

DOMENIC A. COSSI, ESQ.
JORY C. RUGGIERO, ESQ.
MAXWELL E. KIRCHHOFF, ESQ.
WESTERN JUSTICE ASSOCIATES, PLLC
303 W Mendenhall, Suite 1
Bozeman, MT 59715
Tel: (406) 587-1900
Fax: (406) 587-1901
domenic@westernjusticelaw.com
jory@westernjusticelaw.com
max@westernjusticelaw.com

Attorneys for Plaintiff

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OF DISTRICT COURT
JENNIFER BRANDON

2020 SEP 14 PM 4:23

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MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT
GALLATIN COUNTY

GALLATIN VALLEY YMCA, INC.

Plaintiff,

v.

UNITED STATES FIRE INSURANCE
COMPANY, JOHN DOES 1-5,

Defendants.

Cause No. DV-20-1023A

COMPLAINT FOR DAMAGES

and

DEMAND FOR JURY TRIAL

(1) Simmons

COMES NOW, Plaintiff, Gallatin Valley YMCA, Inc. ("Gallatin
YMCA") by and through counsel and in its Complaint for Damages and
Demand for Jury Trial, states as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff asserts this claim pursuant to Montana Code Annotated § 27-8-101, *et. seq.* for a declaration of its rights and as a Breach of Contract and Insurance Bad Faith action under an insurance policy (“the policy”) issued to Gallatin YMCA by Defendant, United States Fire Insurance Company (“USFIC”).

Parties

2. Plaintiff Gallatin YMCA is a non-profit organization with its principal place of business in Gallatin County, Montana.

3. USFIC is an insurer authorized to do business in Montana and whose principal office is in Morristown, New Jersey.

4. USFIC is a proper party because it has contracted to insure a Montana company and has unreasonably denied claims by Plaintiff under the policy.

5. John Does 1-5 are other people or entities, unknown to Plaintiff at this time, that may be liable to Gallatin YMCA for the damages sought in this Complaint for Damages and Demand for Jury Trial.

Jurisdiction and Venue

6. Plaintiff incorporates the foregoing allegations as fully restated herein.

7. This Court has jurisdiction over this case pursuant to Montana Code Annotated §§ 27-8-201, 33-18-201 and 33-18-242.

8. Venue is appropriate in this judicial district pursuant to Montana Code Annotated §§ 25-2-121 and 25-2-122.

ALLEGATIONS COMMON TO ALL COUNTS

9. Plaintiff incorporates the foregoing allegations as fully restated herein.

10. Gallatin YMCA purchased USFIC Commercial Property Insurance, policy number 5068979424 from its agent First West Insurance. The policy has been in effect at all times relevant to the Complaint.

11. Plaintiff seeks coverage for lost income during a mandated closure due to the SARS-CoV-2 ("COVID-19") outbreak.

12. The Policy Plaintiff purchased contains specific additional limits by endorsement, including Civil Authority and Food Contamination and Communicable Disease endorsements.

13. The Policy specifically states the following: (1) If one or more of the described premises in the above Schedule is ordered closed by the

Board of Health or any other governmental authority as a result of the discovery or suspicion of “communicable disease”, we will pay:

(a) The loss of Business Income you sustain due to the necessary “suspension” of your “operations” as a result of the “communicable disease”. The coverage for Business Income will begin 24 hours after you receive notice of closing from the Board of Health or any other governmental authority;

14. Gallatin YMCA premises are described in the Schedule as Loc. No. 001 Bldg. 001, 3673 Love Lane, Bozeman, MT 59718.

15. The communicable disease coverage endorsement of the Policy also specifically states that: “For the purposes of this Additional Coverage, any exclusion of virus or bacteria in this policy does not apply.”

16. The Policy defines “Communicable disease” as any disease that is transmissible by infection or contagion through contact with humans or animals, or through bodily fluids, contaminated objects, airborne inhalation or a similar agent.

17. Due to the COVID-19 outbreak, on March 18, 2020, the Gallatin County Health Department issued an Emergency Health Rule mandating closure of all gyms, fitness facilities, and athletic centers, located within the Gallatin City-County.

18. Due to the COVID-19 outbreak, on March 20, 2020, Governor Bullock issued an emergency order mandating closure of all health club and indoor recreational facilities in the State of Montana.

19. On or around March 20, 2020, First West Insurance Agent Mark Collins submitted a Notice of Loss to USFIC on behalf of Gallatin YMCA for a business income claim. Government orders mandating closure due to COVID-19 were attached to the claim.

20. Mark Collins informed the Gallatin YMCA there would be coverage for the loss.

21. On or around March 31, 2020, Gallatin YMCA CEO, Andrea Stevenson, advised USFIC that Gallatin YMCA was ordered to close under the Emergency Health Rule issued by Gallatin City-County Health Department.

22. On April 15, 2020, through its claims adjuster and/or sister corporation, Redwoods Group, USFIC issued a denial to Gallatin YMCA.

23. The denial letter impermissibly read language into the Policy that the closure must be due to communicable disease “at the Premises” when no such language exists in the Policy.

24. Defendant wrongfully denied the claim under the Civil Authority and other provisions of the Policy as well.

25. In reality, as indicated by the Gallatin YMCA's insurance agent's promise of coverage for this loss, the Policy either clearly provides benefits or is ambiguous and must be construed against the insurer.

26. Further, the Gallatin YMCA's reasonably expected that the Policy would provide coverage in this situation.

27. USFIC continues to wrongfully deny coverage to Gallatin YMCA.

28. USFIC unreasonably denied the claim with the knowledge that the denial would harm Gallatin YMCA.

29. The Gallatin YMCA has suffered damage as a result of USFIC's denial, including, but not limited to contract damages, loss of use of money, lost business opportunity, attorney fees and interest.

COUNT I (DECLARATORY JUDGMENT)

30. Plaintiff incorporates the foregoing allegations as if fully restated herein.

31. Plaintiff is entitled to a declaratory judgment that the Policy issued by USFIC is ambiguous, lacks notice of provisions potentially defeating coverage and violates the reasonable expectations of Plaintiff.

32. Plaintiff requests a declaration that claims made by Plaintiff related to the mandated closure are covered under the Policy as well as an award of necessary and supplemental relief.

COUNT II (BREACH OF CONTRACT)

33. Plaintiff incorporates the foregoing allegations as if fully restated herein.

34. USFIC breached its contract when it failed to indemnify Plaintiff.

35. USFIC breach of contract caused damages to Plaintiff.

COUNT III (BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING)

36. Plaintiff incorporates the foregoing allegations as if fully restated herein.

37. USFIC had a duty of good faith and fair dealing toward Gallatin YMCA.

38. USFIC breached its duty of good faith and fair dealing by wrongfully refusing to pay for the Gallatin YMCA's loss after receiving notice of the insurance claim.

39. USFIC's breach of its duty of good faith and fair dealing toward the Gallatin YMCA caused Plaintiff damage including, but not

limited to loss of use of Policy benefits, inconvenience, attorney fees, and litigation costs.

COUNT IV (BAD FAITH)

40. Plaintiff incorporates the foregoing allegations as if fully restated herein.

41. USFIC unreasonably violated Montana Code Annotated §§ 33-18-201 and 242 when it failed to indemnify Plaintiff.

42. USFIC's failure constitutes an unreasonable violation of Montana Code Annotated § 33-18-201 (1),(4),(6) and (13).

43. USFIC's bad faith caused damages to Plaintiff including, but not limited to, loss of use of money, lost business opportunity, attorney fees and lost interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

1. Declaratory judgment that the Gallatin YMCA is entitled coverage under the Policy for the claim at issue;
2. Supplemental relief allowed under Montana's Declaratory Judgments Act;

3. Supplemental relief allowed under Montana's Declaratory Judgments Act;
4. Judgment for compensatory damages against USFIC in an amount to be proven at trial, together with interests and costs;
5. Interest as permitted by law;
6. Attorney fees and costs;
7. Punitive damages against USFIC; and
8. Any other relief allowable by law that this Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all issues so triable.

DATED this 14 day of September, 2020.

WESTERN JUSTICE ASSOCIATES, PLLC



Domenic A. Cossi, Esq.
Jory C. Ruggiero, Esq.
Maxwell E. Kirchhoff, Esq.
303 W. Mendenhall, Suite 1
Bozeman, Montana 59715
Attorneys for Plaintiff