

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT TACOMA

RONALD A. MIKKELSON DDS, individually  
and on behalf of all others similarly situated,

Plaintiff,

v.

ASPEN AMERICAN INSURANCE  
COMPANY,

Defendant.

No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMAND

**I. INTRODUCTION**

The defendant Aspen American Insurance Company (“Aspen” or “Defendant”) insures the plaintiff Ronald A. Mikkelson DDS (“Mikkelson”), a family-owned, small business dentistry practice. Due to COVID-19, Mikkelson cannot provide routine dentistry services. Mikkelson intended to rely on its business insurance to keep the business alive. This lawsuit is filed to ensure that Mikkelson and other similarly-situated policyholders receive the insurance benefits for which they paid.

## II. JURISDICTION AND VENUE

1  
2 1. This Court has subject matter jurisdiction pursuant to the Class Action Fairness  
3 Act of 2005, 28 U.S.C. § 1332(d), because at least one Class member is of diverse citizenship  
4 from Defendant, there are 100 or more Class members nationwide, and the aggregate amount in  
5 controversy exceeds \$5,000,000. The Court has supplemental jurisdiction over Plaintiffs' state  
6 law claims under 28 U.S.C. § 1367.

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

12 3. Venue is proper in the Western District of Washington pursuant to 28 U.S.C.  
13 § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims at  
14 issue in this Complaint arose in this District. Plaintiff's place of business is located in Olympia,  
15 WA, Thurston County. This action is therefore appropriately filed in the Tacoma Division  
16 because a substantial portion of the events giving rise to this lawsuit arose in Thurston County.

## III. PARTIES

17  
18  
19 4. Plaintiff Ronald A. Mikkelsen, DDS, operates a family dentistry practice located  
20 at 140 North Percival St., Suite B, Olympia WA 98502.

21 5. Defendant Aspen American Insurance Company is an insurance carrier  
22 incorporated and domiciled in the State of Texas, with its principal place of business in Rocky  
23 Hill, Connecticut.

## IV. ALLEGATIONS OF FACTS

24  
25 6. Mikkelsen is a policyholder of an "all risk" policy issued by Aspen.  
26

1           7.       The Policy was in effect at all relevant times.

2           8.       Mikkelson paid all premiums for the coverage when due.

3           9.       The Policy insures Mikkelson's business property.

4           10.      Mikkelson's business property includes property owned and leased by Mikkelson  
5 and used for general business purposes for the specific purpose of dentistry and other activities.

6           11.      Aspen provided coverage for "DIRECT PHYSICAL LOSS" to covered property.

7           12.      This coverage includes coverage for risks of both damage to and loss of covered  
8 property.  
9

10          13.      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          14.      In light of this pandemic, the American Dental Association called upon dentists  
13 to postpone all elective procedures.

14          15.      Washington Governor Jay Inslee issued certain proclamations and orders  
15 affecting many persons and businesses in Washington, whether infected with COVID-19 or not,  
16 requiring certain public health precautions.  
17

18          16.      By order of Governor Inslee, dentists including Mikkelson were prohibited from  
19 practicing dentistry but for urgent and emergency procedures.

20          17.      Mikkelson's property sustained direct physical loss or damage as a result of the  
21 proclamations and orders.

22          18.      Mikkelson's property will continue to sustain direct physical loss or damage  
23 covered by the Aspen policy or policies, including but not limited to business interruption, extra  
24 expense, interruption by civil authority, and other expenses.  
25

26          19.      Mikkelson's property cannot be used for its intended purposes.

1           20.     As a result of the above, Mikkelson has experienced and will experience loss  
2 covered by the Aspen policy or policies.

3           21.     Mikkelson will soon file a claim for its loss, and upon information and belief, its  
4 claim will be denied by Aspen.

5                               **V.     CLASS ACTION ALLEGATIONS**

6           22.     This matter is brought by Mikkelson on behalf of himself and those similarly  
7 situated, under Federal Rules of Civil Procedure 23(b)(1), 23(b)(2), and 23(b)(3).

8           23.     The Classes that Mikkelson seek to represent are defined at this time as:

9                   A.     ***Practice Income Breach of Contract Class:*** All persons and entities in  
10 the United States insured under an Aspen policy with Practice Income coverage who  
11 suffered a suspension of their practice due to COVID-19 at the covered premises and  
12 whose Practice Income claim was denied by Aspen.

