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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR THE COUNTY OF KING

SEATTLE GYMNASTICS ACADEMY, INC.,  
a Washington corporation,

Plaintiff,

vs.

SENTINEL INSURANCE COMPANY, LTD.,  
a Connecticut corporation,

Defendant.

Case No. 20-2-08280-5 SEA

PLAINTIFF'S FIRST AMENDED  
COMPLAINT

Seattle Gymnastics Academy, Inc. brings its amended complaint against Sentinel Insurance Company, Ltd. and alleges as follows:

**I. PARTIES**

1.1. Plaintiff Seattle Gymnastics Academy ("SGA") is a Washington corporation with its principal place of business in Seattle, Washington.

1.2. Defendant Sentinel Insurance Company ("Sentinel") is a Connecticut corporation with its principal place of business in Hartford, Connecticut. Sentinel does business in King County, Washington including selling insurance policies in King County, Washington.

1 **II. JURISDICTION AND VENUE**

2 2.1. Plaintiff’s properties are located in King County, Washington and the policy was  
3 issued in King County, Washington. The Court has original jurisdiction over the subject matter  
4 of this action under RCW 2.08.010. Venue is proper in King County, Washington, pursuant to  
5 RCW 4.12.025.

6 **III. FACTUAL BACKGROUND**

7 SGA and the Sentinel Policy

8 3.1. SGA operates four facilities in the Seattle area (the “Properties”). At each of the  
9 Properties, SGA provides recreational gymnastics instruction and competitive gymnastics  
10 coaching, and other services, to children and families.

11 3.2. From its principal place of business in the Seattle area, SGA obtained property  
12 insurance policies from Defendant Sentinel. One such policy is numbered 04-SBA-TM7447 with  
13 policy period March 18, 2019 through March 18, 2020, which was renewed for the policy period  
14 March 18, 2020, through March 18, 2021 (“the Policy”).

15 3.3. The Policy is an “all-risks” policy.

16 3.4. The Policy contains a “Specialty Property Coverage Form” that provides coverage  
17 for, among other things, “direct physical loss of or physical damage to” the Properties, caused by  
18 “risks of direct physical loss” not otherwise excluded.

19 3.5. Among other things, the Policy also provides coverage for loss of “Business  
20 Income” and “Extended Business Income” sustained due to the “necessary suspension” of SGA’s  
21 “operations” during the “period of restoration” caused by “direct physical loss of or physical  
22 damage to” the Properties, “caused by or resulting from” a “Covered Cause of Loss.”

23 3.6. The Policy also provides coverage for “Extra Expense” that SGA incurs during  
24 the “period of restoration” that it would not have incurred absent the direct physical loss to  
25 SGA’s Properties.  
26

1           3.7.    The Policy also provides coverage for business income loss sustained as a result  
2 of direct physical loss or damage to a “dependent premises” that SGA depends on to, among  
3 other things, deliver materials or services to it, accept its products or services, or to attract  
4 customers to its Properties. The Policy further provides coverage for business income loss  
5 sustained as a result of certain actions or inactions including an “order of civil authority,” and  
6 contains other coverages, exclusions, terms and conditions.

7           3.8.    The Policy also provides coverage under a “stretch” endorsement that adds  
8 additional coverage for business income loss from dependent properties and for extended  
9 business income.

10           The Pandemic

11           3.9.    A pneumonia of unknown origin was first reported to the World Health  
12 Organization (“WHO”) on December 31, 2019. China provided the genetic sequence for what  
13 has become known as the 2019 Novel Coronavirus (also known as SARS-CoV-2) on or about  
14 January 12, 2020.

15           3.10.   The WHO recognized on January 25, 2020, that the 2019 Novel Coronavirus is a  
16 “global threat to human health . . . .” On January 30, 2020, the WHO Director declared the 2019  
17 Novel Coronavirus outbreak “a Public Health Emergency of International Concern.”

18           3.11.   In January 2020, the first known case of a U.S. resident infected by the SARS-  
19 CoV-2 coronavirus was reported in the State of Washington. The first reported case occurred in  
20 Snohomish County, Washington, about 30 miles from Seattle. The first death in the United  
21 States (officials believed at the time) from COVID-19 was announced on February 28, 2020, to  
22 have occurred in King County, Washington.

23           3.12.   SARS-CoV-2 is a coronavirus that is believed to be primarily spread through  
24 respiratory droplets and by “fomites”—objects and surfaces contaminated by the respiratory  
25 droplets.  
26

1           3.13. Emerging research on the virus and reports indicate that the SARS-CoV-2 strains  
2 physically infect and can stay alive on surfaces for at least 17 days, a characteristic that renders  
3 property exposed to the contagion potentially unsafe and dangerous. Other research indicates that  
4 the virus may linger on surfaces for up to four weeks in low temperatures.

5           3.14. SARS-CoV-2 reportedly has an incubation period of 2–12 days, during which  
6 time it can be transmitted to others even before symptoms develop. At no time relevant to this  
7 complaint was testing for the SARS-CoV-2 virus, either in persons or on surfaces, widely  
8 available.

9           3.15. Beginning on January 31, 2020, President Donald Trump began issuing  
10 Presidential Proclamations and other directives suspending or restricting the entry of persons  
11 from certain countries, in an attempt to prevent the spread of the SARS-CoV-2 coronavirus.

12           3.16. The disease caused by the 2019 Novel Coronavirus, also called SARS-CoV-2,  
13 was identified as “COVID-19” on February 11, 2020.

14           3.17. On February 29, 2020, Washington State Governor Jay Inslee issued  
15 Proclamation 20-05, proclaiming, among other things, that a State of Emergency existed in all  
16 counties throughout the State of Washington, including King County, as a result of the SARS-  
17 CoV-2 outbreak in the United States and confirmed spread of SARS-CoV-2 in the State of  
18 Washington.

19           3.18. On March 1, 2020, King County, Washington Executive Dow Constantine  
20 proclaimed a state of emergency in King County, Washington due to SARS-CoV-2.

21           3.19. On March 3, 2020, City of Seattle Mayor Jenny A. Durkan issued a “Mayoral  
22 Proclamation of Civil Emergency” due to SARS-CoV-2.

23           3.20. On March 11, the WHO characterized COVID-19 as a pandemic. WHO saw  
24 “alarming levels of spread and severity” of SARS-Cov-2 and COVID-19. WHO representatives  
25 stated: “Pandemic is not a word to use lightly or carelessly . . . We have never before seen a  
26

1 pandemic sparked by a coronavirus. This is the first pandemic caused by a coronavirus. And we  
2 have never before seen a pandemic that can be controlled, at the same time.”

3 3.21. The United States Center for Disease Control (“CDC”) has stated, among other  
4 things, that a “pandemic is a global outbreak of disease. Pandemics happen when a new virus  
5 emerges to infect people and can spread between people sustainably. Because there is little to no  
6 pre-existing immunity against the new virus, it spreads worldwide.”

7 3.22. On March 11, 2020, Governor Inslee issued Proclamation 20-07, which among  
8 other things, amended Proclamations 20-05 (and Proclamation 20-06, relating to “congregate  
9 care settings”), establishing, among other things, “community mitigation strategies” due to  
10 SARS-CoV-2, including prohibiting gatherings of 250 people or more for specified activities,  
11 including “recreational activities.”

12 3.23. On March 12, 2020, the Seattle Public School District, “in an effort to  
13 aggressively slow the spread of COVID-19,” closed all Seattle Public schools until at least  
14 April 24, 2020.

15 3.24. On March 16, 2020, Governor Inslee issued Proclamation 20-13, which included  
16 a total prohibition on “any number of people from gathering in any public venue in which people  
17 congregate for purposes of public entertainment, recreation, food and beverage service, theater,  
18 bowling, fitness and other similar activities.”

19 3.25. On March 23, 2020, Governor Inslee issued Proclamation 20-25, known as the  
20 “Stay Home – Stay Healthy Order,” which, among other things, prohibited all residents of the  
21 State of Washington from leaving their homes or participating in social, spiritual and recreational  
22 gatherings of any kind regardless of the number of participants; Proclamation 20-25 also ordered  
23 that all non-essential businesses in Washington State stop conducting business due to SARS-  
24 CoV-2. On April 2, 2020, Governor Inslee issued Proclamation 20-25.1, which, among other  
25 things, extended Proclamation 20-25’s restrictions to at least May 4, 2020.  
26

1           3.26. On March 24, 2020, the World Health Organization indicated that the United  
2 States had the potential to become the center of the SARS-CoV-2 pandemic.

3           3.27. On March 28, 2020, King County, Washington and City of Seattle Local Health  
4 Officer Jeffrey S. Duchin, MD issued a “Quarantine Directive and Isolation Order” due to  
5 SARS-CoV-2.

6           3.28. On April 6, 2020, Governor Inslee and Washington State Superintendent of  
7 Public Instruction Chris Reykdal announced Proclamation 20-09.1, “Statewide K-12 School  
8 Closures,” which mandated that all schools in Washington State must remain closed until at least  
9 the start of the 2020–21 school year in September 2020.

