

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

GLACIAL CRYOTHERAPY LLC,
individually and on behalf of all others similarly
situated,

Plaintiff,

v.

EVANSTON INSURANCE COMPANY,

Defendant.

No.

COMPLAINT—CLASS ACTION

JURY DEMAND

I. INTRODUCTION

Plaintiff, Glacial Cryotherapy LLC, individually and on behalf of all other similarly situated members of the defined national class, and the defined Washington state subclasses (collectively, the “Class Members”), by and through the undersigned attorneys, brings this class action against Defendant Evanston Insurance Company (“Defendant” or “Evanston”) and alleges as follows based on personal knowledge and information and belief:

II. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one member of the proposed Class is a citizen of a state different from that of Defendant, the proposed Class has more than 100 members, and

COMPLAINT—CLASS ACTION - 1

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1 the aggregate amount in controversy exceeds \$5,000,000. The Court has supplemental
2 jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1367.

3 2. This Court has personal jurisdiction over Defendant because Defendant is
4 registered to do business in Washington, has sufficient minimum contacts in Washington, and
5 otherwise intentionally avails itself of the markets within Washington through its business
6 activities, such that the exercise of personal jurisdiction by this Court is proper. Moreover,
7 jurisdiction exists because Plaintiff's claims arise out of and directly relate to Defendant's
8 contacts with Washington. Plaintiff has standing to bring each claim against Defendant as a class
9 representative whose claims are typical and common of the class under Federal Rule of Civil
10 Procedure 23.
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12 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(3) because the
13 Court has personal jurisdiction over Defendant, a substantial portion of the alleged wrongdoing
14 occurred in this District and the State of Washington, and Defendant has sufficient contacts with
15 this District and the State of Washington.
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17 4. Venue is proper in the Western District of Washington pursuant to 28 U.S.C.
18 § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims at
19 issue in this Complaint arose in this District. Plaintiff's place of business is in King County. This
20 action is therefore appropriately filed in this District.
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22 III. PARTIES

23 5. Plaintiff Glacial Cryotherapy owns and operates a health-based business in Lake
24 Forest Park, King County, Washington, that provides whole-body and localized cryotherapy, and
25 other therapeutic treatments, using state-of-the-art machinery and equipment. Cryotherapy is a
26 completely dry, noninvasive, hyper-cooling process that lowers one's skin temperature by up to

1 30 degrees Fahrenheit during a single session. Cryotherapy is used to accelerate the body's
2 natural recovery from exercise or overuse by lowering skin and core temperatures and reducing
3 inflammation.

4 6. Defendant Evanston is an insurance carrier incorporated and domiciled in Illinois
5 with its principal place of business in Illinois.
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7 7. Defendant Evanston is authorized to write, sell, and issue business insurance
8 policies in forty-nine states and the District of Columbia. Defendant conducted business within
9 these states by selling and issuing business insurance policies to policyholders, including
10 Plaintiff.

11 8. Defendant is vicariously liable for the acts and omissions of its employees and
12 agents.
13

14 IV. NATURE OF THE CASE

15 9. Plaintiff Glacial Cryotherapy is a physical health and wellness business that
16 provides cryotherapy, light therapy, and infra-red sauna therapy using sophisticated machines
17 and high-tech equipment to deliver therapeutic treatments to the body.

18 10. Historic photographs of Glacial Cryotherapy below depict portions of its interior,
19 and some of its machines and equipment:
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11. This lawsuit is filed to ensure that Plaintiff and other similarly-situated policyholders receive the insurance benefits to which they are entitled and for which they paid.

12. Defendant issued one or more “all-risk” insurance policies to Plaintiff (the “Policy”), which provide broad property and business interruption coverage.

13. The Policy includes a Building and Personal Property Coverage Form and related endorsements, with coverages that include Business Income and Extra Expense, Extended Business Income, Civil Authority, and a Coverage Extension, insuring Glacial Cryotherapy’s property, business equipment and machinery, and business income, with effective dates of July 23, 2019 to July 23, 2020.

14. The Policy described the insured occupancy of the premises in its “Commercial Property Coverage Part Declarations” as falling under the “Class Description” of “Health or

1 Exercise Clubs.” The governmental response to the COVID-19 pandemic did not permit any
2 operations or access to premises consistent with “health or exercise clubs.”

3 15. Plaintiff’s business property includes property owned and/or leased by Plaintiff
4 and used by Plaintiff and its customers for its specified business purposes, including machine
5 and equipment-based therapeutic treatments. Access to some or all of this property and
6 Plaintiff’s premises was prohibited by the governmental response to the COVID-19 pandemic.
7

8 16. Plaintiff’s business property includes a whole-body cryotherapy chamber,
9 localized cryotherapy machines, an infra-red sauna, celluma light therapy machines and beds,
10 and Normatec recovery systems, all of which are designed to provide in-person, on-site
11 treatments to customers.

