads to loss of functional use of
25 business property for ordinary business purposes.
26

1 17. The first confirmed case of COVID-19 in King County, Washington was noted
2 on January 21, 2020.

3 18. On February 29, 2020, Washington Governor Jay Inslee issued Proclamation 20-
4 5, declaring a State of Emergency for all counties in the state of Washington as the result of
5 COVID-19.
6

7 19. Thereafter, Governor Inslee issued a series of certain proclamations and orders
8 affecting many persons and businesses in Washington, whether infected with COVID-19 or not,
9 requiring certain public health precautions. Among other things, Governor Inslee’s “Stay Home,
10 Stay Healthy” order required the closure of all non-essential businesses, including Plaintiff’s
11 business here.

12 20. Issued March 12, 2020, Proclamation 20-08 closed all public and private K-12
13 schools in King, Pierce, and Snohomish counties. Issued March 13, 2020, Proclamation 20-09
14 extended the school closure to the entire state.
15

16 21. Issued March 16, 2020, Proclamation 20-13 closed theaters, gyms, performance
17 venues, dance studios, bowling alleys, bars, and indoor dining at restaurants.

18 22. Proclamation 20-13 prohibited “any number of people from gathering in any
19 public venue in which people congregate for purposes of public entertainment, recreation, food
20 and beverage service, . . . to include all public venues in which the serving, provision, or
21 consumption of prepared food or beverages occurs at a table, bar, or for consumption within.”
22

23 23. Proclamation 20-13 states that one of the reasons for its restrictions is that “the
24 worldwide COVID-19 pandemic and its progression in Washington State continues to threaten
25 the life and health of our people as well as the economy of Washington State, and remains a
26 public disaster affecting life, health, property, or the public peace.”

