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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

THE SEATTLE SYMPHONY ORCHESTRA,
dba Seattle Symphony,

Plaintiff,

v.

HARTFORD FIRE INSURANCE COMPANY,

Defendant.

No.

COMPLAINT

JURY DEMAND

I. INTRODUCTION

Plaintiff, The Seattle Symphony Orchestra, dba Seattle Symphony (“Seattle Symphony”), brings this action against Defendant Hartford Fire Insurance Company (“Defendant” or “Hartford”) and alleges as follows based on personal knowledge and information and belief:

II. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction under 28 U.S.C. § 1332. The amount in controversy exceeds \$75,000, exclusive of interest and costs. This action involves citizens of different states. Plaintiff is a citizen of the State of Washington (“Washington”). Hartford is a citizen of Connecticut.

1 2. This Court has personal jurisdiction over Defendant because Defendant is an
2 authorized foreign insurer in Washington, has appointed the Washington Insurance
3 Commissioner as its agent for service of process under RCW 48.05.200, has sufficient minimum
4 contacts in Washington, and otherwise intentionally avails itself of the markets within
5 Washington through its business activities, such that the exercise of personal jurisdiction by this
6 Court is proper. Moreover, jurisdiction exists because Plaintiff’s claims arise out of and directly
7 relate to Defendant’s contacts with Washington.
8

9 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(3) because the
10 Court has personal jurisdiction over Defendant, a substantial portion of the alleged wrongdoing
11 occurred in this District and Washington, and Defendant has sufficient contacts with this District
12 and Washington.
13

14 4. Venue is proper in the Western District of Washington pursuant to 28 U.S.C.
15 § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims at
16 issue in this Complaint arose in this District, and the property that is the subject of this action is
17 situated in this District. This action is therefore appropriately filed in the Seattle Division of the
18 United States District Court for the Western District of Washington.
19

20 **III. PARTIES**

21 5. Plaintiff Seattle Symphony is a Washington-incorporated 501(c)(3) non-profit,
22 and an internationally acclaimed orchestra, that operates and performs in Benaroya Hall in the
23 heart of downtown Seattle. It is internationally recognized for its extraordinary performances,
24 programming, recordings, and community engagement.
25
26

1 6. Defendant Hartford Fire Insurance Company is an insurance carrier incorporated
2 and domiciled in the State of Connecticut with its principal place of business in Hartford,
3 Connecticut.

4 7. Defendant Hartford is authorized to write, sell, and issue business insurance
5 policies in Washington. Defendant conducted business within Washington by selling and issuing
6 business insurance policies to policyholders, including Plaintiff.

7 8. Defendant is vicariously liable for the acts and omission of its employees and
8 agents, including any outside person or entity to whom it assigned claims-handling or
9 investigative responsibilities.
10

11 **IV. NATURE OF THE CASE**

12 9. This lawsuit is filed to ensure that Plaintiff receives the insurance benefits to
13 which it is entitled and for which it paid.
14

15 10. In a typical year, the Seattle Symphony performs from September through July in
16 Benaroya Hall, a world class performing arts venue that includes three performance spaces,
17 numerous shared practice rooms, a parking garage, and a corridor typically open to the public
18 along Third Avenue, known as the “Boeing Company Gallery.”

19 11. At capacity, Benaroya’s main performance venues accommodate 3,000 people in
20 its theaters and over 100 musicians on stage.
21

22 12. Defendant Hartford issued one or more insurance policies to Seattle Symphony,
23 including Special Multi-Flex Business Insurance Policy, Property Choice Coverage Part,
24 Property Choice – Special Business Income Coverage Form (Business Interruption), and
25 Property Choice Special Business Income – Additional Coverages, and all related endorsements,
26

1 insuring Seattle Symphony’s property and business and other coverages, with effective dates of
2 September 1, 2019 to September 1, 2020.

