

December 22 2020 3:43 PM

KEVIN STOCK
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NO: 20-2-08955-4

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SUPERIOR COURT OF WASHINGTON IN AND FOR PIERCE COUNTY

YEE'S SAX CORP., D/B/A DIRTY OSCAR'S
ANNEX,

Plaintiff,

v.

TRUCK INSURANCE EXCHANGE,

Defendant.

No.

COMPLAINT

I. INTRODUCTION

Plaintiff Yee's Sax Corporation, d/b/a Dirty Oscar's Annex ("Plaintiff"), by and through its undersigned attorneys, brings this action against Defendant Truck Insurance Exchange ("Defendant") and 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 case originates in Washington and the amount in controversy exceeds 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

1 4.28.185. Moreover, the claims of Plaintiff arise out of and directly relate to Defendant's
2 contacts with Washington.

3 **III. PARTIES**

4 3. Plaintiff owns and operates a full dining restaurant and bar with its principal
5 place of business located at 2309 6th Avenue, Tacoma, WA 98403.

6 4. Plaintiff's restaurant, Dirty Oscar's Annex, is known for its tag-line: "Silly
7 Name, Seriously Good Food."

8 5. A 2014 review of the restaurant by "The Daring Gourmet" brags, "this place
9 packs a crowd and has caught the coveted attention of The Food Network," which featured the
10 unassuming restaurant and two of its dishes in the Network's "Diners, Drive-ins and Dives"
11 series.
12

13 6. Defendant Truck Insurance Exchange is an insurer with its principal office in
14 Woodland Hills, California. Defendant is an insurance carrier authorized to write, sell, and issue
15 business insurance policies in Washington to policyholders, including Plaintiff.
16

17 7. Defendant is vicariously liable for the acts and omissions of its employees and
18 agents, including any outside person or entity to whom it assigned claims-handling or
19 investigative responsibilities.
20

21 **IV. NATURE OF THE CASE**

22 8. This lawsuit is filed to ensure that Plaintiff receives the "all-risk" insurance
23 benefits to which it is entitled and for which it paid.

24 9. Defendant issued one or more "all-risk" insurance policies to Plaintiff, including
25 a Business Owners Special Property Coverage Form and related endorsements ("the Policy"),
26 insuring Plaintiff's property and business practice at all relevant times.

1 10. Defendant issued the Policy in Washington covering property and business
2 activities located in Washington.

3 11. Plaintiff's business property includes property owned and/or leased by Plaintiff
4 and used for a restaurant and dining business with a full bar and other related business activities.
5

6 12. Plaintiff's business property includes indoor dining and bar space with typical
7 restaurant facilities for dining and bar service, including bar stools, bar counters, tables, chairs,
8 serving ware, glassware, utensils, menus, condiment and napkin dispensers, and other related
9 equipment and property for customer use while congregating, ordering, and eating and drinking
10 inside the restaurant.

11 13. When fully occupied, Dirty Oscar's Annex can comfortably accommodate and
12 serve well over 100 persons, and it is licensed for full occupancy at 196 guests.
13

14 14. A photograph featuring its bar and showing part of the interior of Dirty Oscar's
15 Annex prior to the issuance of any Shut-Down order follows below:
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15. Defendant promised to pay Plaintiff for risks of “direct physical loss of or damage to” covered property.

16. The Policy includes coverage for risks of both damage to and loss of covered property.

17. Plaintiff paid all premiums for the coverage when due.

18. Defendant’s Business Owners Special Property Coverage Form provides Plaintiff with Business Income Coverage, Extra Expense Coverage, Business Income and Extra Expense – Partial Slowdown Coverage, Extended Business Income Coverage, and Civil Authority Coverage.

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

3 20. COVID-19 is a highly contagious virus that rapidly and easily spreads; it
4 continues to spread across the United States, including in Washington State and Pierce County.

5 21. In many infected person, COVID-19 causes severe illness and requires
6 hospitalization, including intubation. The virus has killed over 320,000 people in the United
7 States to date. Persons who survive the virus have experienced ongoing cognitive, neurological,
8 and physical impacts from the virus, even after the virus is no longer detected in their bodies.

9 22. The COVID-19 virus is a physical substance that spreads through respiratory
10 droplets that are produced when an infected person breathes, talks, coughs or sneezes. It also
11 spreads when virus respiratory droplets are exhaled and aerosolized, and deposited on a surface
12 or object (e.g., door knobs, menus, glassware, bar stools and counters, tables and chairs,
13 computer keyboards, touch screens, credit card machines and key pads, writing or eating
14 utensils) and those objects are then touched by another person who then touches their own
15 mouth, nose or eyes. COVID-19 is caused by a novel (new) coronavirus that has not previously
16 been seen in humans.

