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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

<p>OWENS DAVIES, P.S.,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>NATIONAL FIRE INSURANCE COMPANY OF HARTFORD,</p> <p style="text-align: center;">Defendant.</p>		<p>No.</p> <p>COMPLAINT</p> <p>JURY DEMAND</p>
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I. INTRODUCTION

Plaintiff, Owens Davies, P.S., (“Plaintiff” or “Owens Davies”) brings this action against Defendant National Fire Insurance Company of Hartford (“Defendant” or “NFI”) 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. NFI is a citizen of Illinois.

2. This Court has personal jurisdiction over Defendant because Defendant is an authorized foreign insurer in Washington, has appointed the Washington Insurance

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

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

11 4. Venue is proper in the Western District of Washington pursuant to 28 U.S.C.
12 § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims at
13 issue in this Complaint arose in this District, and the properties that are the subject of this action
14 are situated in this District. This action is therefore appropriately filed in the Tacoma Division of
15 the United States District Court for the Western District of Washington.
16

17 III. PARTIES

18 5. Plaintiff, Owens Davies, P.S., owns and operates a law firm located at 1115 West
19 Bay Drive, Suite 302, Olympia, Thurston County, Washington, 98502.

20 6. Defendant is an insurance carrier incorporated and domiciled in the State of
21 Illinois with its principal place of business in Chicago, Illinois. It is a wholly owned subsidiary of
22 CNA Financial Corporation and is authorized to write, sell, and issue business insurance policies
23 in Washington. Defendant conducted business within Washington by selling and issuing business
24 insurance policies to policyholders, including Plaintiff.
25
26

1 7. Defendant is vicariously liable for the acts and omissions of its employees and
 2 agents, including any outside person or entity to whom it assigned claims-handling or
 3 investigative responsibilities.
 4

5 **IV. NATURE OF THE CASE**

6 8. This lawsuit is filed to ensure that Plaintiff receives the fixed business interruption
 7 benefits to which it is entitled and for which it paid.

8 9. Defendant NFI issued one or more “all risk” insurance policies to Plaintiff,
 9 including Business Owners Special Property Coverage Form (SB-146801-1) (Ed. 04-14),
 10 Business Income and Extra Expense Endorsement (SB146802E) (Ed. 6-16), Civil Authority
 11 Endorsement (SB-146826-B) (Ed. 01/08), Business Income for Interruption of Practice
 12 Endorsement (SB146843E) (Ed. 04/14)), and other related endorsements, insuring Plaintiff’s
 13 property and business practice and other coverages.
 14

15 10. The fixed business interruption benefit which this suit seeks to recover is
 16 described on its Business Income for Interruption of Practice Endorsement (SB146843E) (ed.
 17 04/14).

18 11. Plaintiff’s business property includes property owned and/or leased by Plaintiff
 19 and used for its general business purposes and its specific business purpose of the practice of law
 20 and related activities.
 21

22 12. Defendant’s insurance policy issued to Plaintiff made a promise to pay Plaintiff
 23 for “RISKS OF DIRECT PHYSICAL LOSS” to covered property and includes coverage for
 24 risks of both “loss of or damage to” covered property.

25 13. Plaintiff’s Civil Authority coverage extension states that because Plaintiff has
 26 coverage for Business Income and Extra Expense, it may “extend that insurance to apply to the

1 actual loss of Business Income [it sustains] ... caused by action of a civil authority that prohibits
2 access to the described premises.”

3 14. Plaintiff paid all premiums for the coverage when due.

4 15. On or about January 2020, the United States of America saw its first cases of
5 persons infected by COVID-19, which has been designated a worldwide pandemic.
6

7 16. COVID-19 is a highly contagious virus that rapidly and easily spreads; it
8 continues to spread across the United States including in Washington State.

9 17. In many infected persons, COVID-19 causes severe illness and requires
10 hospitalization, including intubation. The virus has killed over 253,223 people in the United
11 States to date. Persons who survive the virus have experienced ongoing cognitive and physical
12 impacts from the virus, even after the virus is no longer actively detected in their bodies.
13

14 18. The COVID-19 virus is a physical substance that spreads from person to person
15 through respiratory droplets that reach another person and that are produced when an infected
16 person breathes, talks, coughs or sneezes. It also spreads when virus respiratory droplets are
17 exhaled and aerosolized, and deposited on a surface or object (e.g., furniture, computer
18 keyboards, elevator buttons, writing or eating utensils, office equipment, tables, door knobs,
19 chairs, or touch screens) and those objects are then touched by another person who then touches
20 their own mouth, nose or eyes. COVID-19 is caused by a novel (new) coronavirus that has not
21 previously been seen in humans.
22

23 19. COVID-19 remains stable and transmittable in aerosols for up to three hours and
24 up to two or three days on surfaces. Persons infected with COVID-19 can be asymptomatic yet
25 still spread the virus. Guidance issued by the United States Centers for Disease Control &
26 Prevention (CDC) recommends avoiding indoor activities, adhering to strict sanitation protocols,

1 and maintaining social distance of at least six feet from others in order to protect human health
2 and property, and to minimize the spread of COVID-19.

3 20. As of November 19, 2020, over 137,000 persons in Washington State have tested
4 positive for COVID-19; over 9,600 have been hospitalized, and over 2,600 have died due to the
5 COVID-19 virus.¹

6
7 21. As of November 19, 2020, over 2,400 persons in Thurston County have tested
8 positive for COVID-19; over 180 have been hospitalized, and 45 have died due to the COVID-19
9 virus.²

10 22. The presence of any COVID-19 aerosolized or suspended droplets or particles in
11 the air or otherwise circulating in an indoor environment renders that physical space, or physical
12 property, unsafe and unusable.

13 23. The presence of any COVID-19 aerosolized or suspended droplets or particles in
14 the air or otherwise circulating in an indoor environment causes direct physical damage to
15 property and direct physical loss of property.

16 24. The presence of any COVID-19 droplets or particles on physical surfaces renders
17 items of physical property unsafe and unusable.

18 25. The presence of any COVID-19 droplets or particles on physical surfaces causes
19 direct physical damage to property and direct physical loss of property.

20 26. The presence of people infected with or carrying COVID-19 particles at premises
21 renders the premises, including property located at that premises, unsafe and unusable, resulting
22 in direct physical damage and direct physical loss to the premises and property.
23
24

25
26 ¹ *Washington State Department of Health, COVID-19 Data Dashboard,*
<https://www.doh.wa.gov/Emergencies/COVID19/DataDashboard> (last visited Nov. 19, 2020).

² *Id.*

1 27. Loss of functionality of property that has not been physically altered constitutes
2 direct physical loss of property and/or direct physical damage to property.

3 28. On February 29, 2020, Washington Governor Jay Inslee issued Proclamation 20-
4 05, declaring a State of Emergency for all counties in the State of Washington as a result of the
5 COVID-19 outbreak. Thereafter, he issued a series of proclamations and orders affecting many
6 persons and businesses in Washington, whether infected with COVID-19 or not, requiring
7 certain public health precautions.
8

9 29. Public health authorities confirmed the first coronavirus case in Thurston County
10 on March 11, 2020.

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

18 31. Proclamation 20-25 continues a State of Emergency in all counties of Washington
19 State, and states that “the worldwide COVID-19 pandemic and its progression in Washington
20 State continue to threaten the life and health of our people as well as the economy of Washington
21 State, and remain a public disaster affecting life, health, property or the public peace.”
22

23 32. Proclamation 20-25 did not generally characterize the practice of law as an
24 essential activity.
25
26

1 33. Proclamation 20-25 prohibited employees and owners of Owens Davies from
2 leaving their homes for the purpose of practicing law or engaging in related non-essential
3 business activities.

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

8 35. On November 15, 2020, Governor Inslee issued Proclamation 20-25.8, which
9 amended Proclamations 20-05 and 20-25, et seq.

10 36. Among other things, Proclamation 20-25.8 continues a State of Emergency in all
11 counties of Washington State, and states that “the worldwide COVID-19 pandemic and its
12 progression in Washington State continue to threaten the life and health of our people as well as
13 the economy of Washington State, and remain a public disaster affecting life, health, property or
14 the public peace.”

15 37. Proclamation 20-25.8 is entitled “Stay Safe – Stay Healthy,” “Rollback of
16 County-by-County Phased Reopening Responding to a COVID-19 Outbreak Surge.” The
17 Proclamation reversed, for a period of at least 30 days, the prior loosening of certain restrictions
18 on public gatherings, professional services, and other recreational, religious, business and social
19 activities.