3 13. The Hartford Special Multi-Flex Business Insurance Policy issued to the Seattle
4 Symphony (the “Policy” or the “Hartford Policy”) does not include a virus exclusion applicable
5 to this loss; and in fact, the existence of any virus exclusion is specifically deleted by
6 endorsement.
7

8 14. The endorsement states as follows:

9 **PROPERTY CHOICE**



10 **THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

11
12 **"FUNGUS", WET ROT, DRY ROT, BACTERIA AND VIRUS –**
13 **REMOVAL OF LIMITATIONS – WASHINGTON**
14

15
16 This endorsement modifies insurance provided under the following:

17 **PROPERTY CHOICE COVERAGE PART**

18 The following applies to insured risks situated in the state of Washington:

- 19 **A. Applicable to the PROPERTY CHOICE COVERAGE FORM:**
 - 20 1. Additional Coverage - "Fungus", Wet Rot, Dry Rot, Bacteria and Virus – Limited Coverage is deleted.
 - 21 2. Additional Coverage – Ordinance or Law – Ordinance or Law Exclusions (3) (a) and (b) as respects
22 "Fungus", Wet Rot, Dry Rot, Bacteria and Virus do not apply.
- 23 **B. Applicable to the PROPERTY CHOICE – COVERED CAUSES OF LOSS AND EXCLUSIONS FORM:**
24 Specific Exclusion - "Fungus", Wet Rot, Dry Rot, Bacteria or Virus is deleted.
- 25 **C. Applicable to any Business Interruption Form:**
 - 26 1. Additional Coverage - "Fungus", Wet Rot, Dry Rot, Bacteria and Virus – Limited Coverage is deleted.
 - 2. Additional Coverage - Ordinance or Law – Increased Period of Restoration – restrictions as respects
"Fungus", Wet Rot, Dry Rot, Bacteria and Virus do not apply.
- D. Applicable to the MORTGAGEHOLDER’S ERRORS AND OMISSIONS COVERAGE FORM:**
 - 1. EXCLUSION - "Fungus", Wet Rot, Dry Rot, Bacteria or Virus is deleted.
 - 2. "Fungus", Wet Rot, Dry Rot, Bacteria and Virus – Limited Coverage is deleted.

1 15. Plaintiff's business property includes property owned and/or leased and/or used
2 by Plaintiff for the specific purpose of performing arts and related business, including rental
3 business.

4 16. Defendant's Policy issued to Plaintiff is an "all-risk" policy that provides broad
5 property and business interruption coverage except where excluded.
6

7 17. Defendant's Policy issued to Plaintiff promises to pay Plaintiff for loss of
8 business income and other benefits due to "direct physical loss of or physical damage to"
9 covered property.

10 18. Defendant's Policy issued to Plaintiff includes Business Income Coverage, Extra
11 Expense Coverage, Extended Business Income Coverage, Civil Authority Coverage, and Ingress
12 and Egress Coverage, among other applicable coverages. By this action, Plaintiff seeks all
13 benefits due and payable under the Policy.
14

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

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

18 21. COVID-19 remains stable and transmittable in aerosols for up to three hours and
19 up to two or three days on certain surfaces. Persons infected with COVID-19 can be
20 asymptomatic. COVID-19 is spread by breathing, talking, singing, and touching shared or
21 common objects or surfaces. Guidance issued by the United States Centers for Disease Control
22 and Prevention ("CDC") recommends avoiding indoor activities, avoiding crowded and
23 congested areas, limiting contact with commonly touched surfaces in public venues, selecting
24 seating based on the ability to maintain six feet of space from people outside your household,
25
26

1 and otherwise maintaining social distance of at least six feet between people, to slow or stop the
2 spread of COVID-19.¹

3 22. The CDC urges persons to “[b]e particularly mindful in areas where it may be
4 harder to keep [six feet of] distance, such as check-in areas, parking lots, and routes of entry and
5 exit.”²

6
7 23. On February 29, 2020, Washington Governor Jay Inslee issued Proclamation 20-
8 05, declaring a State of Emergency for all counties in Washington as the result of the COVID-19
9 outbreak. Thereafter, he issued a series of certain proclamations and orders affecting many
10 persons and businesses in Washington, whether infected with COVID-19 or not, requiring
11 certain public health precautions.