17 23. COVID-19 remains stable and transmittable in aerosols for up to three hours and
18 up to two or three days on surfaces. Persons infected with COVID-19 can be asymptomatic yet
19 still spread the virus. Guidance issued by the United States Centers for Disease Control &
20 Prevention (CDC) recommends avoiding indoor activities, adhering to strict sanitation
21 protocols, and maintaining social distance of at least six feet from others in order to protect
22 human health and property, and to minimize the spread of COVID-19.
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1 24. As of December 17, 2020, over 217,000 persons in Washington State have tested
2 positive for COVID-19, over 13,200 have been hospitalized, and over 3,150 have died due to
3 the COVID-19 virus.

4 25. As of December 17, 2020, over 22,600 persons in Pierce County have tested
5 positive for COVID-19, over 1,650 have been hospitalized, and over 300 have died due to the
6 COVID-19 virus.

7 26. On February 29, 2020, Washington Governor Jay Inslee issued Proclamation 20-
8 05, declaring a State of Emergency for all counties in the state of Washington as the result of the
9 COVID-19 outbreak.

10 27. Thereafter, Governor Inslee issued a series of certain proclamations and orders
11 affecting many persons and businesses in Washington, whether infected with COVID-19 or not,
12 requiring certain public health precautions.

13 28. Public health authorities confirmed the first case of COVID-19 in Pierce County
14 on March 6, 2020.

15 29. On March 13, 2020, Governor Inslee issued Proclamation 20-11, “Statewide
16 Limits on Gatherings,” which prohibited all gatherings of 250 people or more in all Washington
17 counties, including Pierce County.

18 30. On March 16, 2020, Governor Inslee issued Proclamation 20-14, “Reduction of
19 Statewide Limits on Gatherings,” which prohibited all gatherings of 50 people or more in all
20 Washington counties, including Pierce County, and further prohibited gatherings of fewer
21 people unless organizers of those activities complied with certain social distancing and
22 sanitation measures.
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1 31. Also on March 16, 2020, Governor Inslee issued Proclamation 20-13, “Statewide
2 Limits: Food and Beverage Services, Areas of Congregation,” which prohibited the onsite
3 consumption of food and/or beverages in a public venue, including restaurants, bars, or other
4 similar venues in which people congregate for the consumption of food or beverages.
5

6 32. By order of Governor Inslee, restaurant venues including Plaintiff were
7 prohibited from providing food and beverage service, except for limited legally delivered or
8 “take-out” services.

9 33. On March 23, 2020, Governor Inslee issued Proclamation 20-25, “Stay Home—
10 State Healthy.” The proclamation, which amends or supersedes Proclamations 20-05, requires
11 that “[a]ll people in Washington State [] immediately cease leaving their home or place of
12 residence except: (1) to conduct or participate in essential activities, and/or (2) for employment
13 in essential business activities.” The proclamation prohibits “all non-essential businesses in
14 Washington State from conducting business, within the limitations provided herein.”
15

16 34. Proclamation 20-25 continues a State of Emergency in all counties of
17 Washington State, and states that “the worldwide COVID-19 pandemic and its progression in
18 Washington State continue to threaten the life and health of our people as well as the economy
19 of Washington State, and remain a public disaster affecting life, health, property or the public
20 peace.”
21

22 35. On March 30, 2020, Governor Inslee issued Order Number 20-03-30-01
23 affecting persons and residents within the State of Washington, which includes a “Stay-at-Home
24 Order” requiring all persons living in Washington to stay in their homes or places of residences
25 except under certain specified circumstances.
26

1 36. On November 15, 2020, Governor Inslee issued Proclamation 20-25.8, which
2 amended Proclamations 20-05 and 20-25, *et seq.*

3 37. Among other things, Proclamation 20-25.8 continues a State of Emergency in all
4 counties of Washington State, and states that “the worldwide COVID-19 pandemic and its
5 progression in Washington State continue to threaten the life and health of our people as well as
6 the economy of Washington State, and remain a public disaster affecting life, health, property or
7 the public peace.”

8 38. Proclamation 20-25.8 is entitled “Stay Safe – Stay Healthy,” “Rollback of
9 County-by-County Phased Reopening Responding to a COVID-19 Outbreak Surge.” The
10 Proclamation closed all restaurants and bars for indoor dine-in service.

