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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

THE RINGSIDE, INC., an Oregon corporation,

Plaintiff,

v.

THE CINCINNATI CASUALTY COMPANY, an Ohio corporation,

Defendant.

Case No.

COMPLAINT
(Breach of Contract; Breach of Covenant of Duty of Good Faith and Fair Dealing; Declaratory Judgment)

CLAIM NOT SUBJECT TO MANDATORY ARBITRATION

Amount Claimed: \$236,500
Statutory Fee Authority: ORS 21.160(1)(c)
Filing Fee: \$594

Plaintiff The Ringside, Inc. alleges as follows:

PARTIES

1.

The Ringside, Inc. (“Ringside”) is an Oregon corporation that operates The Ringside Steakhouse restaurant in Portland, Oregon and has its principal place of business in Portland, Oregon.

2.

The Cincinnati Insurance Company (“Cincinnati”) is an Ohio corporation with its principal place of business in Fairfield, Ohio. Cincinnati conducts business including but not limited to selling insurance policies in Multnomah County.

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1 **JURISDICTION AND VENUE**

2 3.

3 This Court has subject matter jurisdiction because the policy of insurance at issue
4 insures property in this county and was issued in this county.

5 4.

6 Venue is proper in this Court because the insurance policy at issue insures
7 property in and was issued in this county.

8 **FACTUAL BACKGROUND**

9 **Ringside and the Cincinnati Policy**

10 5.

11 Ringside Steakhouse is a nationally-acclaimed restaurant that has operated in
12 Portland, Oregon under family ownership since 1944.

13 6.

14 From its principal place of business in Portland, Oregon, Ringside purchased a
15 commercial property insurance policy from Defendant Cincinnati, numbered EPP 047 10 67, and
16 with a policy period of January 10, 2018 through January 10, 2021 (the "Policy").

17 7.

18 The Policy provides coverage for "direct 'loss' to Covered Property at the
19 'premises' caused by or resulting from any Covered Cause of Loss."

20 8.

21 "Loss" is defined in the Policy as "accidental physical loss or accidental physical
22 damage."

23 9.

24 The Policy states that "Covered Cause of Loss means direct 'loss' unless the
25 'loss' is excluded or limited in this Coverage Part."

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10.

Because the only causes of loss that are not covered by the Policy are those that are specifically excluded by the Policy, the Policy provides what is commonly known as “all-risk” coverage.

11.

The Policy contains two “forms” that provide business income and extra expense coverage: 1) the “Building and Personal Property Coverage (Including Special Causes of Loss)” Form, numbered FM 101 05 16; and 2) the “Business Income (and Extra Expense)” Form, numbered FA 213 05 16. Each of these forms provide that Cincinnati “will pay for the actual loss of ‘Business Income’ . . . due to the necessary ‘suspension’ of [the insured’s] ‘operations’ during the ‘period of restoration.’”

12.

The Policy also provides coverage for “Extra Expense,” which is defined in the Policy as “necessary expenses” sustained by the insured “during the ‘period of restoration’ that [the insured] would not have sustained if there had been no direct ‘loss’ to property caused by or resulting from a Covered Cause of Loss.”

13.

“Suspension” is defined in the Policy as the “slowdown or cessation of [the insured’s] business activities; and [t]hat a part or all of the ‘premises’ is rendered untenable.”

14.

“Period of restoration” is defined in the Policy as the period that “[b]egins at the time of direct ‘loss’ and [e]nds on the earlier of” the date when the insured’s property “should be repaired, rebuilt, or replaced with reasonable speed and similar quality” or when the insured resumes operations at a new permanent location.

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15.

The Policy contains an “Additional Coverage” for “Civil Authority,” which provides coverage on the following essential terms: “When a Covered Cause of Loss causes damage to property other than Covered Property at a ‘premises,’ [Cincinnati] will pay for the actual loss of Business Income and necessary Extra Expense” that the insured sustains “caused by action of civil authority that prohibits access to the ‘premises.’”

16.

The Policy also provides other coverages and terms that may be relevant to the loss sustained by Ringside as described herein, including but not limited to coverage for business income loss resulting from prevention of “Ingress” and “Egress” and coverage for losses incurred to protect covered property from further damage.

17.

The Policy expressly provides that “two or more coverages in this policy [may] apply to the same ‘loss.’”

18.

Ringside intended to rely on the insurance coverage provided by the Policy to keep the business alive in the event of a natural disaster, or other event not excluded by the Policy causing business income and other loss.

The Pandemic

19.