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

1 39. Governor's Inslee's proclamations and orders related to COVID-19 have been
2 extended and modified from time to time.

3 40. Plaintiff has complied with the proclamations and orders.

4 41. Plaintiff has complied with the proclamations and orders by preventing the public,
5 including its employees and clients, from entering its place of business to participate in business
6 activities which were routine and allowed prior to the issuance of the Proclamations and Orders.
7

8 42. As a result of the proclamations and orders, Plaintiff was unable to engage in its
9 law practice except according to the terms of the proclamations and orders, and was unable to
10 use its physical business property and equipment for their full intended and insured purpose.

11 43. Plaintiff invested in its business property, insured its business property, insured
12 the income it derives from its business properties, but was deprived of its property's functionality
13 due to the government's response to the COVID-19 pandemic.
14

15 44. Loss caused by Governor Inslee's orders and proclamations and/or related to
16 COVID-19 rendered Plaintiff's property unusable for its intended and insured purpose.

17 45. Plaintiff's property has sustained direct physical loss or damage covered by
18 Defendants' policy or policies.

19 46. Plaintiff was unable to use its insured physical properties for their full intended
20 business purposes.

21 47. Plaintiff suffered direct physical loss of use of the covered properties for their
22 intended purposes.
23

24 48. As a result of the above, Plaintiff has experienced loss covered by Defendant's
25 policy.
26

1 49. Defendant’s Business Income for Interruption of Practice Endorsement
2 (SB146843E) (Ed. 04/14) provides for two alternative methods of recovery under the Business
3 Income, Extra Expense and Civil Authority Coverages. Under the first alternative, at Plaintiff’s
4 option, Defendant NFI is contractually obligated to pay for Plaintiff’s covered loss resulting from
5 the covered cause of loss, “[t]he daily limit shown in the Declarations without reduction for
6 discontinuing expenses or rescheduled clients, but only for the initial 30 days of loss, or portion
7 of a day, for each occurrence.”
8

9 50. Pursuant to the contract, Plaintiff selects the fixed business interruption benefit
10 identified as “a., daily limit.”

11 51. Under the terms of the policy, the option to recover “[t]he daily limit shown in the
12 Declarations without reduction for discontinuing expenses or rescheduled clients, but only for
13 the initial 30 days of loss, or portion of a day, for each occurrence,” may be asserted as to “each
14 occurrence.”
15

16 52. The daily limit shown in the Declarations issued to Plaintiff for Business Income
17 for Interruption of Practice is \$10,000.

18 53. Plaintiff seeks the fixed business interruption benefit pursuant to (1) Governor
19 Inslee’s March 23, 2020 Proclamation, and (2) Governor Inslee’s November 15, 2020
20 Proclamation.
21

22 54. In a letter dated May 14, 2020, Plaintiff tendered its covered loss to Defendant
23 with respect to the March 23, 2020 Proclamation.

24 55. NFI denied all coverage to Plaintiff in a letter dated June 10, 2020. In that letter,
25 NFI incorrectly asserts that Plaintiff has not reported “any physical loss [of] [sic] or damage” to
26 Plaintiff’s Business Personal Property.

1 56. NFI's June 10, 2020 denial letter to Plaintiff does not address the fact that the
2 March 23, 2020 Proclamation prohibited Plaintiff's employees and owners from accessing its
3 property to conduct legal services.

4 57. NFI's June 10, 2020 denial letter to Plaintiff does not address the fact that the
5 March 23, 2020 Proclamation prohibits access to other property and causes physical loss of
6 property at locations other than Plaintiff's premises.

7 58. By letter dated June 15, 2020, Plaintiff served NFI and the Washington State
8 Insurance Commissioner, pursuant to RCW 48.30.015, a written notice of the basis for Plaintiff's
9 claims and causes of action against Defendant NFI as alleged herein, arising out of Defendant
10 NFI's wrongful denial of coverage for Plaintiff's covered business losses related to Governor
11 Inslee's March 23, 2020 Proclamation.
12

13 59. As detailed above, on November 15, 2020, Governor Inslee issued Proclamation
14 20-25.8, which amended Proclamations 20-05 and 20-25, et seq.
15

16 60. In a letter dated November 24, 2020, Plaintiff tendered its covered loss to
17 Defendant stemming from the November 15, 2020 Proclamation (the "Second Tender").