11 39. Proclamation 20-25.8 also prohibits indoor operations at a variety of business
12 locations near and in the vicinity of Plaintiff’s business, including but not limited to other
13 restaurants and bars, fitness facilities and gyms, bowling alleys, and movie theaters.

14 40. Governor Inslee’s proclamations and orders related to the COVID-19 outbreak in
15 Pierce County and Washington State (collectively, the “Proclamations and Shut-Down Orders”)
16 have been extended and modified from time to time.

17 41. Plaintiff has complied with all of the Proclamations and Shut-Down Orders.

18 42. Among other things, Plaintiff has complied with the Proclamations and Shut-
19 Down Orders by preventing the public, including its customers, from entering its business to
20 participate in dining, drinking, and congregating activities which were routine and allowed prior
21 to the issuance of the Proclamations and Orders.

22 43. In order to comply with the Proclamations and Shut-Down Orders, Plaintiff was
23 forced to dramatically suspend its business and incur extra expense.
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1 44. In order to comply with the Proclamations and Shut-Down Orders, Plaintiff was
2 unable to use its insured restaurant and bar business property and related equipment for their full
3 intended and insured purpose.

4 45. Plaintiff invested in its business property, insured its business property, insured
5 the income it receives from its business properties, but was deprived of its property's
6 functionality due to the government's response to the COVID-19 pandemic.

7 46. Plaintiff's property has sustained direct physical loss and/or damage related to
8 COVID-19 and/or the proclamations and orders.

9 47. Plaintiff's property has sustained direct physical loss or damage covered by
10 Defendant's Policy, including but not limited to business income interruption, extra expense,
11 extended business interruption, partial slowdown coverage, interruption by civil authority, and
12 other expenses.
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14 48. Plaintiff's property will continue to sustain direct physical loss or damage
15 covered by the Truck Insurance Exchange Policy, including but not limited to business income
16 interruption, extra expense, extended business interruption, partial slowdown coverage,
17 interruption by civil authority, and other expenses.
18

19 49. Plaintiff suffered direct physical loss of use of the covered property for its
20 intended purpose.
21

22 50. Plaintiff's property cannot be used for its full and insured intended purpose.

23 51. As a result of the above, Plaintiff has experienced and will experience loss
24 covered by the Truck Insurance Exchange Policy.

25 52. Plaintiff complied with all requirements in Defendant's Policy.
26

1 53. On or about May 15, 2020, Plaintiff tendered its covered loss to Defendant
2 stemming from the Proclamations and Shut-Down Orders.

3 54. Defendant denied all coverage to Plaintiff in a letter dated May 19, 2020. In that
4 letter, Defendant incorrectly asserts that Plaintiff has not suffered a “direct physical loss of ...
5 property at the described premises”
6

7 55. Defendant’s May 19 letter denying coverage also falsely states that “access to the
8 described premises was not prohibited due to direct physical loss of or damage to property other
9 than the described premises.”

10 56. Defendant has undertaken no meaningful investigation regarding the timing,
11 scope, or impact of the Proclamations and Shut-Down Orders that affect Plaintiff’s business or
12 business properties.
13

14 57. Defendant has undertaken no meaningful investigation regarding the damage to
15 property related to COVID-19 and/or the Proclamations and Shut-Down Orders at or in the
16 vicinity of Plaintiff’s business.

17 **V. CAUSES OF ACTION**

18 **Count One—Declaratory Judgment**

19 58. Plaintiff realleges all previous paragraphs and incorporates them herein.

20 59. This is a cause of action for declaratory judgment pursuant to the Uniform
21 Declaratory Judgments Act, RCW 7.24.010 *et seq.*
22

23 60. Plaintiff seeks a declaratory judgment declaring that Plaintiff’s losses and
24 expenses resulting from the interruption of its business are covered by the Policy Defendant
25 issued to Plaintiff.
26

1 61. Plaintiff seeks a declaratory judgment declaring that Truck Insurance Exchange
2 is responsible for timely and fully paying all such claims.

3 62. Plaintiff seeks a declaratory judgment declaring that Defendant is obligated to
4 pay Plaintiff's reasonable attorney fees and costs and disbursements in obtaining coverage.
5

6 **Count Two—Breach of Contract**

7 63. Plaintiff realleges all previous paragraphs and incorporates them herein.

