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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

BRANDON E. COOLEY, DDS AND AARON
C. COOLEY, DDS; CRAIG PEARCE, DMD
AND CRAIG PEARCE, DMD PLLC; SIMONE
W. KIM, DDS AND LISA W. PARK, DDS;
SUKHDEV SINGH, DMD; GLORIA TUCKER
DDS AND GLORIA TUCKER, DDS, P.S.; J.
BREWSTER BEDE DDS AND J. BREWSTER
BEDE DDS, P.S.; and DANIS L. LAIZURE
DMD d.b.a. WALLA WALLA DENTAL
CARE,

Plaintiffs,

v.

ASPEN AMERICAN INSURANCE
COMPANY, an insurance company,

Defendant.

No.

COMPLAINT

I. INTRODUCTION

Plaintiffs bring this action for business interruption insurance coverage. Plaintiffs allege as follows based on personal knowledge and information and belief:

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II. JURISDICTION

1. This Court has original jurisdiction pursuant to RCW 2.08.010 because the actions originate in Washington and the amounts in controversy exceed the jurisdictional threshold.

2. This Court has personal jurisdiction over Defendant because Defendant 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, Plaintiffs' 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 Plaintiffs' loss, in accordance with the contractual limitation on suit in Plaintiffs' business interruption insurance policies.

4. A matter currently on direct review to the Washington 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, Plaintiffs contend this action should be stayed after filing and service until 60 days after the Washington Supreme Court issues a decision in *Hill & Stout*.

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III. PARTIES

5. Brandon E. Cooley, DDS and Aaron C. Cooley, DDS are insured by Defendant under Policy # D009228-12.

6. Craig Pearce, DMD and Craig Pearce, DMD PLLC are insured by Defendant under Policy # D008719-14.

1 17. Defendant promised to pay Plaintiffs for loss of business income because of
2 direct physical loss or damage of property. The Policies do not define the key coverage terms.

3 18. In general, courts have found coverage under business interruption policies when
4 the policyholder has lost the functional use of their business property. This occurred to
5 Plaintiffs.

6 19. Plaintiffs paid all premiums for the coverage when due.

7 20. Plaintiffs seek all coverage due under their policies, including without limitation
8 Business Income Coverage, Extra Expense Coverage, Extended Business Income Coverage, and
9 Civil Authority Coverage, to whatever extent provided.

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

12 22. It is now known that COVID-19 spreads through airborne transmission, and, in
13 some cases in conjunction with governmental responses, leads to loss of functional use of
14 business property for ordinary business purposes.

15 23. The first confirmed case of COVID-19 in King County, Washington was noted
16 on January 21, 2020.

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

20 25. Thereafter, Governor Inslee issued a series of certain proclamations and orders
21 affecting many persons and businesses in Washington, whether infected with COVID-19 or not,
22 requiring certain public health precautions. Among other things, Governor Inslee’s “Stay Home,
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1 Stay Healthy” order required the closure of all non-essential businesses, including each of the
2 Plaintiffs’ businesses here.

3 26. Issued March 12, 2020, Proclamation 20-08 closed all public and private K-12
4 schools in King, Pierce, and Snohomish counties. Issued March 13, 2020, Proclamation 20-09
5 extended the school closure to the entire state.
6

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

9 28. Proclamation 20-13 prohibited “any number of people from gathering in any
10 public venue in which people congregate for purposes of . . . fitness and other similar activities.”
11 The proclamation further prohibits “the operation of public venues in which people congregate
12 for entertainment, social or recreational purposes, including but not limited to . . . gyms, fitness
13 centers . . . and other similar venues.”
14

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

20 30. The various orders issued in Washington State in connection with the COVID-19
21 global pandemic led to Plaintiffs’ experiencing a loss of functionality of their business property.

22 31. Proclamations 20-05 and 20-13 refer to property damage throughout the State of
23 Washington, including where Plaintiffs’ businesses are located.

24 32. Other premises, schools, and businesses in immediate close proximity to each
25 Plaintiff were closed and suffered direct physical loss as a result of these and similar
26 governmental orders.