In or around December of 2019, a novel coronavirus began to spread in China. China provided the genetic sequence for what has become known as the 2019 Novel Coronavirus (also known as SARS-CoV-2) on or about January 12, 2020. The World Health Organization (“WHO”) later named the disease that may result from infection by SARS-CoV-2, “COVID-19.”

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1 20.

2 In January 2020, health officials reported that a Washington State resident tested
3 positive for SARS-CoV-2 infection, and that he was the first known U.S. resident infected by the
4 virus. Officials announced that the first death in the United States from COVID-19 (they
5 believed at the time) occurred in King County, Washington on February 28, 2020.

6 21.

7 The WHO recognized on January 25, 2020, that the 2019 Novel Coronavirus is a
8 “global threat to human health . . .” On January 30, 2020, the WHO Director declared the 2019
9 Novel Coronavirus outbreak “a Public Health Emergency of International Concern.”

10 22.

11 On March 11, 2020, the Director of the WHO determined that the rapidly
12 spreading SARS-CoV-2 virus and COVID-19 disease constituted a worldwide pandemic. WHO
13 saw “alarming levels of spread and severity” of SARS-Cov-2 and COVID-19. WHO
14 representatives stated: “Pandemic is not a word to use lightly or carelessly . . . We have never
15 before seen a pandemic sparked by a coronavirus. This is the first pandemic caused by a
16 coronavirus. And we have never before seen a pandemic that can be controlled, at the same
17 time.”

18 23.

19 The United States Center for Disease Control (“CDC”) has stated, among other
20 things, that a “pandemic is a global outbreak of disease. Pandemics happen when a new virus
21 emerges to infect people and can spread between people sustainably. Because there is little to no
22 pre-existing immunity against the new virus, it spreads worldwide.”

23 24.

24 The WHO has explained that SARS-CoV-2 primarily spreads through respiratory
25 droplets expelled when an infected person talks, sneezes, and coughs, and by “fomites,” objects

26 ///

1 and surfaces contaminated by the respiratory droplets. Emerging research suggests also that
2 SARS-CoV-2 spreads by becoming aerosolized, or through airborne transmission.

3 25.

4 Emerging research on the virus and reports indicate that SARS-CoV-2 physically
5 infects and can stay alive on surfaces for at least 17 days, a characteristic that renders property
6 exposed to the contagion potentially unsafe and dangerous. Other research indicates that the
7 virus may linger on surfaces for up to four weeks in lower temperatures.

8 26.

9 SARS-CoV-2 reportedly has an incubation period of 2–12 days, during which
10 time it can be spread by an infected person even before symptoms develop in the infected person.
11 During periods of time relevant to this complaint testing for the SARS-CoV-2 virus, either of
12 persons or surfaces, was not widely available.

13 27.

14 On March 24, 2020, the World Health Organization indicated that the United
15 States had the potential to become the center of the SARS-CoV-2 pandemic.

16 28.

17 As of April 11, 2020, all 50 states as well as the U.S. Virgin Islands, the Northern
18 Mariana Islands, Washington, D.C., Guam and Puerto Rico had received a federal disaster
19 declaration as a result of the pandemic. As of April 11, 2020, American Samoa was the only
20 U.S. territory that was not under a major disaster declaration.

21 29.

22 No later than March 13, 2020, at least one person physically present in downtown
23 Portland, Oregon, where Ringside is located, was reported to have tested positive for infection by
24 SARS-CoV-2.

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1 **Governmental Orders**

2 30.

3 On March 8, 2020, Oregon Governor Kate Brown issued Executive Order 20-03,
4 declaring a state of emergency as a result of the presence and transmission of SARS-CoV-2,
5 pursuant to ORS 401.165 *et seq.*

6 31.

7 On March 17, 2020, Governor Brown issued Executive Order 20-07 (“Order 20-
8 07”), which among other things, prohibited restaurants from offering dine-in or “on-premises”
9 service and consumption of food or beverages. Order 20-07 was immediately effective.

10 32.

11 Also on March 17, 2020, Governor Brown issued Executive Order 20-08, which
12 stated in part:

13 COVID-19 may cause respiratory disease leading to serious illness
14 or death. The World Health Organization considers COVID-19 to
15 be a global pandemic. *COVID-19 spreads person-to-person through*
16 *coughing, sneezing, close personal contact, including touching a*
surface with the virus on it and then touching your mouth, nose, or
eyes.