8 64. The Truck Insurance Exchange Policy is a contract under which Plaintiff paid
9 premiums to Truck Insurance Exchange in exchange for Truck Insurance Exchange's promise to
10 pay Plaintiff for all claims covered by the Policy.

11 65. Plaintiff has paid its insurance premiums.

12 66. Plaintiff notified Defendant in May 2020 of its losses and requested Defendant
13 provide coverage for its losses.
14

15 67. Truck Insurance Exchange responded by telling Plaintiffs that its claims were not
16 covered.

17 68. Denying coverage for the claim is a breach of the insurance contract.

18 69. Plaintiff is harmed by the breach of the insurance contract by Truck Insurance
19 Exchange.
20

21 **Count Three—Insurance Bad Faith**

22 70. Plaintiff realleges all previous paragraphs and incorporates them herein.

23 71. In Washington, insurers must refrain from elevating their interests above those of
24 their policyholders, and must refrain from any conduct towards their policyholders that are
25 unreasonable, frivolous or unfounded.
26

1 72. Defendant breached that duty by its (a) unreasonable denial of Plaintiff's claim;
2 and (b) failure to conduct a reasonable investigation of the claim.

3 73. As a result of Defendant's bad faith, Plaintiff has been damaged, in an amount to
4 be proven at trial.

5 **Count Four—Violation of the Washington Consumer Protection Act**

6 74. Plaintiff realleges all previous paragraphs and incorporates them herein.

7 75. In failing and refusing to cover Plaintiff's claim, Defendant violated at least the
8 following Washington Unfair Claims Settlement Practices Regulations, each of which is a *per*
9 *se* violation of the Washington State Consumer Protection Act, RCW 19.86, *et seq.* ("CPA"):

- 10 (a) Refusing to pay claims without conducting a reasonable investigation in
11 violation of WAC § 284-30-330(4);
12 (b) Failing to promptly provide a reasonable explanation of the basis in the
13 insurance policy in relation to the facts or applicable law for denial of a
14 claim in violation of WAC § 284-30-330(13);
15 (c) Failing to adopt and implement reasonable standards for the processing
16 and payment of claims after the obligation to pay has been established, in
17 violation of WAC § 284-30-330(16); and
18 (d) Misrepresenting pertinent facts in failing to cover the claim in violation of
19 WAC § 284-30-330(1).
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23 76. These violations, Defendant's unreasonable decision to deny coverage, and
24 Defendant's insurance bad faith, violate the CPA and entitle Plaintiff to treble damages and an
25 award of its attorneys' fees and costs incurred in prosecuting this action.
26

1 **Count Five—Negligence**

2 77. Plaintiff realleges all previous paragraphs and incorporates them herein.

3 78. Defendant’s conduct failed to meet the standard of care of a reasonably prudent
4 insurer in the same or similar circumstances and amounts to negligence.

5 79. As a result of Defendant’s negligence, Plaintiff was damaged in the form of
6 unpaid insurance benefits, and other damages.
7

8 **VI. REQUEST FOR RELIEF**

9 1. A declaratory judgment that the Policy covers Plaintiff’s losses and expenses
10 resulting from the interruption of Plaintiff’s business related to COVID-19 and/or orders issued
11 by Governor Inslee and/or other authorities.

12 2. A declaratory judgment that Defendant is responsible for timely and fully paying
13 these losses.
14

15 3. Damages, including but not limited to loss of business income, extended business
16 income, for fpartial slowdown or suspension of operations, and extra expense, including treble
17 damages as provided for under the CPA.

18 4. That Plaintiff be awarded damages against Defendant for breach of contract,
19 insurance bad faith, violation of the CPA, and negligence.

20 5. That Plaintiff be awarded treble damages in an amount up to \$25,000 against
21 Defendant for each violation of the Washington State Consumer Protection Act, RCW 19.86 *et*
22 *seq.*
23

24 6. That Plaintiff be awarded all costs and reasonable attorneys’ fees under common
25 law or statute for breach of the duty of good faith and fair dealing and violation of the
26 Washington State Consumer Protection Act, RCW 19.86 *et seq.*

- 1 7. Pre- and post-judgment interest at the highest allowable rate.
2 8. Attorney fees and costs under *Olympic Steamship* and/or other applicable law.
3 9. Such further and other relief as the Court shall deem appropriate.
4

5 DATED this 22nd day of December, 2020.
6

7 KELLER ROHRBACK L.L.P.
8

9 By: *s/ Amy Williams-Derry*

10 By: *s/ Ian S. Birk*

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