18 61. If NFI denies Plaintiff's Second Tender, Plaintiff reserves all of its rights and
19 remedies in response, including but not limited to those under RCW 48.30.015, and the right to
20 amend its complaint to assert additional claims and remedies.
21

22 62. Plaintiff invested in its business property, insured its business property, insured
23 the income it derives from its business properties, but was deprived of its property's functionality
24 due to the government's response to the COVID-19 pandemic.

25 63. Prohibitions stemming from Proclamation 20-25 and 20-25.8, including but not
26 limited to prohibitions on Plaintiff's ability to access and use its business property, and the direct

1 physical loss of or damage to property at locations other than Plaintiff’s insured premises, caused
2 Plaintiff to experience a covered loss under the policy.

3 64. Plaintiff’s property has sustained direct physical loss or damage covered by
4 Defendants’ policy or policies, including but not limited to business income interruption, extra
5 expense, interruption by civil authority, and other expenses.

6 65. Plaintiff was and is unable to use its insured physical property for its full intended
7 business purposes.

8 66. Plaintiff suffered direct physical loss of use of the covered property for its
9 intended purpose.

10 67. Plaintiff complied with all requirements in Defendant’s policy or policies.

11 68. Defendant has undertaken no meaningful investigation regarding the timing,
12 scope, or impact of governmental proclamations or closure orders that affect its insured’s
13 business or business properties.

14 69. Defendant has undertaken no meaningful investigation regarding the community
15 spread of COVID-19 and damage to property related to COVID-19 at or in the vicinity of
16 Plaintiff’s business.

17
18
19 **V. CAUSES OF ACTION**

20 **Count One—Declaratory Judgment**

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

23 71. Plaintiff seeks a declaratory judgment declaring that its losses and expenses
24 resulting from the interruption of its business are covered by Defendant’s policy or policies.
25
26

1 72. Plaintiff seeks a declaratory judgment declaring that Defendant is responsible for
2 timely and paying all such claims.

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

6 **Count Two—Breach of Contract**

7 74. The Policy is a contract under which Plaintiff paid premiums to Defendant in
8 exchange for Defendant's promise to pay Plaintiff for all claims covered by the Policy.

9 75. Plaintiff has paid its insurance premiums.

10 76. Plaintiff notified Defendant in May 2020 of its losses and requested Defendant
11 provide coverage for its losses.

12 77. Defendant responded telling Plaintiff that its claims were not covered.

13 78. Denying coverage for the claim is a breach of the insurance contract.

14 79. Plaintiff is harmed by the breach of the insurance contract by Defendant.
15

16 **Count Three—Insurance Bad Faith**

17 80. In Washington, insurers must refrain from elevating their interests above those of
18 their policyholders, and must refrain from any conduct towards their policyholders that are
19 unreasonable, frivolous or unfounded.

20 81. Defendant breached that duty by its (a) unreasonable denial of Plaintiff's claim;
21 and (b) failure to conduct a reasonable investigation of the claim.
22

23 82. As a result of Defendant's bad faith, Plaintiff has been damaged, in an amount to
24 be proven at trial.

25 **Count Four—Violation of the Washington Consumer Protection Act**
26

1 83. In failing and refusing to cover Plaintiff’s claim, Defendant violated at least the
2 following Washington Unfair Claims Settlement Practices Regulations, each of which is a *per se*
3 violation of the Washington State Consumer Protection Act, RCW 19.86, *et. seq.* (“CPA”):

- 4 (a) Refusing to pay claims without conducting a reasonable investigation in
5 violation of WAC § 284-30-330(4);
6
7 (b) Failing to promptly provide a reasonable explanation of the basis in the
8 insurance policy in relation to the facts or applicable law for denial of a
9 claim in violation of WAC § 284-30-330(13);
10
11 (c) Failing to adopt and implement reasonable standards for the processing
12 and payment of claims after the obligation to pay has been established, in
13 violation of WAC § 284-30-330(16); and
14
15 (d) Misrepresenting pertinent facts in failing to cover the claim in violation of
16 WAC § 284-30-330(1).

17 84. These violations, Defendant’s unreasonable decision to deny coverage, and
18 Defendant’s insurance bad faith, violate the CPA and entitle Plaintiff to treble damages and an
19 award of their attorney’s fees and costs incurred in prosecuting this action.

20 **Count Five—Violation of the Washington Insurance Fair Conduct Act**

21 85. Defendant’s conduct described herein violates the Insurance Fair Conduct Act,
22 RCW § 48.30.015 (“IFCA”). Defendant has violated IFCA by unreasonably denying Plaintiff’s
23 claim for coverage or payment of benefits.

24 86. Pursuant to RCW 48.30.015(8), Plaintiff provided the required written notice to
25 Defendant and the Washington State Insurance Commissioner prior to filing this action.
26 Following this notice, Defendant failed to resolve the basis of the claim within 20 days as

1 provided by the statute. Thus, Plaintiff has satisfied IFCA's pre-suit notice requirements set forth
2 in RCW § 48.30.015(8)(b).

3 87. Defendant's conduct herein constitutes an unreasonable denial of coverage and an
4 unreasonable denial of payment of benefits.

5 88. Defendant has also violated the following Washington Unfair Claims Handling
6 Practices Regulations, each of which is enumerated as a regulation whose violation also
7 constitutes a violation of IFCA:
8

- 9 (a) Refusing to pay claims without conducting a reasonable investigation in
10 violation of WAC § 284-30-330(4);
11 (b) Failing to promptly provide a reasonable explanation of the basis in the
12 insurance policy in relation to the facts or applicable law for denial of a
13 claim in violation of WAC § 284-30-330(13);
14 (c) Failing to adopt and implement reasonable standards for the processing
15 and payment of claims after the obligation to pay has been established, in
16 violation of WAC § 284-30-330(16); and
17 (d) Misrepresenting pertinent facts in failing to cover the claim in violation of
18 WAC § 284-30-330(1).
19

20 89. As a result of Defendant's conduct, Plaintiff has suffered, and will continue to
21 suffer, damage and injury in the form of unreimbursed losses and costs. Plaintiff is entitled to its
22 actual damages sustained and the costs of litigation including reasonable attorneys' fees and
23 costs, treble damages for the unreasonable failure to pay the benefits due and owing under the
24 insurance policy, and such additional damages as are authorized under IFCA. As a result of
25
26

1 Defendant's failure to pay benefits due and owing under the insurance policy in violation of
2 RCW 48.30.015, Plaintiff has been damaged in an amount to be determined at trial.

3 **Count Six—Negligence**

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

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

8 **VI. REQUEST FOR RELIEF**

9 1. A declaratory judgment that pursuant to Defendant NFI's policy or policies,
10 Plaintiff is entitled to payment under its fixed business interruption benefit at the rate of \$10,000
11 per day for a period of up to thirty (30) days for each covered incident stemming from Plaintiff's
12 physical loss of covered property pursuant to its compliance with, and the fact of, Governor
13 Inslee's Proclamations.

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

16 3. Damages under the fixed business interruption benefit, including treble damages
17 as provided under the CPA and IFCA.

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

20 5. That Plaintiff be awarded actual damages under the fixed business interruption
21 benefit, and treble damages for Defendant's violation of RCW 48.30.015.

1 6. That Plaintiff be awarded treble damages in an amount up to \$25,000 against
2 Defendant for each violation of the Washington State Consumer Protection Act, RCW 19.86 et
3 seq.

4 7. That Plaintiff be awarded all costs and reasonable attorneys' fees under common
5 law or statute for breach of the duty of good faith and fair dealing, violation of the Washington
6 State Consumer Protection Act, RCW 19.86 et seq., and violation of RCW 48.30.015.

7 8. Pre- and post-judgment interest at the highest allowable rate.

8 9. Such further and other relieve as the Court shall deem appropriate.
9

10 **VII. JURY DEMAND**

11 Plaintiff demands a jury trial on all claims so triable.
12

13
14 DATED this 25th day of November, 2020.

15 KELLER ROHRBACK L.L.P.

16
17 By: s/ Amy Williams-Derry

18 By: s/ Ian S. Birk

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