12 24. On March 11, 2020, Governor Inslee issued Proclamation 20-07 that states that
13 “to help preserve and maintain life, health, property or the public peace,” all gatherings of 250
14 people or more for social, spiritual and recreational activities, including concerts and similar
15 activities, were prohibited.³

16
17 25. On March 16, 2020, Governor Inslee issued Proclamation 20-13.

18 26. Proclamation 20-13 states that “the COVID-19 disease has and continues to
19 spread quickly across the state of Washington, beyond the original community outbreaks in
20 King, Pierce, and Snohomish counties.”⁴

21
22
23 ¹ See *Coronavirus Disease 2019 (COVID-19): Personal and Social Activities*, CDC (updated July 30, 2020),
24 <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/personal-social-activities.html>.

25 ² *Id.*

26 ³ Proclamation 20-07 of Washington Gov. Jay Inslee (Mar. 11, 2020) at p. 2, <https://www.governor.wa.gov/sites/default/files/proclamations/20-07%20Coronavirus%20%28tmp%29.pdf>.

⁴ Proclamation 20-13 of Washington Gov. Jay Inslee, *Statewide Limits: Food and Beverage Services, Areas of Congregation* at p. 1 (Mar. 16, 2020), <https://www.governor.wa.gov/sites/default/files/proclamations/20-13%20Coronavirus%20Restaurants-Bars%20%28tmp%29.pdf>.

1 27. Proclamation 20-13 prohibits “any number of people from gathering in any public
2 venue in which people congregate for purposes of public entertainment.”⁵ The proclamation
3 further prohibits “the operation of public venues in which people congregate for entertainment,
4 social or recreational purposes, . . . and other similar venues, which prohibition shall remain in
5 effect until midnight on March 31, 2020, unless extended beyond that date”⁶
6

7 28. Proclamation 20-13 states that one of the reasons for its restrictions is that “the
8 worldwide COVID-19 pandemic and its progression in Washington State continues to threaten
9 the life and health of our people as well as the economy of Washington State, and remains a
10 public disaster affecting life, health, property, or the public peace”⁷
11

12 29. On information and belief, Proclamation 20-07 and 20-13 refer to property
13 damage throughout Washington, including in King County where Plaintiff’s business is located.

14 30. On March 23, 2020, Governor Inslee issued Proclamation 20-25, “Stay Home-
15 Stay Healthy.” The proclamation, which amends Proclamation 20-05, requires that “[a]ll people
16 in Washington State [] immediately cease leaving their home or place of residence except: (1) to
17 conduct or participate in essential activities, and/or (2) for employment in essential business
18 activities.”⁸ The proclamation prohibits “all non-essential businesses in Washington State from
19 conducting business, within the limitations provided herein.”⁹
20

21 31. Governor Inslee’s Proclamations and Orders related to COVID-19 have been
22 extended and modified from time to time.

23 _____
24 ⁵ *Id.* at p. 2.

25 ⁶ *Id.* at p. 3.

26 ⁷ *Id.* at p. 1.

⁸ Proclamation 20-25 of Washington Gov. Jay Inslee, *Stay Home – Stay Healthy* at p. 3 (Mar. 23, 2020),
<https://www.governor.wa.gov/sites/default/files/proclamations/20-25%20Coronavirus%20Stay%20Safe-Stay%20Healthy%20%28tmp%29%20%28002%29.pdf>.

⁹ *Id.* at p. 2.

1 32. By order of Governor Inslee, the Seattle Symphony and Benaroya Hall were
2 prohibited from operating.

3 33. By order of Governor Inslee, the Seattle Symphony was prohibited from gathering
4 or performing, and audience members were prohibited from attending any performances.
5

6 34. Due to Governor Inslee's order, beginning on or about March 11, 2020, Plaintiff
7 was unable to use its physical business property at Benaroya Hall and other insured business
8 property for their intended purposes.

9 35. Plaintiff's property has sustained direct physical loss and/or damage related to
10 COVID-19, property damage related to COVID-19, and/or the proclamations and orders.

