

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

SALON XL COLOR & DESIGN
GROUP, LLC,

Plaintiff,

vs.

WEST BEND MUTUAL INSURANCE
COMPANY, a Wisconsin mutual insurance
company,

Defendant.

William J. Stapleton (P38339)
Angela L. Jackson (P53930)
Attorneys for Plaintiff
HOOPER HATHAWAY, P.C.
126 South Main Street
Ann Arbor, MI 48104
(734) 662-4426
wstapleton@hooperhathaway.com
ajackson@hooperhathaway.com

**This case is eligible to be designated
as a Business Court case in
accordance with MCR 2.112(o).**

20-000517-CB
Case No. -CB
JUDGE ARCHIE C. BROWN

**There is no other pending or
resolved civil action arising out of
the transaction or occurrence
alleged in the Complaint.**

/s/William J. Stapleton
William J. Stapleton (P38339)
Attorney for Plaintiff

COMPLAINT

NOW COMES Plaintiff Salon XL Color & Design Group, LLC, by and through its attorneys Hooper Hathaway, P.C. and for its Complaint against Defendant West Bend Mutual Insurance Company, states as follows:

INTRODUCTION

1. Plaintiff owns a hair salon in Ann Arbor and has been forced to close its business due to recent orders issued by the State of Michigan as part of the state's efforts to slow the spread of the COVID-19 global pandemic. To protect its business from situations like these based on

factors wholly outside of its control, Plaintiff purchased business interruption insurance from West Bend Mutual Insurance Company (“West Bend”). West Bend has denied Plaintiff’s claims arising from the state-ordered interruption of its business.

2. Unlike many commercial property policies available in the market, the policy which West Bend sold to Plaintiff expressly provides coverage for business losses resulting from a temporary shutdown by a government order due to a “communicable disease”. This is precisely what has occurred to Plaintiff’s business as a result of the COVID-19 pandemic and West Bend’s denial of this claim is arbitrary and unreasonable and a blatant breach of its coverage obligations under the policy.

3. As a result of West Bend’s wrongful denial of coverage, Plaintiff files this action for declaratory judgment which establishes that it is entitled to receive the benefit of the insurance coverage it purchased, for indemnification of the business losses and losses it has sustained and for 12% penalty interest pursuant to the Uniform Trade Practices Act.

PARTIES AND JURISDICTION

4. Plaintiff Salon XL Color & Design Group, LLC (“Salon XL”) is a Michigan limited liability company with its principal place of business located at 208 East Washington Street, Ann Arbor, Washtenaw County, Michigan.

5. West Bend Mutual Insurance Company (“West Bend”) is a Wisconsin corporation which is and has been at all times pertinent hereto, conducting business in Washtenaw County, Michigan.

6. The amount in controversy, exclusive of interest and costs, exceeds \$25,000.

7. Venue is proper in this court pursuant to MCL 600.1621 because West Bend conducts business in Washtenaw County.

8. There is a case of actual controversy within the jurisdiction of this court.

FACTUAL ALLEGATIONS

9. Salon XL incorporates by references the allegations contained in paragraphs 1-8 above as though fully restated herein.

The West Bend Policy.

10. In exchange for a substantial premium, West Bend sold Salon XL a commercial property insurance policy which included business interruption insurance, where West Bend promised to indemnify Salon XL for lost income and expenses if its business was shut down (the “Policy” attached as Exhibit A). The West Bend Policy provides coverage for Salon XL for loss of business income and expenses as follows:

We will pay for the actual loss of Business Income you sustain due to the necessary suspension of your “Operations” during the “Period of Restoration”. The suspension must be caused by direct physical loss of or damage to property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 1000 feet of such premises.

11. The West Bend Policy expressly provides coverage to Salon XL for business income losses and expenses due to a communicable disease as follows:

g. Communicable Disease Business Income and Extra Expense Coverage.

You may extend this insurance to apply to the actual loss of Business Income or Extra Expense that you sustain as the result of your “Operations” being temporarily shut down or suspended as ordered by a local, state or federal board of health or similar governmental board that has jurisdiction over your “Operations”. The shutdown or suspension must be due to an outbreak of a “communicable disease” or a “waterborne pathogen” at the insured premises as described in the Declarations. ...

12. The West Bend Policy defines Business Income as follows:

- i. Net Income (net profit or loss before income taxes) that would have been earned or incurred if no physical loss or damage had occurred ...
- ii. Continuing normal operating expenses incurred, including payroll.

13. The West Bend Policy states that Extra Expense coverage includes, but is not limited to, the following:

- (a) The cost of cleaning your equipment or disinfecting the insured premises in accordance with the jurisdictional board's requirements;
- (b) The cost of replacing consumable goods declared by the jurisdictional board to be contaminated;
- (c) The cost of testing the insured premises to confirm the elimination of the "communicable disease" or "waterborne pathogen";
- (d) The cost of necessary medical tests, doctor's care, hospitalization, blood work or vaccines for infected persons as required by the jurisdictional board;
- (e) The extra advertising costs to restore your business reputation;
- (f) The cost to evacuate the insured premises;
- (g) To avoid or minimize the suspension of business and to continue "Operations" at the described premises or at replacement or temporary locations, including relocation expenses and costs to equip and operate the replacement or temporary locations; and
- (h) To minimize the suspension of your "Operations" if you cannot continue your "Operations".

14. The West Bend Policy defines "communicable disease" as:

An illness, sickness, condition or an interruption or disorder of body functions, systems or organs that is transmissible by an infection or a contagion directly or indirectly through human contact or contact with human fluids, waste or similar agent, such as but not limited to meningitis, measles, or Legionnaire's Disease.

15. The West Bend Policy also includes "Civil Authority" coverage, pursuant to which West Bend promised to pay for the loss of business income and necessary extra expense sustained

by Salon XL “caused by action of civil authority that prohibits access” to Salon XL’s insured premises.

16. This Civil Authority coverage is triggered when any non-excluded cause results in “damage to property other than property” at Salon XL’s premises, and is intended to cover losses resulting from governmental actions “taken in response to dangerous physical conditions”.

17. In the West Bend Policy a Covered Cause of Loss “means direct physical loss unless the Loss is excluded or limited” by the Policy. The interruption of Salon XL’s business was not caused by any of the exclusions or limitations set forth in the Policy.

18. Salon XL has suffered a direct physical loss and/or damage to its property because it has been unable to use its property for its intended purpose.

19. As drafter of the Policy, if West Bend wanted to exclude from coverage as “physical loss or damage” loss of use of property that has not been physically altered, it should have used explicit language stating such a definition of “physical loss or damage”. The Policy contains no such language.

20. The virus or bacteria exclusion in the Policy does not apply because Salon XL’s losses were not caused by a “virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.” Rather, Salon XL’s losses were caused directly by executive orders from the Governor of the State of Michigan, for which the Policy expressly provides coverage.

Salon XL’s Losses Due to the Closure Orders.

21. On March 11, 2020, the World Health Organization declared that the emerging threat from the novel coronavirus – otherwise known as COVID-19 – constituted a global pandemic.

22. Emerging research on the virus and recent reports from the CDC indicate that the COVID-19 strains physically infect and can stay alive on surfaces for at least 17 days, a characteristic that renders property exposed to the contagion potentially unsafe and dangerous. Other research indicates that the virus may linger on surface for up to four weeks in low temperatures.

23. On March 10, 2020, the Michigan Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, Michigan Governor Gretchen Whitmer issued Executive Order 2020-4 which declared a state of emergency across the State of Michigan.

24. In response to the pandemic, and the spread of coronavirus throughout Michigan, Governor Whitmer issued Executive Order 2020-20 on March 21, 2020 requiring that all hair salons and other non-essential personal care businesses close to the public beginning on March 22, 2020.

25. In subsequent Executive Orders Governor Whitmer has extended the closure of hair salons and other non-essential personal care businesses due to the COVID-19 pandemic to June 12, 2020 and the closure may get extended beyond June 12 (“Closure Orders”).

26. As a result of the Closure Orders, Salon XL has suffered substantial business income losses and incurred extra expenses. The covered losses incurred by Salon XL and owed under the Policy are increasing every day the salon remains closed.

27. Following the closure of its business, Salon XL promptly submitted a claim to West Bend requesting coverage for its business interruption losses promised under the Policy.

28. Pursuant to a letter dated April 3, 2020, West Bend denied all of Salon XL’s claims for coverage. The denial letter is attached as Exhibit B.

COUNT I

Declaratory Judgment

29. Salon XL incorporates by reference the allegations contained in paragraphs 1-28 above as though fully restated herein.

30. The Policy is an insurance contract pursuant to which West Bend was paid premiums in exchange for its promise to pay Salon XL's losses for claims covered by the Policy, such as business losses incurred as a result of the Closure Orders forcing Salon XL to close its business.

31. Salon XL has complied with all applicable provisions of the Policy, including payment of the premium in exchange for coverage under the Policy.

32. West Bend has arbitrarily and without justification refused to reimburse Salon XL for any losses incurred in connection with the covered business losses related to the Closure Orders and the necessary interruption of its business stemming from the COVID-19 pandemic.

33. An actual case or controversy exists regarding Salon XL's rights and West Bend's obligations under the Policy to reimburse Salon XL for the full amount of losses incurred in connection with the closure orders and the necessary interruption of its business stemming from the COVID-19 pandemic.

WHEREFORE, Salon XL respectfully requests this Honorable Court enter a judgment in its favor, finding and ordering the following:

- a. Salon XL's losses incurred in connection with the Closure Orders and the necessary interruption of its business stemming from the COVID-19 pandemic are insured losses under the Policy;
- b. West Bend has waived any right it may have to assert defenses to coverage or otherwise seek to bar or limit coverage for Salon XL's losses by issuing blanket coverage denials without conducting a claim investigation as required under Michigan law;

- c. West Bend is obligated to pay Salon XL for the full amount of losses incurred and to be incurred in connection with the covered business losses related to the Closure Orders and the necessary interruption of its business stemming from the COVID-19 pandemic; and
- d. Such other relief as the Court deems just under the circumstances.

COUNT II

Breach of Contract

34. Salon XL incorporates by reference the allegations contained in paragraphs 1-33 above as though fully restated herein.

35. The Policy is an insurance contract pursuant to which West Bend was paid a premium in exchange for its promise to pay Salon XL's losses for claims covered by the Policy, such as business losses incurred as a result of the Closure Orders forcing Salon XL to close its business.

36. Salon XL has complied with all applicable provisions of the Policy, including payment of the premium in exchange for coverage under the Policy.

37. By denying coverage for any business losses incurred by Salon XL in connection with the Closure Orders and the COVID-19 pandemic, West Bend has breached its coverage obligations under the Policy.

38. As a result of West Bend's breaches of its coverage obligations, Salon XL has sustained substantial damages for which West Bend is liable including, but not limited to, loss of business income and expenses resulting from the closure of its business due to the COVID-19 pandemic.

WHEREFORE, Salon XL respectfully requests this Honorable Court enter a judgment in its favor in whatever amount it is deemed to be entitled, together with interest, costs and attorney fees, and such other relief as the Court deems just under the circumstances.

COUNT III

Uniform Trade Practices Act

39. Salon XL incorporates by reference the allegations contained in paragraphs 1-38 above as though fully restated herein.

40. The Uniform Trade Practices Act, MCL 500.2001, et seq. provides that an insurer shall be liable to pay 12% interest for failure to pay a claim within 60 days of receipt of satisfactory proof of loss. The purpose of the interest penalty under the Uniform Trade Practices Act is to penalize insurers for dilatory practices in settling meritorious claims.

41. Salon XL promptly notified West Bend of its claim following the closure of its business due to the Closure Orders and the COVID-19 pandemic.

42. Under the language of the Policy described above and Michigan insurance law, the business losses and expenses sustained by Salon XL are clearly covered losses.

43. Under the Uniform Trade Practices Act, Salon XL's claim is not reasonably in dispute.

44. Despite being promptly notified of this claim by Salon XL, West Bend denied the claim without conducting any reasonable investigation of the claim.

45. West Bend's failure to pay Salon XL's claim on a timely basis constitutes a violation of the Uniform Trade Practices Act, entitling Salon XL to 12% interest on the benefits West Bend has wrongly denied to Salon XL.

WHEREFORE, Salon XL respectfully requests this Honorable Court enter a judgment in its favor requiring West Bend to pay Salon XL 12% interest on benefits wrongfully denied to Salon XL as provided in the Uniform Trade Practices Act, and grant such other relief as the Court deems just under the circumstances.

HOOPER HATHAWAY, P.C.

Dated: June 5, 2020

BY: /s/William J. Stapleton
William J. Stapleton (P38339)
Angela L. Jackson (P53930)
Attorneys for Plaintiff
126 South Main Street
Ann Arbor, MI 48104
(734) 662-4426
wstapleton@hooperhathaway.com
ajackson@hooperhathaway.com