10          3.29. Beginning in at least January 2020, and potentially earlier, the SARS-CoV-2  
11 coronavirus began spreading throughout the United States.

12          3.30. As of April 11, 2020, all 50 states as well as the U.S. Virgin Islands, the Northern  
13 Mariana Islands, Washington, D.C., Guam and Puerto Rico have received a federal disaster  
14 declaration as a result of the pandemic. As of April 11, 2020, American Samoa was the only U.S.  
15 territory that is not under a major disaster declaration.

16           SGA’s Response to the Pandemic

17          3.31. On or about March 12, 2020, in response to the facts as set forth above, SGA’s  
18 facilities were closed to its customers and its operations ceased.

19          3.32. SGA’s average monthly revenue for its current fiscal year beginning in July 2019,  
20 until March, 2020, was \$708,000. SGA’s average monthly revenue for its past two fiscal years  
21 was approximately \$660,000.

22          3.33. Since closing its facilities, SGA has lost business income. SGA has attempted to  
23 mitigate its losses, and has incurred expense related to such attempts, by among other things  
24 running “virtual” classes, but has received little to no revenue from running “virtual” classes.  
25 SGA has therefore suffered business income loss, and other losses including extra expense,  
26 within the terms of the Policy.

1           Sentinel’s Denial

2           3.34. On or about April 1, 2020, SGA provided notice of a claim to Sentinel under the  
3 Policy.

4           3.35. On April 2, 2020, a Sentinel claims representative contacted SGA in response to  
5 its claim for business income coverage. During the call, which lasted less than five minutes, the  
6 representative did not ask SGA questions related to the particular facts and circumstances of its  
7 insured’s claim. Rather, after learning only what the insured reported over the phone about the  
8 facts and circumstances of SGA’s closure, Sentinel’s representative notified SGA that its claim  
9 would be denied.

10          3.36. Within minutes of ending the call with SGA, Sentinel issued a denial letter to  
11 SGA.

12          3.37. In its denial letter, Sentinel stated that “Business Income coverage is not provided  
13 for your loss because there has been no physical loss or damage caused by or resulting from a  
14 Covered Cause of Loss to property at a scheduled premises.”

15          3.38. Sentinel cited “potentially applicable” exclusions for denying SGA’s claim under  
16 the Policy, as follows:

17           A. Sentinel claimed that the Policy excludes coverage for “pollution,” the definition  
18 of which does not include viruses, stating, “The coronavirus is understood to be  
19 an irritant or contaminant which causes or threatens to cause physical impurity,  
20 unwholesomeness and threatens human health or welfare. . . . [E]ven if coverage  
21 were otherwise available for loss caused by coronavirus, the pollution exclusion  
22 could further bar coverage for the loss.”

23           B. Sentinel stated that physical loss or physical damage caused by or resulting from  
24 “consequential losses, delay, loss of use or loss of market” is precluded under the  
25 “consequential losses” exclusion. Without explanation, Sentinel asserted, “To the  
26 extent that you are claiming physical loss or physical damage caused by loss of

1 use or loss of market, coverage would be precluded based on the exclusion  
2 above.”

3 C. Lastly, Sentinel stated that based on the “acts or decisions” exclusion, Sentinel  
4 “will not pay for damage caused by or resulting from the decision of a person,  
5 group, organization or governmental body.”

6 **IV. FIRST CLAIM FOR RELIEF: BREACH OF CONTRACT**

7 4.1. SGA realleges and incorporates by reference each and every preceding paragraph.

8 4.2. SGA, the named insured on the Policy, paid valuable premiums in consideration  
9 for the Policy.

10 4.3. SGA complied with all conditions precedent to coverage under the Policy, except  
11 any obligations that were waived or excused.

12 4.4. Sentinel breached its express and implied duties under the Policy by denying  
13 coverage to SGA for SGA’s business income losses and other covered losses as alleged above,  
14 including extra expense, all of which are covered under the terms and conditions of the Policy.

15 4.5. Sentinel’s breach of the Policy has caused SGA’s damages in an amount to be  
16 proven at trial in but not less than \$500,000.

17 **V. SECOND CLAIM FOR RELIEF: COMMON LAW BAD FAITH**

18 5.1. Plaintiff realleges and incorporates by reference each and every preceding  
19 paragraph.

20 5.2. Sentinel owes SGA a duty of good faith and fair dealing. Sentinel also has a duty  
21 not to put its own interests above SGA’s.

22 5.3. Sentinel’s unreasonable and unfounded actions and omissions, including its  
23 failure to conduct a reasonable investigation and to pay coverage owed under the Policy, and  
24 unreasonable denial of coverage under the Policy, constitute a breach of its duties to SGA and  
25 amount to the tort of bad faith under Washington law.  
26



1           5.4. Sentinel's bad faith conduct directly and proximately damaged SGA. These  
2 damages include, but are not limited to, the deprivation of benefits owed to SGA under the  
3 Policy and the costs associated with bringing this action, including expenses and attorney fees.  
4 SGA is entitled to recover these costs, which resulted from Sentinel's bad faith.

5           **VI. THIRD CLAIM FOR RELIEF: CONSUMER PROTECTION ACT**

6           6.1. SGA realleges and incorporates by reference each and every preceding paragraph.

7           6.2. Sentinel unfairly denied SGA's claim for coverage under the Policy and  
8 misrepresented SGA's coverage in Sentinel's denial letter.

9           6.3. On information and belief, Sentinel has employed similar unfair and deceptive  
10 acts by failing to reasonably investigate SGA's claims and other similar claims.

11           6.4. Sentinel's employment of unfair and deceptive practices in the insurance industry  
12 against Washington policyholders impacts the public interest.

13           6.5. These unfair and deceptive practices injured SGA by depriving it of coverage  
14 owed under the Policy and by requiring it to incur costs and attorney fees to bring this action.

15           6.6. SGA's damages were directly and proximately caused by the SGA's unfair and  
16 deceptive acts.

17           **VII. FOURTH CLAIM FOR RELIEF: DECLARATORY RELIEF**

18           7.1. Plaintiff realleges and incorporates by reference each and every preceding  
19 paragraph.

20           7.2. There is a clear and present dispute between SGA and Sentinel concerning their  
21 respective rights and obligations. Accordingly, Plaintiff seeks declaratory relief on, at a  
22 minimum, the following topics:

- 23           A. Whether Sentinel's investigation was reasonable;
- 24           B. An adjudication of whether Sentinel unreasonably denied coverage;
- 25           C. Whether Sentinel is limited to asserting those coverage defenses set forth  
26 in its April 2, 2020, denial letter;

1 D. Whether Sentinel breached the Washington Consumer Protection Act by  
2 the conduct set forth in this Complaint; and

3 E. Such other and further declaratory relief as the court may deem  
4 appropriate.

5 **VIII. FIFTH CLAIM FOR RELIEF: INSURANCE FAIR CONDUCT ACT**

6 8.1. Plaintiff realleges and incorporates by reference each and every preceding  
7 paragraph.

8 8.2. Pursuant to RCW 48.30.015(8), SGA sent notice to Sentinel of SGA's intent to  
9 assert a cause of action against Sentinel under the Insurance Fair Conduct Act ("IFCA") on April  
10 29, 2020 (the "IFCA Notice").

11 8.3. Sentinel acknowledged SGA's IFCA Notice on May 4, 2020, and affirmed its  
12 previous denial of coverage.

13 8.4. More than 20 days have passed since SGA sent the IFCA Notice Letter and  
14 Sentinel failed to resolve SGA's claim within the 20-day statutory period.

15 8.5. As such, SGA has met its statutory obligations under IFCA.

16 8.6. Sentinel is liable under IFCA for, among other things, failing to conduct a  
17 reasonable investigation into SGA's claim, compelling SGA to initiate litigation to recover  
18 amounts due to it under the Policy, by failing to reasonably connect the Policy language that it  
19 cites for denial to the facts of SGA's claim, and for unreasonably denying SGA coverage owed  
20 under the Policy.

21 8.7. SGA is entitled to recovery for its actual damages, attorney fees, litigation costs,  
22 and expert witness fees pursuant to RCW 48.30.015(3).

23 8.8. SGA should be awarded three times its actual damages pursuant to RCW  
24 48.30.015(3).

1 **IX. PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for judgment in its favor against Sentinel as follows:

- 3 1. For damages in an amount to be proven at trial but not less than \$500,000;
- 4 2. For declaratory relief;
- 5 3. For an award of attorney fees, expert costs, and other costs incurred in bringing  
6 this action;
- 7 4. For treble damages under the Consumer Protection Act up to the statutory  
8 maximum;
- 9 5. For treble damages and other relief available under the Insurance Fair Conduct  
10 Act, and
- 11 6. For such other and further relief as the Court deems just and equitable.

12 DATED this 26th day of May, 2020.

13 s/ Seth H. Row  
14 Seth H. Row, WSBA No. 32905

15 s/ Tristan N. Swanson  
16 Tristan N. Swanson, WSBA No. 41934

17 s/ Carolyn A. Mount  
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