11 36. Plaintiff's property will continue to sustain direct physical loss or damage covered
12 by the Hartford Policy, including but not limited to business interruption, extra expense,
13 interruption by civil authority, and other expenses.
14

15 37. Plaintiff has incurred loss of business income and other covered losses due to
16 direct physical loss of covered property at a Scheduled Location.

17 38. As a result of the above, Plaintiff has experienced and will experience loss
18 covered by the Hartford Policy.

19 39. Plaintiff filed a claim with Defendant in March 2020 for its losses covered by the
20 Hartford Policy.
21

22 40. Defendant denied coverage to Plaintiff by letter dated March 26, 2020.

23 41. Defendant's letter denying coverage to Plaintiff, stated in part:

24 The Business Income coverage does not apply to this loss, at a
25 minimum, because there has been no physical loss or damage to
26 property at a scheduled premises. You also have not shown that
any suspension of your business operations has occurred due to a
covered cause of loss.

1
2 42. This denial is incorrect and unreasonable under the circumstances. Hartford’s
3 denial failed to make reference to the specific Policy endorsement stipulating that exclusions for
4 loss due to virus do not apply, and, as to “‘FUNGUS’, WET ROT, DRY ROT, BACTERIA
5 AND VIRUS”, providing for “REMOVAL OF LIMITATIONS” in Washington.¹⁰ Hartford
6 further failed to make a reasonable investigation of the circumstances of this Plaintiff and the
7 particular venue in which it operates.

8 43. The average purchaser of insurance in Washington would understand that because
9 any limitations in cases of virus were removed, the Seattle Symphony was expressly covered in
10 cases of virus.
11

12 **V. CAUSES OF ACTION**

13 **Count One—Declaratory Judgment**

14 44. This is a cause of action for declaratory judgment pursuant to the Declaratory
15 Judgment Act, codified at 28 U.S.C. § 2201.

16 45. Plaintiff seeks a declaratory judgment declaring that Plaintiff’s losses and
17 expenses resulting from the interruption of its business are covered by the Hartford Policy.
18

19 46. Plaintiff seeks a declaratory judgment declaring that Hartford is responsible for
20 timely and fully paying all such claims.

21 47. Plaintiff seeks a declaratory judgment declaring that Hartford is obligated to pay
22 Plaintiff’s reasonable attorney fees and costs and disbursements in obtaining coverage.
23

24 **Count Two—Breach of Contract**

25
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¹⁰ See *supra* ¶ 14.
COMPLAINT - 9

1 48. The Hartford Policy is a contract under which Plaintiff paid premiums to Hartford
2 in exchange for Hartford's promise to pay Plaintiff for all claims covered by the Hartford Policy.

3 49. Plaintiff has paid its insurance premiums.

4 50. Plaintiff contacted Defendant in March 2020 to ask whether Hartford would
5 provide coverage for its losses.
6

7 51. Defendant responded telling Plaintiff that its claim was not covered.

8 52. Denying coverage for the claim is a breach of the insurance contract.

9 53. Plaintiff is harmed by the breach of the insurance contract by Hartford.

10 **Reservation**

11 54. Plaintiff does not assert but reserves any and all claims under Washington's
12 Insurance Fair Conduct Act, RCW 48.30.015, which may be asserted following the expiration of
13 twenty (20) days or other agreed extended period pursuant to RCW 48.30.015(8).
14

15 **VI. REQUEST FOR RELIEF**

16 1. A declaratory judgment that the Hartford Policy covers Plaintiff's losses and
17 expenses resulting from the interruption of the Plaintiff's business related to COVID-19 and/or
18 orders issued by Governor Inslee, and/or other authorities.

19 2. A declaratory judgment that the Defendant is responsible for timely and fully
20 paying all such losses.

21 3. Damages.

22 4. Pre- and post-judgment interest at the highest allowable rate.

23 5. Reasonable attorneys' fees and costs.

24 6. Such further and other relief as the Court shall deem appropriate.
25
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VII. JURY DEMAND

Plaintiff demands a jury trial on all claims so triable.

DATED this 19th day of August, 2020.

KELLER ROHRBACK L.L.P.

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