17 State and local public health officials advise that the virus is
18 circulating in the community and expect the number of cases to
19 increase. The United States Centers for Disease Control and
20 Prevention (CDC) reports that COVID-19 is most contagious when
21 the individual is most symptomatic, but may also spread before
22 symptoms appear. CDC recommends measures to limit spread of the
23 disease in the community, including limitations on events and
24 gatherings.

25 (Emphasis added.)

26 33.

On April 7, 2020, Governor Brown issued Executive Order 20-14, which
extended Order 20-07.

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1 34.

2 Subsequently Governor Brown implemented a phased reopening process that
3 impacted all businesses, including Ringside, which made reopening dependent on State approval
4 of county-specific reopening plans. In June, 2020, the State approved a plan that included
5 allowing restaurants in Multnomah County to offer limited on-premises consumption of food and
6 beverages beginning on June 19, 2020.

7 **Ringside's Response to the Pandemic**

8 35.

9 On or about March 17, 2020, Ringside closed its restaurant to customers and
10 suspended its operations due to the pandemic, the presumptive, likely and actual presence of the
11 SARS-CoV-2 virus, and Order 20-07 and other governmental directives.

12 36.

13 Since that time, Ringside has attempted to mitigate its losses by selling or
14 attempting to sell certain products or services, constituting a significant slowdown if not
15 complete cessation of its operations.

16 37.

17 Ringside was forced to lay off or furlough employees, cancel orders from
18 suppliers, incur expenses to mitigate loss, and take other actions with a significant impact on its
19 business, its business partners and its community, as a result of the suspension of its operations
20 and Defendant's failure to pay losses covered under the Policy.

21 38.

22 Ringside's suspension of its operations is ongoing.

23 **Ringside's Losses**

24 39.

25 As a result of the pandemic, including but not limited to loss of customers and
26 loss of employees, and or in the alternative as a result of the presumptive, likely and actual

1 presence of the virus in the community, including employees and customers, and on and about
2 the premises, property at Ringside’s premises was rendered physically unfit or unsafe for
3 ordinary or intended use, rendered substantially unusable, and/or lost physical utility, and
4 therefore it was necessary for Ringside to suspended operations.

5 40.

6 Ringside’s necessary suspension of its operations for the reasons described above,
7 beginning on March 17, 2020, and continuing to date, was caused by direct accidental physical
8 loss to property at its covered premises.

9 41.

10 Ringside has incurred actual loss of business income due to the suspension of its
11 operations as described above, in an amount to be proven at trial but not less than \$221,500.

12 42.

13 Ringside has also incurred necessary expenses following the suspension of its
14 operations described above that it would not have incurred if there had been no accidental direct
15 physical loss to its property as described above. Ringside incurred these extra expenses in order
16 to reduce its business income loss including minimizing the suspension of its business, and to
17 prevent further damage to the property, in an amount to be proven at trial but not less than
18 \$15,000.

19 43.

20 And or in the alternative, the governmental orders described above and other
21 similar orders constitute multiple instances of “action of civil authority” within the meaning of
22 the Policy on the basis that a “Covered Cause of Loss”—the pandemic and/or virus —caused
23 “damage” to property other than the insured’s property; that the orders “prohibited access” to the
24 insured’s premises; that the orders “prohibited access” to the “area immediately surrounding” the
25 “damaged property” “as a result of the damage” by limiting gatherings and other public and

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1 private activities; and that the orders were issued “in response to dangerous physical conditions”
2 resulting from the “damage:” the pandemic and/or presence of the virus.

3 44.

4 And or in the alternative the pandemic, and or in the alternative the presence of
5 the virus in the community, employees and customers other than on the premises, prevented
6 existing ingress and egress to the insured’s property due to direct loss to property contiguous to
7 the insured’s property.

8 45.

9 On or about March 31, 2020, Ringside informed Cincinnati of its claim for Policy
10 benefits as a result of the actions and loss described above.

11 46.

12 On or about May 4, 2020, Cincinnati denied Ringside’s claim.

13 **FIRST CLAIM FOR RELIEF**

14 **(Breach of Contract)**

15 47.

16 Ringside realleges and incorporates each preceding paragraph as if fully set forth
17 herein.

18 48.

19 Ringside paid substantial premiums to Cincinnati in consideration for Cincinnati’s
20 promise to pay Ringside’s claims for business income loss and extra expense covered by the
21 Policy. The Policy constitutes a contract between the parties.

22 49.

23 Ringside complied with all conditions precedent to coverage under the Policy,
24 except for any obligations that were waived or excused.

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1 50.

2 Cincinnati breached its express and implied duties under the Policy by, among
3 other things, denying coverage under the terms of the Policy.

4 51.

5 By breaching the terms of the Policy, Cincinnati has caused and continues to
6 cause Ringside damages in an amount to be proven at trial, but not less than \$236,500.

7 52.

8 As a result of Cincinnati's breach, Ringside has been required to retain counsel
9 and incur attorney fees and other costs, for which Cincinnati is liable pursuant to, among other
10 laws, ORS 742.061.

11 **SECOND CLAIM FOR RELIEF**

12 **(Breach of the Covenant of Good Faith and Fair Dealing)**

13 53.

14 Ringside realleges and incorporates each preceding paragraph as if fully set forth
15 herein.

16 54.

17 Every contract, including the Policy, contains an obligation of good faith and fair
18 dealing, performance, and enforcement. Cincinnati had discretion in its performance of certain
19 obligations under the Policy.

20 55.

21 Cincinnati's refusal to pay Policy benefits to Cincinnati was unreasonable and
22 without proper cause and therefore breached the covenant of good faith and fair dealing inherent
23 in the Policy.

24 56.

25 Cincinnati breached its implied duties of good faith and fair dealing in the
26 performance of its obligations under the Policy in at least the following ways: 1) failing to

1 adequately investigate Ringside's claim, including failing to adopt reasonable interpretations of
2 undefined and disputed terms in the Policy; 2) failing to provide a proper explanation for the
3 basis relied on for its denial of Ringside's claim in relation to the facts or applicable law; 3) by
4 misrepresenting facts and the terms of the Policy in an effort to improperly deny or limit its
5 coverage obligations; 4) by compelling Ringside to initiate this litigation in order to recover
6 Policy benefits; and 5) on information and belief, by failing to adopt and implement reasonable
7 standards for the prompt and correct investigation of Ringside's claim.

8 57.

9 As a direct result of Cincinnati's breach of the covenant of good faith and fair
10 dealing, Ringside has been damaged in an amount to be proven at trial.

11 58.

12 As a direct result of Cincinnati's conduct Ringside has been required to retain the
13 services of an attorney and to incur attorney fees and other costs resulting from the need to
14 contest Cincinnati's denial.

15 59.

16 As a direct result of the conduct of Cincinnati as alleged above, Ringside has been
17 damaged and injured, and is therefore entitled to recover:

18 a) reasonable attorney fees incurred by Ringside in obtaining Policy benefits in an
19 amount to be proved at trial under applicable law, including ORS 742.061;

20 b) costs and expenses associated with the need to contest Cincinnati's denial that
21 are not recoverable under ORS 742.061; and

22 c) an award of consequential damages resulting from Cincinnati's conduct, in an
23 amount to be proven at trial.

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1 **THIRD CLAIM FOR RELIEF**

2 **(Declaratory Judgment)**

3 60.

4 Ringside realleges and incorporates each preceding paragraphs as if fully set
5 forth herein.

6 61.

7 A justiciable controversy exists between Ringside and Cincinnati regarding
8 coverage under the Policy for the business income loss and extra expense suffered by Ringside.
9 The Court can resolve the controversy through entry of a Judgment declaring the rights and
10 liabilities of Ringside and Cincinnati relative to coverage under the Policy for Ringside's
11 business income loss and extra expense. Ringside requests appropriate declaratory relief to
12 establish its rights.

13 62.

14 For the reasons set forth above, Ringside is entitled to a declaration that
15 Cincinnati has breached the Policy and that Cincinnati is obligated to cover Ringside's business
16 income losses up to the Policy's limits.

17 **DEMAND FOR JURY TRIAL**

18 63.

19 Plaintiff demands a trial by jury on all claims for which a right to jury trial
20 applies.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Ringside prays for judgment as follows:

- 23 1. On its First Claim for Relief, for judgment in favor of Ringside and
24 against Cincinnati in an amount to be proven at trial, but not less than \$236,500;
- 25 2. On its Second Claim for Relief, for judgment in favor of Ringside and
26 against Cincinnati in an amount to be proven at trial;

- 1 3. On its Third Claim for Relief, for a judgment declaring that Cincinnati has
2 breached the Policy and that Cincinnati is obligated to cover Ringside's business income losses
3 up to the Policy limits;
4 4. For its reasonable attorney fees and costs incurred pursuant to applicable
5 law including ORS 742.061;
6 5. For pre-judgement interest at the highest applicable statutory rate; and
7 6. For such other and further relief as the Court deems just, equitable, and
8 proper.

9 DATED this 2nd day of September, 2020.

10 MILLER NASH GRAHAM & DUNN LLP

11
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