12 17. Defendant promised to pay Plaintiff for “direct physical loss of or physical
13 damage to” covered property, and its Policy includes coverages for risks of both “loss of or
14 damage to” covered property.
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16 18. The Policy expressly defines “Covered Causes of Loss” as meaning “direct
17 physical loss.”

18 19. On information and belief, Defendant and affiliated entities owned by the same
19 parent company issued materially identical policies to thousands of businesses throughout
20 Washington and in other states.
21

22 20. Plaintiff paid all premiums for the coverage when due.

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

25 22. COVID-19 is a highly contagious virus that rapidly and easily spreads; it
26 continues to spread across the United States, including in the State of Washington.

1 23. In many infected persons, COVID-19 causes severe illness and requires
2 hospitalization, including intubation. The virus has killed over 500,000 people in the United
3 States to date. Persons who survive the virus have experienced ongoing cognitive, neurological,
4 and physical impacts from the virus, even after the virus is no longer actively detected in their
5 bodies.

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7 24. The COVID-19 virus is a physical substance that spreads from person to person
8 through respiratory droplets that reach another person and that are produced when an infected
9 person breathes, talks, coughs, or sneezes. It also spreads when virus respiratory droplets are
10 exhaled and aerosolized, and deposited on a surface or object (e.g., weights, exercise equipment,
11 handles, machinery, door knobs, touch screens, computer keyboards, water fountains, and
12 writing or eating utensils) and those objects are then touched by another person who then touches
13 their own mouth, nose, or eyes. COVID-19 is caused by a novel (new) coronavirus that has not
14 previously been seen in humans.¹

15
16 25. COVID-19 remains stable and transmittable in aerosols for up to three hours and
17 up to two or three days on certain surfaces. Persons infected with COVID-19 can be
18 asymptomatic. COVID-19 is spread by breathing, talking, and touching shared or common
19 objects or surfaces. Guidance issued by the United States Centers for Disease Control and
20 Prevention (“CDC”) recommends avoiding indoor activities, maintaining social distance of at
21 least six feet between people, and not sharing exercise items such as resistance bands, to slow or
22 stop the spread of COVID-19.²

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26 ¹ See, e.g., *Coronavirus (COVID-19): Frequently Asked Questions*, CDC (updated Feb. 25, 2021),
<https://www.cdc.gov/coronavirus/2019-ncov/faq.html>.

² *Coronavirus (COVID-19): Personal and Social Activities*, CDC (updated Feb. 19, 2021),
<https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/personal-social-activities.html>.

26. Public health data throughout the United States, and on a state-by-state basis, shows that COVID-19 has been detected in every state.

27. The first confirmed case of COVID-19 in King County, and indeed nationwide, was noted on January 21, 2020.³

28. Public health data throughout the United States shows the number of COVID-19 tests administered, the rate of positive testing, the numbers of persons diagnosed with COVID-19, the number of persons hospitalized due to COVID-19, the number of deaths from COVID-19, and other related statistics, by state, county, and sometimes by city.⁴

29. As of February 24, 2021, at least 319,498 individuals in the State of Washington have tested positive for COVID-19, 18,155 have been hospitalized, and 4,942 have died due to the COVID-19 virus.⁵

30. As of February 24, 2021, at least 81,738 individuals in King County have tested positive for COVID-19, 5,117 have been hospitalized, and 1,390 have died due to the COVID-19 virus.⁶

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

³ Casey McNertney, *Coronavirus in Washington State: A Timeline of the Outbreak Through March 2020*, KIRO 7 News (updated Apr. 3, 2020, 2:03 AM), <https://www.kiro7.com/news/local/coronavirus-washington-state-timeline-outbreak/IM65JK66N5BYTIAPZ3FUZSKMUE/>.

⁴ See, e.g., *Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. Times (updated Feb. 26, 2021, 7:56 AM), <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html?action=click&module=Top%20Stories&pgtype=Homepage> (reflecting COVID-19 statistics, on a state-by-state, county-by-county, and aggregated basis since March 2020).

⁵ *COVID-19 Data Dashboard*, Wash. State Dep't of Health (last updated 2/25/21, 5:38 PM), <https://www.doh.wa.gov/Emergencies/COVID19/DataDashboard>.

⁶ *Id.*

1 32. The presence of any COVID-19 aerosolized or suspended droplets or particles in
2 the air or otherwise circulating in an indoor environment causes direct physical damage to
3 property and/or direct physical loss of property.

4 33. The presence of any COVID-19 droplets or particles on physical surfaces renders
5 items of physical property unsafe and unusable.

6 34. The presence of any COVID-19 droplets or particles on physical surfaces causes
7 direct physical damage to property and/or direct physical loss of property.

8 35. The presence of people infected with or carrying COVID-19 particles at premises
9 renders the premises, including property located at that premises, unsafe and unusable, resulting
10 in direct physical damage and/or direct physical loss to the premises and property.

11 36. Loss of functionality of property that has not been physically altered constitutes
12 direct physical loss of property and/or direct physical damage to property.

13 37. Other premises and businesses in close proximity to Plaintiff were closed and
14 suffered direct physical loss. This occurred at least through governmental orders affecting many
15 such places.

16 38. On February 29, 2020, Washington Governor Jay Inslee issued Proclamation 20-
17 05, declaring a State of Emergency for all counties in the State of Washington as the result of the
18 COVID-19 outbreak.⁷

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

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⁷ Proclamation 20-05 of Washington Gov. Jay Inslee (Feb. 29, 2020),

[https://www.governor.wa.gov/sites/default/files/proclamations/20-05%20Coronavirus%20\(final\).pdf](https://www.governor.wa.gov/sites/default/files/proclamations/20-05%20Coronavirus%20(final).pdf).

40. Some local agencies acted even more quickly than the state. On February 27, 2020, the Northshore School District closed Bothell High School to completely disinfect the entire school because of concerns about the safety of school property stemming from COVID-19.⁸ On March 2, 2020, Everett Public Schools Superintendent Dr. Ian B. Saltzman made a similar announcement closing schools, highlighting that Everett Schools would clean both schools and school buses.⁹

41. Issued March 12, 2020, Proclamation 20-08 closed all public and private K-12 schools in King, Pierce, and Snohomish counties.¹⁰ Issued March 13, 2020, Proclamation 20-09 extended the school closure to the entire state.¹¹

42. On March 13, 2020, Governor Inslee issued Proclamation 20-11, “Statewide Limits on Gatherings,” which prohibited all gatherings of 250 people or more in all Washington counties, including King County.¹²

43. Issued March 16, 2020, Proclamation 20-13 closed all non-essential retail including theaters, gyms, performance venues, dance studios, bowling alleys, fitness centers, barbershops and hair/nail salons, tattoo parlors, and indoor dining at restaurants.¹³

⁸ See Michelle Reid, *Letter to Families: Bothell High School Closure*, Northshore School District (Feb. 26, 2020), <https://www.nsd.org/blog/~board/superintendent-blog/post/letter-to-families-bothell-high-school-closure>.

⁹ See Ian B. Saltzman, *Superintendent’s Message, March 2, 2020*, Everett Public Schools (Mar. 2, 2020), <https://www.everettsd.org/Page/32622>.

¹⁰ Proclamation 20-08 of Washington Gov. Jay Inslee (Mar. 12, 2020), <https://www.governor.wa.gov/sites/default/files/proclamations/20-08%20Coronavirus%20%28tmp%29.pdf>

¹¹ Proclamation 20-09 of Washington Gov. Jay Inslee, *Statewide K-12 School Closures* (Mar. 13, 2020), <https://www.governor.wa.gov/sites/default/files/proclamations/20-09%20Coronavirus%20Schools%20Amendment%20%28tmp%29.pdf>.

¹² Proclamation 20-11 of Washington Gov. Jay Inslee, *Statewide Limits on Gatherings* at p. 2 (Mar. 13, 2020), <https://www.governor.wa.gov/sites/default/files/proclamations/20-11%20Coronavirus%20Gatherings%20Amendment%20%28tmp%29.pdf>.

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

1 44. Proclamation 20-13 states that “the COVID-19 disease has and continues to
2 spread quickly across the [S]tate of Washington, beyond the original community outbreaks in
3 King, Pierce, and Snohomish counties.”¹⁴

4 45. Proclamation 20-13 prohibits “any number of people from gathering in any public
5 venue in which people congregate for purposes of . . . fitness and other similar activities.”¹⁵ The
6 proclamation further prohibits “the operation of public venues in which people congregate for
7 entertainment, social or recreational purposes, including but not limited to . . . gyms, fitness
8 centers . . . and other similar venues, which prohibition shall remain in effect until midnight on
9 March 31, 2020, unless extended beyond that date.”¹⁶

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

14 47. On information and belief, Proclamation 20-13 refers to property damage
15 throughout the State of Washington, including in King County where Plaintiff’s business is
16 located.

17 48. On March 16, 2020, Governor Inslee issued Proclamation 20-14, “Reduction of
18 Statewide Limits on Gatherings,” which prohibited gatherings of fifty people or more in all
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25 ¹⁴ *Id.* at p. 1.

26 ¹⁵ *Id.* at p. 2.

¹⁶ *Id.* at p. 3.

¹⁷ *Id.* at p. 1.

1 Washington counties, including King County, and further prohibited gatherings of fewer people
 2 unless organizers of such gatherings complied with social distancing and sanitation guidelines.¹⁸

3 49. Issued March 19, 2020, Proclamation 20-24 placed restrictions on non-urgent
 4 medical and dental services, largely shuttering those offices.¹⁹

5 50. On March 23, 2020, Governor Inslee issued Proclamation 20-25, “Stay Home –
 6 Stay Healthy.”²⁰ The proclamation, which amends Proclamation 20-05, requires that “[a]ll
 7 people in Washington State [] immediately cease leaving their home or place of residence
 8 except: (1) to conduct or participate in essential activities, and/or (2) for employment in essential
 9 business services.”²¹ The proclamation prohibits “all non-essential businesses in Washington
 10 State from conducting business, within the limitations provided herein.”²²

11 51. Proclamation 20-25 continues a State of Emergency, and states that “the
 12 worldwide COVID-19 pandemic and its progression in Washington State continues to threaten
 13 the life and health of our people as well as the economy of Washington State, and remains a
 14 public disaster affecting life, health, property or the public peace.”²³

15 52. On August 3, 2020, Governor Inslee issued additional restrictions regarding the
 16 operation of indoor fitness gyms and studios, effective as of August 10, 2020.²⁴

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 21 ¹⁸ Proclamation 20-14 of Washington Gov. Jay Inslee, *Reduction of Statewide Limits on Gatherings* (Mar. 16, 2020),
<https://www.governor.wa.gov/sites/default/files/proclamations/20-14%20COVID-19%20-%20Prohibitions%20on%20Gatherings%20%28tmp%29.pdf>.

22 ¹⁹ Proclamation 20-24 of Washington Gov. Jay Inslee, *Restrictions on Non Urgent Medical Procedures* (Mar. 19,
 23 2020), <https://www.governor.wa.gov/sites/default/files/proclamations/20-24%20COVID-19%20non-urgent%20medical%20procedures%20%28tmp%29.pdf>.

24 ²⁰ Proclamation 20-25 of Washington Gov. Jay Inslee, *Stay Home – Stay Healthy* (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>.

25 ²¹ *Id.* at p. 3.

26 ²² *Id.* at p. 2.

²³ *Id.* at p. 1.

²⁴ Memorandum of Washington Gov. Jay Inslee, *Indoor Fitness and Training – Proclamation 20-25, et seq.* (Aug. 3, 2020),

53. On November 15, 2020, Governor Inslee issued Proclamation 20-25.8, “Stay Safe – Stay Healthy” “Rollback of County-by-County Phased Reopening Responding to a COVID-19 Outbreak Surge,” which amended Proclamation 20-05 and 20-25, *et seq.*²⁵ The proclamation again closed restaurants and bars for indoor dine-in service.²⁶

54. Proclamation 20-25.8 also prohibits indoor operations at a variety of business locations throughout King County and elsewhere in the State of Washington, including but not limited to restaurants and bars, bowling centers, movie theaters, museums, and in-store retail.²⁷

55. Governor Inslee’s proclamations and orders related to the COVID-19 pandemic (collectively, “the proclamations and orders”) have been extended and modified from time to time.

56. By order of Governor Inslee, therapeutic health and wellness businesses, including Glacial Cryotherapy, were prohibited from operating their businesses except according to the terms of the proclamations and orders.

57. Plaintiff has complied with the proclamations and orders which have required it to close, suspend, and/or curtail its business.

58. Among other things, Plaintiff complied with the proclamations and orders by preventing the public, including its customers and employees, from entering its place of business to participate in therapeutic treatments which were routine and allowed prior to the issuance of the proclamations and orders.

https://www.governor.wa.gov/sites/default/files/COVID19Phase2FitnessMemo.pdf?utm_medium=email&utm_source=govdelivery.

²⁵ Proclamation 20-25.8 of Washington Gov. Jay Inslee, “*Stay Safe – Stay Healthy*” *Rollback of County-by-County Phased Reopening Responding to a COVID-19 Outbreak Surge* (Mar. 23, 2020),

https://www.governor.wa.gov/sites/default/files/proclamations/proc_20-25.8.pdf.

²⁶ *See id.* at pp. 3-4.

²⁷ *Id.*

1 59. In order to comply with the proclamations and orders, Plaintiff was forced to
2 suspend its business and incur extra expense.

3 60. Due to Governor Inslee's orders, beginning on or about March 16, 2020, Plaintiff
4 was unable to use its physical business tenancy and other insured property therein for their
5 intended purposes.

6 61. Plaintiff invested in its business property, insured the business property, and
7 insured the income derived from its business property, but Plaintiff was deprived of its
8 property's functionality due to the government's response to the COVID-19 pandemic.

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

11 63. Governors and civil authorities in other states have issued similar orders and
12 proclamations, for similar reasons.

13 64. Plaintiff's property and covered movable business property have sustained direct
14 physical loss and/or damage related to COVID-19, property damage related to COVID-19,
15 and/or the proclamations and orders.

16 65. Plaintiff's property will continue to sustain direct physical loss or damage covered
17 by the Policy, including but not limited to business interruption, extra expense, interruption by
18 civil authority, and other expenses.

19 66. Plaintiff suffered direct physical loss of use of the covered properties for its
20 intended purposes.

21 67. As a result of the above, Plaintiff has experienced and will experience loss
22 covered by Defendant's Policy.

1 68. Plaintiff's suspension of its business in response to the proclamations and orders
2 caused Plaintiff to suffer a business loss.

3 69. Plaintiff complied with all requirements in the Policy.

4 70. No COVID-19 virus has been detected on Plaintiff's business premises.

5 71. Plaintiff filed a claim with Defendant for its losses covered by the Policy in
6 March 2020.

7 72. Defendant assigned a claim number to Plaintiff's claim.

8 73. Defendant verbally denied coverage for Plaintiff's claim by telephone
9 conversation with Plaintiff on or about March 27, 2020.

10 74. Defendant said it would provide Plaintiff with a written letter confirming its
11 denial of the claim within a week following its verbal denial.

12 75. Plaintiff never received from Defendant any written denial of its claim.

13 76. Defendant made no meaningful investigation of Plaintiff's claim or its loss.

14 77. Upon information and belief, Defendant has denied all claims submitted to it for
15 business income coverage that relate to governmental proclamations or orders and/or COVID-19.

16 78. Upon information and belief, Defendant has undertaken no meaningful
17 investigation regarding whether there is any presence of COVID-19 at Plaintiff's insured
18 premises.

19 79. Upon information and belief, Defendant has undertaken no meaningful
20 investigation regarding the timing, scope, or impact of governmental proclamations or closure
21 orders that affect its insured's business or business property.

1 80. Upon information and belief, Defendant has undertaken no meaningful
2 investigation regarding the community spread of COVID-19 in the vicinity of Plaintiff's
3 business.

4 81. Upon information and belief, Defendant has denied and will deny coverage to
5 Plaintiff and all other similarly situated policyholders based on Defendant's uniform policy to
6 deny business interruption claims stemming from government closure orders related to COVID-
7 19.

8 82. Defendant's across-the-board coverage denials are not consistent with its policy
9 language and with its obligations to investigate losses arising under its policies. Courts have
10 found coverage or reasonable grounds for coverage during the COVID-19 pandemic in one or
11 more ways, including based on (1) the actual or potential presence of virus in the air in the
12 vicinity of the policyholder's business; (2) the necessity of modifying physical behaviors through
13 the use of social distancing, avoiding confined indoor spaces, and/or not congregating in the
14 same physical area as others; (3) governmental orders requiring that physical spaces such as the
15 policyholder's business be shut down or that other property not be used for its insured business
16 purposes; and/or (4) the need to mitigate the threat or actual physical presence of virus on door-
17 handles, tables, silverware, surfaces, equipment, in heating and air conditioning systems and any
18 other places where virus may be found.
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22 **V. CLASS ACTION ALLEGATIONS**

23 83. This matter is brought by Plaintiff on behalf of itself and those similarly situated,
24 under Federal Rules of Civil Procedure 23(b)(1), 23(b)(2), and 23(b)(3).

25 84. The Classes and Subclasses that Plaintiff seeks to represent are defined as:
26

1 A. ***Business Income Breach of Contract Class:*** All persons and entities in
2 the United States issued an Evanston policy with Business Income Coverage who
3 suffered a suspension of their business at the covered premises related to COVID-19
4 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities
5 and whose Business Income claim has been denied by Evanston.
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7 B. ***Business Income Breach of Contract Washington Subclass:*** All persons
8 and entities in the state of Washington issued an Evanston policy with Business Income
9 Coverage who suffered a suspension of their business at the covered premises related to
10 COVID-19 and/or proclamations or orders issued by Governor Inslee, and/or other civil
11 authorities and whose Business Income claim has been denied by Evanston.
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13 C. ***Business Income Declaratory Relief Class:*** All persons and entities in the
14 United States issued an Evanston policy with Business Income Coverage who suffered a
15 suspension of their business at the covered premises related to COVID-19 and/or orders
16 issued by Governor Inslee, other Governors, and/or other civil authorities.
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18 D. ***Business Income Declaratory Relief Washington Subclass:*** All persons
19 and entities in the state of Washington issued an Evanston policy with Business Income
20 Coverage who suffered a suspension of their business at the covered premises related to
21 COVID-19 and/or proclamations or orders issued by Governor Inslee, and/or other civil
22 authorities.
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24 E. ***Extra Expense Breach of Contract Class:*** All persons and entities in the
25 United States issued one of Defendant's policies with Extra Expense coverage who
26 incurred expenses while seeking to minimize the suspension of business at the covered
premises in connection with COVID-19 and/or proclamations or orders issued by

1 Governor Inslee, other Governors, and/or other civil authorities whose Extra Expense
2 claim has been denied by Defendant.

3 F. ***Extra Expense Breach of Contract Washington Subclass:*** All persons
4 and entities in the state of Washington issued one of Defendant's policies with Extra
5 Expense Coverage who incurred expenses while seeking to minimize the suspension of
6 business at the covered premises in connection with COVID-19 and/or proclamations or
7 orders issued by Governor Inslee, and/or other civil authorities and whose Extra Expense
8 claim has been denied by Defendant.
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10 G. ***Extra Expense Declaratory Relief Class:*** All persons and entities in the
11 United States issued one of Defendant's policies with Extra Expense Coverage who
12 incurred expenses while seeking to minimize the suspension of business at the covered
13 premises in connection with COVID-19 and/or proclamations or orders issued by
14 Governor Inslee, other Governors, and/or other civil authorities.
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16 H. ***Extra Expense Declaratory Relief Washington Subclass:*** All persons and
17 entities in the state of Washington issued one of Defendant's policies with Extra Expense
18 Coverage who incurred expenses while seeking to minimize the suspension of business at
19 the covered premises in connection with COVID-19 and/or proclamations or orders
20 issued by Governor Inslee, and/or other civil authorities.
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22 I. ***Extended Business Income Breach of Contract Class:*** All persons and
23 entities in the United States issued an Evanston policy with Extended Business Income
24 Coverage who suffered a suspension of their business at the covered premises related to
25 COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil
26 authorities and whose Extended Business Income claim has been denied by Evanston.

1 **J. *Extended Business Income Breach of Contract Washington Subclass:***

2 All persons and entities in the state of Washington issued one of Defendant's policies
 3 with Extended Business Income Coverage who suffered a suspension of their business at
 4 the covered premises related to COVID-19 and/or proclamations or orders issued by
 5 Governor Inslee, and/or other civil authorities and whose Extended Business Income
 6 claim has been denied by Defendant.
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8 **K. *Extended Business Income Declaratory Relief Class:*** All persons and

9 entities in the United States issued an Evanston policy with Extended Business Income
 10 Coverage who suffered a suspension of their business at the covered premises related to
 11 COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil
 12 authorities.
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14 **L. *Extended Business Income Declaratory Relief Washington Subclass:*** All

15 persons and entities in the state of Washington issued one of Defendant's with Extended
 16 Business Income Coverage who suffered a suspension of their business at the covered
 17 premises related to COVID-19 and/or proclamations or orders issued by Governor Inslee,
 18 and/or other civil authorities.
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20 **M. *Civil Authority Breach of Contract Class:*** All persons and entities in the

21 United States issued an Evanston policy with Civil Authority Coverage who suffered a
 22 suspension of their business and/or extra expense at the covered premises related to
 23 COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil
 24 authorities and whose Civil Authority claim has been denied by Evanston.
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26 **N. *Civil Authority Breach of Contract Washington Subclass:*** All persons

and entities in the state of Washington issued one of Defendant's policies with Civil

1 Authority Coverage who suffered a suspension of their business at the covered premises
 2 related to the impact of COVID-19 and/or proclamations or orders issued by Governor
 3 Inslee, and/or other civil authorities and whose Civil Authority claim has been denied by
 4 Defendant.

5 **O. Civil Authority Declaratory Relief Class:** All persons and entities in the
 6 United States issued an Evanston policy with Civil Authority Coverage who suffered a
 7 suspension of their business at the covered premises related to COVID-19 and/or orders
 8 issued by Governor Inslee, other Governors, and/or other civil authorities.
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10 **P. Civil Authority Declaratory Relief Washington Subclass:** All persons and
 11 entities in the state of Washington issued one of Defendant's policies with Civil
 12 Authority Coverage who suffered a suspension of their business at the covered premises
 13 related to COVID-19 and/or proclamations or orders issued by Governor Inslee, and/or
 14 other civil authorities.
 15

16 85. Excluded from the Classes are Defendant's officers, directors, and employees; the
 17 judicial officers and associated court staff assigned to this case; and the immediate family
 18 members of such officers and staff. Plaintiff reserves the right to amend the Class definitions
 19 based on information obtained in discovery.
 20

21 86. This action may properly be maintained on behalf of each proposed Class under
 22 the criteria of Federal Rule of Civil Procedure 23.

23 87. **Numerosity:** The members of the Class are so numerous that joinder of all
 24 members would be impractical. Plaintiff is informed and believes that each proposed Class has
 25 hundreds of members. The precise number of Class Members can be ascertained through
 26 discovery, which will include Defendant's records of policyholders.

1 88. **Commonality and Predominance:** Common questions of law and fact
2 predominate over any questions affecting only individual members of the Class. Common
3 questions include, but are not limited to, the following:

4 A. Whether the Class and Subclass Members suffered cognizable losses
5 under the Defendant's policies;

6 B. Whether Evanston acted in a manner common to the Class and Subclass in
7 denying claims for coverage relating to COVID-19 and/or orders issued by Governor
8 Inslee, other Governors, and/or other civil authorities;

9 C. Whether Business Income Coverage in Evanston's policies of insurance
10 applies to a suspension of business relating to COVID-19 and/or orders issued by
11 Governor Inslee, other Governors, and/or other civil authorities;

12 D. Whether Extended Business Income Coverage in Evanston's policies of
13 insurance applies to a suspension of business relating to COVID-19 and/or orders issued
14 by Governor Inslee, other Governors, and/or other civil authorities;

15 E. Whether Extra Expense Coverage in Evanston's policies of insurance
16 applies to efforts to minimize a loss at the covered premises relating to COVID-19 and/or
17 orders issued by Governor Inslee, other Governors, and/or other civil authorities;

18 F. Whether Civil Authority Coverage in Evanston's policies of insurance
19 applies to a suspension of business relating to COVID-19 and/or orders issued by
20 Governor Inslee, other Governors, and/or civil authorities;

21 G. Whether Defendant carried out a blanket denial of all claims based on
22 business interruption, income loss or closures related to COVID-19 and/or orders issued
23 by Governor Inslee, other Governors, and/or other civil authorities;

1 H. Whether Evanston has breached its contracts of insurance through a
 2 blanket denial of all claims based on business interruption, income loss or closures
 3 related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or
 4 other civil authorities; and

5 I. Whether, because of Defendant's conduct, Plaintiff and the Class
 6 Members are entitled to equitable and declaratory relief, and if so, the nature of such
 7 relief.
 8

9 89. **Typicality:** Plaintiff's claims are typical of the claims of the members of the
 10 classes. Plaintiff and all the members of the classes have been injured by the same wrongful
 11 policies and practices of Defendant. Plaintiff's claims arise from the same policies, practices, and
 12 course of conduct that give rise to the claims of the members of the Class and are based on the
 13 same legal theories.
 14

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

19 91. **Federal Rule of Civil Procedure 23(b)(1), the Risk of Inconsistent or Varying**
 20 **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

92. **Federal Rule of Civil Procedure 23(b)(2), Declaratory and Injunctive Relief:** Defendant acted or refused to act on grounds generally applicable to Plaintiff and other members of the proposed class making injunctive relief and declaratory relief appropriate on a classwide basis.

93. **Federal Rule of Civil Procedure 23(b)(3), Superiority:** A class action is superior to all other available methods of the fair and efficient adjudication of this lawsuit. While the aggregate damages sustained by the classes are likely to be in the millions of dollars, the individual damages incurred by each Class Member may be too small to warrant the expense of individual suits. Individual litigation creates a risk of inconsistent and/or contradictory decisions and the court system would be unduly burdened by individual litigation of such cases. A class action would result in a unified adjudication, with the benefits of economies of scale and supervision by a single court.

VI. CAUSES OF ACTION

Count One—Declaratory Judgment

(Brought on behalf of the Business Income Declaratory Relief Class, Business Income Declaratory Relief Washington Subclass, Extra Expense Declaratory Relief Class, Extra Expense Declaratory Relief Washington Subclass, Extended Business Income Declaratory Relief Class, Extended Business Income Declaratory Relief Washington Subclass, Civil Authority Declaratory Relief Class, and Civil Authority Declaratory Relief Washington Subclass)

94. Previous paragraphs alleged are incorporated herein.

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

96. Plaintiff brings this cause of action on behalf of the Business Income Declaratory Relief Class, Business Income Declaratory Relief Washington Subclass, Extra Expense

Declaratory Relief Class, Extra Expense Declaratory Relief Washington Subclass, Extended

1 Business Income Declaratory Relief Class, Extended Business Income Declaratory Relief
2 Washington Subclass, Civil Authority Declaratory Relief Class, and Civil Authority Declaratory
3 Relief Washington Subclass.

4 97. Plaintiff seeks a declaratory judgment declaring that Plaintiff and Class Members'
5 losses and expenses resulting from the interruption of their business are covered by the Policy.
6

7 98. Plaintiff seeks a declaratory judgment declaring that Evanston is responsible for
8 timely and fully paying all such claims.

9 **Count Two—Breach of Contract**

10 *(Brought on behalf of the Business Income Breach of Contract Class, Business*
11 *Income Breach of Contract Washington Subclass, Extra Expense Breach of Contract*
12 *Class, Extra Expense Breach of Contract Washington Subclass, Extended Business*
13 *Income Breach of Contract Class, Extended Business Income Breach of Contract*
14 *Washington Subclass, Civil Authority Breach of Contract Class, and Civil Authority*
15 *Breach of Contract Washington Subclass)*

16 99. Previous paragraphs alleged are incorporated herein.

17 100. Plaintiff brings this cause of action on behalf of the Business Income Breach of
18 Contract Class, Business Income Breach of Contract Washington Subclass, Extra Expense
19 Breach of Contract Class, Extra Expense Breach of Contract Washington Subclass, Extended
20 Business Income Breach of Contract Class, Extended Business Income Breach of Contract
21 Washington Subclass, Civil Authority Breach of Contract Class, and Civil Authority Breach of
22 Contract Washington Subclass.

23 101. The Policy is a contract under which Plaintiff and the class paid premiums to
24 Evanston in exchange for Evanston's promise to pay Plaintiff and the class for all claims covered
25 by the Policy.

26 102. Plaintiff has paid its insurance premiums.

1 103. Plaintiff contacted Defendant in or about March 2020 to ask whether Evanston
2 would provide coverage for its losses.

3 104. Defendant denied Plaintiff's claim for coverage.

4 105. On information and belief, Evanston has denied, and will continue to deny
5 coverage for other similarly situated policyholders.
6

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

8 107. Plaintiff is harmed by the breach of the insurance contract by Evanston.

9 **VII. REQUEST FOR RELIEF**

10 1. Class action status under Federal Rule of Civil Procedure 23.

11 2. A declaratory judgment that the policy or policies cover Plaintiff's losses and
12 expenses resulting from the interruption of the Plaintiff's business related to COVID-19 and/or
13 orders issued by Governor Inslee, other Governors, and/or other authorities.
14

15 3. A declaratory judgment that the Defendant is responsible for timely and fully
16 paying all such losses.

17 4. Damages.

18 5. Pre- and post-judgment interest at the highest allowable rate.

19 6. Reasonable attorney fees and costs.

20 7. Such further and other relief as the Court shall deem appropriate.
21

22 **VIII. JURY DEMAND**

23 Plaintiff demands a jury trial on all claims so triable.

24 DATED this 2nd day of March, 2021.

25 KELLER ROHRBACK L.L.P.
26

By: s/ Amy Williams-Derry

1 By: s/ Lynn L. Sarko

2 By: s/ Ian S. Birk

3 By: s/ Gretchen Freeman Cappio

4 By: s/ Irene M. Hecht

5 By: s/ Nathan L. Nanfelt

6 By: s/ Gabriel E. Verdugo

Amy Williams-Derry, WSBA #28711

Lynn L. Sarko, WSBA #16569

Ian S. Birk, WSBA #31431

Gretchen Freeman Cappio, WSBA #29576

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Email: gcappio@kellerrohrback.com

Email: ihecht@kellerrohrback.com

Email: nnanfelt@kellerrohrback.com

Email: gverdugo@kellerrohrback.com

15 By: s/ Alison Chase

Alison Chase, *pro hac vice* forthcoming

801 Garden Street, Suite 301

Santa Barbara, CA 93101

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Fax: (805) 456-1497

Email: achase@kellerrohrback.com

***Attorneys for Plaintiff and the Proposed
Classes***

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

GLACIAL CRYOTHERAPY LLC, individually and on behalf of all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Keller Rohrback L.L.P., 1201 Third Avenue, Suite 3200
Seattle, WA 98101 // Phone: 206-623-1900

DEFENDANTS

EVANSTON INSURANCE COMPANY

County of Residence of First Listed Defendant Cook
(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 ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 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 type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" 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	PERSONAL INJURY <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	<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 PERSONAL PROPERTY <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"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <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 IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <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)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<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
REAL PROPERTY <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	CIVIL RIGHTS <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	PRISONER PETITIONS Habeas Corpus: <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 Other: <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			

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. § 1332

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 Barbara J. Rothstein

DOCKET NUMBER 2:20-cv-00597-BJR

DATE 3/2/2021 SIGNATURE OF ATTORNEY OF RECORD

s/ Amy Williams-Derry

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT

for the

Western District of Washington



GLACIAL CRYOTHERAPY LLC, individually and on
behalf of all others similarly situated,

Plaintiff(s)

v.

EVANSTON INSURANCE COMPANY

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Evanston Insurance Company
10275 W. Higgins Road, Suite 750
Rosemont, IL 60018

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Amy Williams-Derry, Lynn L. Sarko, Ian S. Birk, Gretchen Freeman Cappio, Irene M. Hecht, Gabriel E. Verdugo, Nathan Nanfelt
KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: