

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LANE

BA VENTURES LLC an Oregon Foreign
Limited Liability Company; PACIFIC
CLEARVISION INSTITUTE, PC, an Oregon
professional corporation dba Pacific Clearvision
Institute ,

Plaintiffs,

vs.

FARMERS INSURANCE EXCHANGE, a
California Corporation,

Defendant.

Case No. _____

COMPLAINT

(Breach of Contract; Declaratory Relief)

Amount in Controversy: \$235,418.08

Fee Authority: ORS 21.160(1)(c) - \$594

CLAIM NOT SUBJECT TO
MANDATORY ARBITRATION

Plaintiffs, BA Ventures LLC and Pacific Clearvision Institute, PC dba Pacific Clearvision
Institute (“Plaintiffs”), by and through their attorneys, Gleaves Swearingen LLP, allege as
follows:

PARTIES AND JURISDICTION

1.

At all times material and relevant hereto, Plaintiff BA Ventures LLC is an Oregon
foreign limited liability company that conducts business in the State of Oregon at its three offices
located in Cottage Grove, Oakridge, and Eugene, Oregon.

2.

At all times material and relevant hereto, Plaintiff Pacific Clearvision Institute, PC, is an
Oregon corporation doing business as Pacific Clearvision Institute that conducts business in the

1 State of Oregon at its three offices located in Cottage Grove, Oakridge, and Eugene, Oregon.

2 3.

3 At all times material and relevant hereto, Defendant Farmers Insurance Exchange
4 (“Defendant”) is a California Insurance Corporation that, upon information and belief, conducts
5 continuous and substantial business operations in the State of Oregon.

6 4.

7 This Court has personal jurisdiction over all parties because Defendant undertakes the
8 business of selling insurance policies in Lane County, Oregon, and Plaintiffs conduct business
9 out of three offices in Lane County, Oregon. All matters relevant to this action arise out of and
10 relate to insurance policies issued by Defendant to Plaintiffs to insure Plaintiffs’ three offices in
11 Lane County, Oregon.

12 5.

13 This Court has subject matter jurisdiction over this action because all claims arose in
14 Lane County, Oregon.

15 6.

16 Venue is proper in Lane County under ORS 14.080 because all claims arose in Lane
17 County.

18 **FACTS**

19 7.

20 Plaintiffs constitute a top of the line ophthalmology clinic that employs doctors and staff
21 to provide patients with eye care.

22 8.

23 In June of 2019, Plaintiffs purchased a commercial insurance policy from Defendant
24

1 labeled as policy number 60675-10-05 (the "Policy") to protect Plaintiffs from certain
2 unforeseeable business losses.

3 9.

4 The Policy was and is effective from June 27, 2019 through June 27, 2020.

5 10.

6 Plaintiffs paid Defendant all premiums required under the Policy during the relevant
7 periods.

8 11.

9 In consideration for payment of those premiums, Defendant agreed to provide Plaintiffs
10 coverage against certain types of business losses suffered at Plaintiffs' Cottage Grove, Oakridge,
11 and Eugene, Oregon locations.

12 12.

13 One of the losses Defendant agreed to insure Plaintiffs against under the Policy was a
14 loss of Business Income.

15 13.

16 The Policy stated:

17 [Defendant] will pay for the actual loss of Business Income [Plaintiff] sustain[s]
18 due to the necessary suspension of [its] "operations" during the "period of
19 restoration". The suspension must be caused by direct physical loss of or damage
20 to property at the described premises. The loss or damage must be caused by or
21 result from a Covered Cause of Loss. With respect to loss of or damage to
22 personal property in the open or personal property in a vehicle, the described
23 premises include the area within 100 feet of the site at which the described
24 premises are located.

14.

The Policy defined Business Income as:

///

1 Net Income (Net Profit or Loss before income taxes) that would have been earned
2 or incurred if no physical loss or damage had occurred, but not including any Net
3 Income that would likely have been earned as a result of an increase in the
4 volume of business due to favorable business conditions caused by the impact of
5 the Covered Cause of Loss on customers or on other businesses; and Continuing
6 normal operating expenses incurred, including payroll.

7
8
9 15.

10 The Policy also provided coverage for Extra Expenses the Plaintiffs incurred that would
11 not have been incurred if there had been no direct loss or damage to property at the described
12 premises.

13 16.

14 The Policy defined Extra Expenses as expenses incurred:

15 (a) To avoid or minimize the suspension of business and to continue "operations":

16 (i) At the described premises; or (ii) At replacement premises or at temporary locations,
17 including relocation expenses, and costs to equip and operate the replacement or
18 temporary locations.

19 (b) To minimize the suspension of business if you cannot continue "operations".

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21 (c) To: (i) Repair or replace any property; or (ii) Research, replace or restore the lost
22 information on damaged "valuable papers and records": to the extent it reduces the
23 amount of loss that otherwise would have been payable under this Additional Coverage
24 or Additional Coverage f. Business Income.

17 17.

18 The Policy extended the definition of suspension of operations to include, "The partial
19 slowdown or complete cessation of [Plaintiff's] business activities; or That a part or all of the
20 described premises is rendered untenable, if coverage for Business Income applies."

21 18.

22 Additionally, the Policy stated the Insurer, "[W]ill pay for the actual loss of Business
23 Income [Plaintiff] sustain[s] and necessary Extra Expense caused by action of civil authority that
24

1 prohibits access to the described premises due to the direct physical loss of damage to property,
2 other than at the described premises, caused by or resulting from any Covered Cause of Loss.”

3 19.

4 The Policy covered the loss of Business Income caused by an action of civil authority
5 that the Plaintiff suffered for up to three consecutive weeks beginning 72 hours after an action
6 was taken, and covered necessary Extra Expenses for up to three consecutive weeks beginning
7 immediately after the time the action was taken.

8 20.

9 On March 19, 2020, Governor Kate Brown issued Executive Order 20-10, which was
10 effective for 90 days and suspended all elective and non-urgent medical procedures that utilized
11 Personal Protective Equipment (“PPE”) from March 23, 2020 until June 15, 2020.

12 21.

13 Executive Order 20-10 also required medical facilities that had surplus PPE to notify the
14 State’s PPE Coordinator and arrange for the delivery of the surplus PPE to the PPE coordinator.

15 22.

16 Plaintiffs’ PPE was covered property under the Policy.

17 23.

18 The majority of Plaintiffs’ business income stemmed from procedures and appointments
19 that were considered elective and non-urgent under Executive Order 20-10, and could not be
20 safely performed without the use of PPE.

21 24.

22 Thus, Plaintiffs were required to stop conducting almost all of their procedures and
23 appointments, which resulted in Plaintiffs having surplus PPE.

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25.

Plaintiffs were required to turn over this surplus PPE to the State’s PPE coordinator.

26.

After turning over its surplus PPE, Plaintiffs were unable to further acquire more PPE which was necessary for Plaintiffs to continue to conduct business, because of Executive Order 20-10 and other actions by civil authority.

27.

As a result of losing its PPE, Plaintiffs were unable to conduct their normal procedures and appointments, which resulted in Plaintiffs suffering \$235,418.08 in Business Income and Extra Expense losses as defined in the Policy.

**FIRST CLAIM FOR RELIEF
(Breach of Contract)**

28.

Plaintiffs reallege paragraphs 1- 27 and by this reference incorporate such paragraphs as if set forth in full herein.

29.

Plaintiffs are named insureds under the Policy.

30.

Plaintiffs sustained significant Business Income and Extra Expense loses while the Policy was in full force and effect.

31.

In consideration for payment of the required premiums under the Policy, Defendant agreed to provide Plaintiffs coverage against the Business Income and Extra Expense losses Plaintiffs suffered.

1 32.

2 Plaintiffs suffered Business Income and Extra Expense losses due to Executive Order
3 20-10 and other actions of civil authority that were covered under the Policy.

4 33.

5 Plaintiffs filed a claim requesting Defendant cover the Business Income and Extra
6 Expense losses it suffered as required by the Policy.

7 34.

8 Defendant informed Plaintiffs that Defendant would not compensate Plaintiffs for any of
9 the Business Income or Extra Expense losses that Plaintiffs suffered for a number of reasons.

10 35.

11 Plaintiffs requested Defendant reconsider its denial of Plaintiffs' claim for Business
12 Income and Extra Expense losses Plaintiffs suffered as required by the Policy.

13 36.

14 Defendant again informed Plaintiffs that Defendant would not compensate Plaintiff for
15 any of the Business Income or Extra Expense losses that Plaintiffs suffered.

16 37.

17 Plaintiffs have performed all necessary obligations required of them under the Policy.

18 38.

19 Defendant has failed to perform its obligations as required under the Policy.

20 39.

21 As a result of Defendant's failure to perform its obligations as required under the Policy,
22 Plaintiffs have been damaged in the amount of \$235,418.08.

23 ///

24

1 **SECOND (ALTERNATIVE) CLAIM FOR RELIEF**
2 **(Declaratory Relief)**

3 40.

4 Plaintiffs reallege paragraphs 1-39 and by this reference incorporate such paragraphs as if
5 set forth in full herein.

6 41.

7 Defendant contends there is no coverage under the Policy for the Business Income and
8 Extra Expense losses incurred by Plaintiffs because of Executive Order 20-10 and other actions
9 of civil authority.

10 42.

11 The Policy specifically requires Defendant to cover Business Income and Extra Expense
12 losses incurred by Plaintiffs resulting from an action by civil authority.

13 **WHEREFORE**, Plaintiffs prays for and demands judgment as follows:

- 14 1. For a judgment against Defendant in an amount not less than \$235,418.08, plus
15 interest from the entry of judgment until paid in full;
- 16 2. Or, alternatively to Plaintiffs' first claim for relief, a judgment against Defendant
17 declaring the Business Income and Extra Expense losses incurred by Plaintiffs
18 are a covered loss under the Policy;
- 19 3. For an award of Plaintiffs' costs and reasonable attorney fees as allowed under
20 ORS 742.061(1).

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4. Such other relief as the Court deems just and equitable.

DATED this 28th day of May, 2020.

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