13                   B.     ***Practice Income Declaratory Relief Class:*** All persons and entities in the  
14 United States insured under an Aspen policy with Practice Income coverage who  
15 suffered a suspension of their practice due to COVID-19 at the covered premises.

16                   C.     ***Extra Expense Breach of Contract Class:*** All persons and entities in the  
17 United States insured under an Aspen policy with Extra Expense coverage who sought to  
18 minimize the suspension of business in connection with COVID-19 at the covered  
19 premises and whose denied Extra Expense coverage claim was denied by Aspen despite  
20 their efforts to minimize the suspension of their practice.

21                   D.     ***Extra Expense Declaratory Relief Class:*** All persons and entities in the  
22 United States insured under an Aspen policy with Extra Expense coverage who sought to  
23  
24  
25  
26

1 minimize losses from the suspension of their practice due to COVID-19 at the covered  
2 premises.

3 24. Excluded from the Class are Defendant's officers, directors, and employees; the  
4 judicial officers and associated court staff assigned to this case; and the immediate family  
5 members of such officers and staff. Mikkelson reserves the right to amend the Class definition  
6 based on information obtained in discovery.

7 25. This action may properly be maintained on behalf of each proposed Class under  
8 the criteria of Rule 23 of the Federal Rules of Civil Procedure.

9 26. **Numerosity:** The members of the Class are so numerous that joinder of all  
10 members would be impractical. Plaintiff is informed and believes that the proposed Class  
11 contains thousands of members. The precise number of class members can be ascertained  
12 through discovery, which will include Defendant's records of policyholders.

13 27. **Commonality and Predominance:** Common questions of law and fact  
14 predominate over any questions affecting only individual members of the Class. Common  
15 questions include, but are not limited to, the following:

16 A. Whether the class members suffered covered losses based on common  
17 policies issued to members of the Class;

18 B. Whether Aspen acted in a manner common to the class and wrongfully  
19 denied claims for coverage arising from COVID-19;

20 C. Whether Practice Income coverage in Aspen's policies of insurance  
21 applies to a suspension of practice caused by COVID-19;

22 D. Whether Aspen's Extra Expense coverage applies to efforts to minimize a  
23 loss caused by COVID-19;  
24  
25  
26

1           E.       Whether Aspen has breached its contracts of insurance through a blanket  
2       denial of all claims based on business interruption, income loss or closures related to  
3       COVID-19.

4           F.       Whether, because of Defendant's conduct, Mikkelson and the class  
5       members have suffered damages; and if so, the appropriate amount thereof; and

6           G.       Whether, because of Defendant's conduct, Mikkelson and the class  
7       members are entitled to equitable and declaratory relief, and if so, the nature of such  
8       relief.  
9

10       28.       **Typicality:** Mikkelson's claims are typical of the claims of the members of the  
11       classes. Mikkelson and all the members of the classes have been injured by the same wrongful  
12       practices of Defendant. Mikkelson's claims arise from the same practices and course of conduct  
13       that give rise to the claims of the members of the Class and are based on the same legal theories.

14       29.       **Adequacy:** Mikkelson will fully and adequately assert and protect the interests of  
15       the classes and has retained class counsel who are experienced and qualified in prosecuting class  
16       actions. Neither Mikkelson nor their attorneys have any interests contrary to or in conflict with  
17       the Class.  
18

19       30.       **Federal Rule of Civil Procedure 23(b)(1), the Risk of Inconsistent or**  
20       **Varying Adjudications and Impairment to Other Class Members' Interests:** Plaintiff seeks  
21       adjudication as to the interpretation, and resultant scope, of Defendant's policies, which are  
22       common to all members of the class. The prosecution of separate actions by individual members  
23       of the classes would risk inconsistent or varying interpretations of those policy terms and create  
24       inconsistent standards of conduct for Defendant. The policy interpretations sought by Plaintiff  
25       could also impair the ability of absent class members to protect their interests.  
26

1           31.     **Federal Rule of Civil Procedure 23(b)(2), Declaratory and Injunctive Relief:**

2 Defendant acted or refused to act on grounds generally applicable to Plaintiff and other  
3 members of the proposed classes making injunctive relief and declaratory relief appropriate on a  
4 classwide basis.

5           32.     **Federal Rule of Civil Procedure 23(b)(3), Superiority:** A class action is

6 superior to all other available methods of the fair and efficient adjudication of this lawsuit.

7 While the aggregate damages sustained by the classes are likely to be in the millions of dollars,  
8 the individual damages incurred by each class member may be too small to warrant the expense  
9 of individual suits. Individual litigation creates a risk of inconsistent and/or contradictory

10 decisions and the court system would be unduly burdened by individual litigation of such cases.

11 A class action would result in a unified adjudication, with the benefits of economies of scale and  
12 supervision by a single court.  
13

14                               **VI.     CAUSES OF ACTION**

15                                       **COUNT ONE —**

16   **Declaratory Judgment**

17                       *(Claim brought on behalf of claimants that anticipate denied coverage)*

18           33.     This is a cause of action for declaratory judgment pursuant to the Declaratory  
19 Judgment Act, codified at 28 U.S.C. § 2201.  
20

21           34.     Mikkelson seeks a declaratory judgment declaring that Mikkelson's losses and  
22 expenses resulting from the interruption of its business are covered by the Policy.

23           35.     Mikkelson seeks a declaratory judgment declaring that Aspen is responsible for  
24 timely and fully paying all such losses.

25           36.     Previous paragraphs alleged are incorporated herein.  
26

**COUNT TWO —**

**Breach of Contract**

*(Claim brought on behalf of claimants that were denied coverage)*

37. The Policy is a contract under which Mikkelson paid premiums to Aspen in exchange for Aspen's promise to pay Mikkelson for all claims covered by the Policy.

38. Mikkelson has paid its insurance premiums.

39. Mikkelson will soon file a claim for its loss covered by the Policy. Upon information and belief, Aspen has denied coverage for other similarly situated policyholders and will deny Mikkelson's claim.

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

41. Mikkelson is harmed by the breach of the insurance contract by Aspen.

**VII. PRAYER FOR RELIEF**

1. A declaratory judgment that the policy or policies cover the plaintiff's losses and expenses resulting from the interruption of the plaintiff's business by COVID-19.

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

3. Damages.

4. Pre-judgment interest.

5. Reasonable attorney fees and costs.

6. Such further and other relief as the Court shall deem appropriate.

**VIII. JURY TRIAL DEMANDED**

Plaintiff demands a jury trial on all claims so triable.



1 DATED this 20th day of April, 2020.

2 KELLER ROHRBACK L.L.P.

3 By: s/ Ian S. Birk

4 By: s/ Lynn L. Sarko

5 By: s/ Gretchen Freeman Cappio

6 By: s/ Irene M. Hecht

7 By: s/ Nathan L. Nanfelt

8 Ian S. Birk, WSBA #31431

9 Lynn L. Sarko, WSBA #16569

10 Gretchen Freeman Cappio, WSBA #29576

11 Irene M. Hecht, WSBA #11063

12 Nathan L. Nanfelt, WSBA #45273

13 1201 Third Avenue, Suite 3200

14 Seattle, WA 98101

15 Telephone: (206) 623-1900

16 Fax: (206) 623-3384

17 Email: [ibirk@kellerrohrback.com](mailto:ibirk@kellerrohrback.com)

18 Email: [lsarko@kellerrohrback.com](mailto:lsarko@kellerrohrback.com)

19 Email: [gcappio@kellerrohrback.com](mailto:gcappio@kellerrohrback.com)

20 Email: [ihecht@kellerrohrback.com](mailto:ihecht@kellerrohrback.com)

21 Email: [nnanfelt@kellerrohrback.com](mailto:nnanfelt@kellerrohrback.com)

22 By: s/ Alison Chase

23 Alison Chase, *pro hac vice forthcoming*

24 801 Garden Street, Suite 301

25 Santa Barbara, CA 93101

26 Telephone: (805) 456-1496

Telephone: (805) 456-1497

Email: [achase@kellerrohrback.com](mailto:achase@kellerrohrback.com)

***Attorneys for Plaintiff***

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

RONALD A. MIKKELSON DDS, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff THURSTON  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
**KELLER ROHRBACK LLP**  
1201 THIRD AVENUE STE 3200, SEATTLE, WA 98101

**DEFENDANTS**

County of Residence of First Listed Defendant TRAVIS COUNTY, TX  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question  
(U.S. Government Not a Party)
- ☒ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                                   |   | PTF                        | DEF                        |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1            | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. § 1391(b)(3)

Brief description of cause:  
INSURANCE BAD FAITH

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

04/20/2020

SIGNATURE OF ATTORNEY OF RECORD

s/lan S. Birk

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE