

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

STYLE LOUNGE SALON, INC. d/b/a)	
SALON ENVY, an Illinois Corporation,)	
)	Case No. 1:20-cv-03721
Plaintiff,)	
)	Hon.
v.)	
)	
WEST BEND MUTUAL INSURANCE)	
COMPANY, a Wisconsin Corporation,)	JURY TRIAL DEMANDED
)	
)	
Defendant.)	

COMPLAINT

Plaintiff Style Lounge Salon, Inc. d/b/a Salon Envy (“Plaintiff” or “Salon Envy”), by and through its attorneys, Fuksa Khorshid, LLC, states and alleges its Complaint against West Bend Mutual Insurance Company (“Defendant” or “Defendant West Bend”) as follows:

NATURE OF THE ACTION

1. Plaintiff is a small business – a hair salon in Chicago. Plaintiff, like countless other small businesses across the United States, has been forced by recent orders of local and state government, to cease its operations, through no fault of its own, as part of the government’s efforts to slow the dangerous spread, between and among persons and businesses premises, of the COVID-19 virus and the global pandemic. The closures mandated by these orders (collectively, the “Closure Orders”) present an existential threat to small businesses who employ millions of American citizens – and an existential threat to Salon Envy.

2. To protect its business from risk, Plaintiff purchased a “Commercial Lines Policy” from Defendant West Bend Mutual Insurance Company. This 100+ page Policy contract was authored and issued by Defendant and contains numerous promises to pay Plaintiff – also known as “coverages” – for a broad range of losses that the Plaintiff might suffer. A true and correct copy of the Commercial Lines Policy (the “Policy”) is attached hereto as Exhibit A and incorporated by reference herein.

3. Despite the fact that Defendant has accepted Plaintiff’s insurance premium payments,

Defendant has summarily denied Plaintiff's claims for coverage arising from government-ordered interruption and closure of its business, in breach of Defendant's contractual obligations under the Policy. Defendant denied Plaintiff's claims with a cursory boilerplate letter sent (on information and belief) in substantially similar form to all of Defendant's insureds, without any reasonable explanation or individualized investigation or consideration. A true and correct copy of this form denial letter is attached hereto as Exhibit B and incorporated by reference herein.

4. Significantly, Defendant admits in its form denial letter that: "*Your policy of insurance provides broad protection for your business.*" (Exhibit B, p. 1) (emphasis added).

5. As set forth at length herein, Plaintiff has been forced to file this action for a declaratory judgment in response to Defendant's misconduct and refusal to meet its obligations under the Policy, in order for this Court to establish that Plaintiff is entitled to receive the benefit of the insurance coverage it purchased. Plaintiff seeks reimbursement and indemnification of the business losses it has sustained, as well as all damages arising out of Defendant's breach of contract and Defendant's bad faith claims handling under 215 ILCS 5/155.

THE PARTIES

6. Plaintiff is a corporation organized and existing under the laws of Illinois with its principal place of business at 2658 N. Halsted Street, Chicago, Illinois 60614, located in Cook County and in the Northern District of Illinois. Plaintiff conducts all of its business operations in Illinois.

7. Defendant West Bend Mutual Insurance Company is a Wisconsin insurance company organized and existing under the laws of Wisconsin with its principal place of business at 1900 S 18th Ave, West Bend, Wisconsin 53095. Defendant is registered with the Illinois Department of Insurance to conduct business in Illinois. Defendant specializes in both commercial and personal lines of insurance.

JURISDICTION AND VENUE

Subject Matter Jurisdiction

8. This Court has federal subject matter jurisdiction over the claims set forth in this action under 28 U.S.C. § 1332 because there is complete diversity of citizenship between the parties and the

amount in controversy exceeds \$75,000, exclusive of interest and costs.

9. Plaintiff Salon Envy is incorporated in and has its principal place of business in Illinois. Accordingly, Plaintiff is a citizen of Illinois.

10. West Bend Mutual Insurance Company is incorporated in and has its principal place of business in Wisconsin. Accordingly, West Bend Mutual Insurance Company is a citizen of Wisconsin.

11. The amount in controversy in this action is well in excess of \$75,000. Plaintiff Salon Envy is entirely shut down and is losing business income at the rate of approximately \$50,000 per month. As of the date of filing of this action, Plaintiff has sustained approximately \$100,000 in business income losses that continue to mount. Additionally, as set forth in Count III below, Plaintiff makes a claim for statutory bad faith under 215 ILCS 5/154.6, which entitles Plaintiff to statutory penalties and attorneys' fees of an additional \$50,000 or more as of the time of filing of this action. Therefore, the amount in controversy in this action at time of filing is well in excess of \$150,000.

Personal Jurisdiction

12. The Court may exercise general personal jurisdiction over Defendant due to the fact that Defendant's activities in Illinois are such that Defendant may fairly be regarded as submitting itself to jurisdiction of the courts in Illinois. Defendant exercises substantial, systematic and continuous contacts with Illinois by doing business in Illinois, serving insureds in Illinois, and seeking additional business in Illinois.

13. The Court may exercise specific personal jurisdiction over Defendant in this matter, as Plaintiff's claims arise out of Defendant's activities in Illinois.

14. Further, Defendant has submitted to jurisdiction in the Northern District of Illinois pursuant to the Illinois "long arm statute," 735 ILCS 5/2-209, by: (a) transacting business in Illinois; (b) contracting to insure a person, property or risk located within this district at the time of contracting; and (c) making a contract substantially connected with this district and Illinois. *See* 735 ILCS 5/2-209(1), (4), (7).

15. This Court has jurisdiction to grant declaratory relief under 28 U.S.C. § 2201 because an actual controversy exists between the parties as to their respective rights and obligations under the insurance

Policy concerning Plaintiffs loss of business arising from the Closure Orders.

Venue

16. Venue is proper in the Northern District of Illinois pursuant to 28 U.S.C. § 1391(b)(1) and (c)(2) because Defendant is a resident in this district by virtue of being subject to the court's personal jurisdiction with respect to this action.

17. Venue is proper in the Northern District of Illinois pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District.

FACTS

18. Salon Envy is a hair salon in Chicago that has been in business since 2005, working hard to build up a client base for its services. Built on a business model of going "above and beyond" for its clients, Salon Envy is dedicated to providing outstanding customer service in a relaxing and modern atmosphere. The nature of Salon Envy's business requires the utilization of its physical business premises and the specialized equipment located therein to provide salon services that can only be performed by direct personal contact with its customers.

The Policy and the Coverages

19. Like many other reputable and honest small businesses, Salon Envy conducted its business responsibly and obtained what is known in business and the insurance industry as a "Commercial General Liability" or "CGL" policy to protect itself and others from a myriad of risks.

20. Defendant aggressively markets and sells CGL policies, advertising such policies as designed as a way for businesses to be "smart" and to play a key part of the "Silver Lining" Defendant promises in the event of a loss.¹

21. Plaintiff purchased its West Bend Commercial Lines Policy through an agent of West Bend, The Sol Holland Company, Inc., located at 6601 N. Avondale Ave., Chicago, IL 60631. Plaintiff's

¹ West Bend Mutual Insurance Company, <https://www.thesilverlining.com/business-insurance/insurance-for-your-business> (accessed April 14, 2020).

Policy was effective March 3, 2020 and was a renewal of an identical or practically identical policy in force the year before. Plaintiff paid a premium to Defendant for the coverages in this Policy. (Ex. A).

22. The Policy is what is known in the insurance industry as an “all risk” policy that provides broad coverage for losses sustained from *any cause*. As Defendant itself states and admits, the Policy provides “broad protection for your business” (Ex. B, p. 1).

23. In the Policy, Defendant promised to pay Plaintiff for “actual loss of Business Income you sustain due to the necessary suspension of your ‘operations’” when Plaintiff experienced a “direct physical loss of” or damage to its business premises. (Ex. A p. 4 of 45, p. 5 of 45).

24. Defendant further promised in the Policy to pay Plaintiff for “actual loss of Business Income you sustain . . . caused by action of civil authority that prohibits access” to Plaintiff’s business premises, provided that Plaintiff’s premises are “not more than one mile” from other “damaged property” and the civil authority order is in response to “dangerous physical conditions.” (Ex. A, p. 6 of 45).

25. What is more, Defendant West Bend offered and Plaintiff purchased special coverage for contagious or infectious diseases – coverage not found in the CGL policies of many of Defendant’s competitors. Purchasing this coverage to mitigate the risk of infectious disease was important to Plaintiff. Hygiene and limiting cross contamination are essential in the salon business, and the necessity of close physical contact with customers creates an ever-present risk of infection. Sold to Plaintiff as an additional benefit to induce Plaintiff into purchasing the Policy, this “Communicable Disease Business Income and Extra Expense Coverage,” provided coverage for losses related to shutdowns by “local, state, or federal” authorities due to “an outbreak of a ‘communicable disease.’” (Ex. A., p. 8 of 45).

26. In the Policy, Defendant promised to provide Plaintiff with broad coverage for lost “business income” plus “extra expense” sustained during periods of shutdown and beyond. (Ex. A, pp. 5-8).

27. Although the Policy contained a purported “Virus or Bacteria” exclusion (Ex. A, p. 35 of 45), said exclusion is impermissibly overbroad and unenforceable. Moreover, it introduces ambiguities into the Policy that must be construed against West Bend.

The Economic Shutdown Crisis

28. Reports of a novel Coronavirus (“COVID-19”) pandemic emerged out of Wuhan, China in early 2020. The first case in the United States was confirmed on January 20, 2020, followed rapidly by many others, culminating in a medical and economic disaster.²

29. By March 15, 2020, Illinois Governor J.B. Pritzker, exercising his emergency powers under state law, ordered many public gathering places closed in an effort to slow or stop the spread of COVID-19. On March 20, 2020, Governor Pritzker ordered all “non-essential businesses” to close. Similar orders were issued by Chicago Mayor Lori Lightfoot pursuant to her emergency powers under state law.

30. As a result of these Closure Orders, Plaintiff’s hair salon was and remains closed, with its operations entirely suspended as of the date of filing of this action. While Governor Pritzker has subsequently allowed hair salons to reopen with certain precautions, by Mayor Lightfoot’s order Plaintiff’s salon remains closed.

31. Due to the nature of its business, Plaintiff is uniquely unable to mitigate damages. Plaintiff’s business requires close physical contact with customers at a professional facility with specialized and necessary equipment, to which access is denied. Plaintiff is entirely closed down, resulting in profound economic effects and loss of business income.

Defendant’s Systematic Denial of Claims

32. Despite Defendant’s promises in the Policy to pay for lost business income and extra expenses incurred by Plaintiff in circumstances such as these, Defendant has denied all such claims.

33. Defendant’s response contrasts its promises on its website that it “Provides a Silver Lining” and that “[t]he worst brings out our best,”³ Defendant’s “COVID-19 Resources” page merely directs insureds, such as Plaintiff, to government relief programs without even acknowledging, let alone honoring, its obligations under thousands of policy contracts during the current crisis.

34. Rather than “[t]he worst brings out our best,” Defendant’s approach to insurance claims

² New England Journal of Medicine, March 5, 2020 <https://www.nejm.org/doi/full/10.1056/NEJMoa2001191>.

³ West Bend Mutual Insurance Company, <https://www.thesilverlining.com/> (accessed April 14, 2020).

handling in the COVID-19 crisis has been to leave its insureds, the taxpayers, and society as a whole to bear the economic burden of West Bend's refusal to honor its own obligations under its policies.

35. Defendant has designed, in bad faith, a systematic and consistent form and cursory denial of all claims, such as Plaintiff's claim, in order to avoid paying Defendant's obligations under the Policy. After making its claim, Plaintiff received Defendant's cursory, form denial letter (Ex. B) which Plaintiff believes is identical in substance and form to thousands of letters Defendant has sent out to any and every insured who has made or will make a claim for losses sustained during this pandemic.

36. West Bend failed to undertake or conduct a reasonable investigation of Plaintiff's claims under the Policy, in violation of its duties under Illinois law.

37. Defendant's denial to Plaintiff was not only woefully inadequate, but it was based on the false and blanket assertion that "there is no direct physical loss or damage to property" at the business premises of Plaintiff. (Ex. B, p. 2). As set forth herein, that blanket assertion runs contrary to Illinois law, established science, and the facts.

Illinois Law, Science, and the Facts Contradict Defendant's Cursory Claim Denial

38. Defendant's conclusory statements are contrary to the law in Illinois and the science and facts of the current crisis and Plaintiff's claim.

39. Illinois courts have held that dangerous substances can and do cause "direct physical loss or damage" under commercial insurance policies. See e.g., Bd. of Educ. of Twp. High Sch. Dist. No. 211 v. Int'l Ins. Co., 720 N.E.2d 622, 625-26 (Ill. App. Ct. 1999), as modified on denial of reh'g (Dec. 3, 1999).

40. COVID-19 may well be the most dangerous physical substance to emerge upon humankind to date during the 21st century. The danger of the presence of COVID-19 on a surface or in the air at a premises renders that premises potentially fatal and directly physically affected, damaged, and unfit for human use. Like asbestos, COVID-19 can linger in the air or on surfaces (including equipment and air ducts on a business premises) and endanger human life. Unlike inanimate asbestos, COVID-19 can reproduce readily and expand its direct physical impact by infecting areas and persons quickly. Unlike inanimate asbestos, its direct physical impact cannot be encapsulated or contained on a premises. At the

same time, there are no readily available and easy to administer tests to determine if COVID-19 exists on a property and no vaccine to slow or stop its spread, meaning its physical presence has a profoundly dangerous impact.

41. West Bend essentially argues that because COVID-19 cannot be seen with the naked eye or is “invisible,” that it can have no direct physical impact.

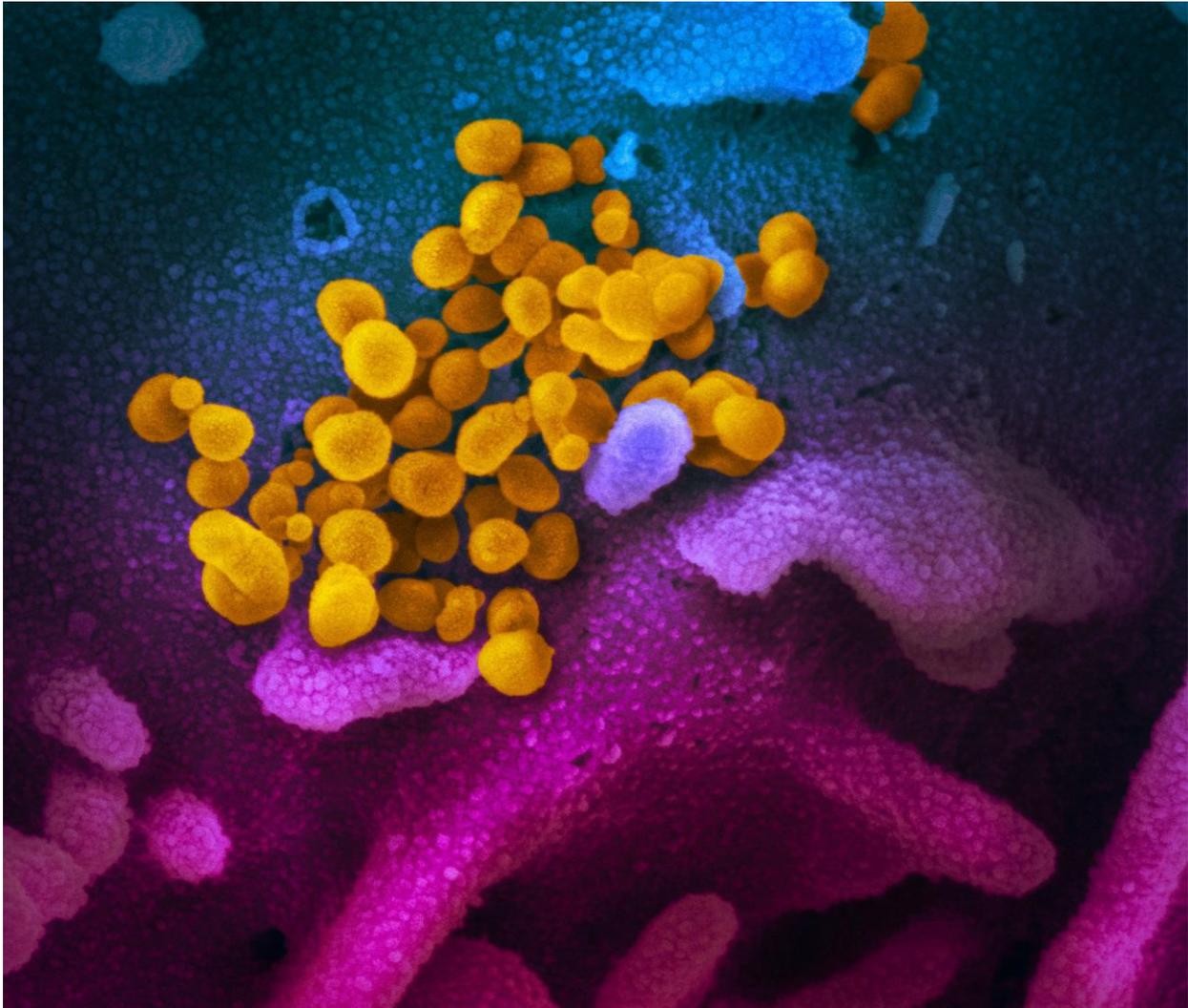
42. COVID-19 physically exists.

43. COVID-19 has a direct physical impact.

44. COVID-19 can be seen with an electron microscope.⁴

⁴ <https://www.sciencealert.com/this-is-what-the-covid-19-virus-looks-like-under-electron-microscopes>

45. This is an electron microscope image⁵ of COVID-19 that depicts its physical existence:



46. West Bend's denial that COVID-19 causes a direct physical loss or damage to property (Ex. B, p. 2) rejects the germ theory of disease proven more than a century ago by Louis Pasteur (1864). The germ theory of disease states that microscopic pathogens, which include viruses, too small to see without magnification, do physically exist. Due to their physical existence, viral pathogens can move from the physical environs of property, invade humans and other living hosts, and cause fatal disease.

⁵ <https://www.sciencealert.com/this-is-what-the-covid-19-virus-looks-like-under-electron-microscopes>

47. Emerging research and recent reports from the CDC indicate that the COVID-19 pathogen strains physically impact and infect and can stay alive on surfaces for at least 17 days.⁶ Thus, a core scientific and epidemiological concept of the Closure Orders (and the loss of business property they mandate) is the necessary assumption that COVID-19 is physically and impactfully present on the surface of every premises and will be transmitted, resulting in harm and/or death.⁷ This science is fundamental to the Closure Orders.⁸

48. Government authorities on the federal, state, and local levels, including those in the jurisdiction in which the Plaintiff is located, have based their orders on the scientifically supported presumption that COVID-19 exists at all business premises.⁹

49. As a result, government authorities issued Closure Orders that mandated the shutdown of Plaintiff's business.

50. The complete shutdown of non-essential businesses, social distancing rules, mandatory masks, partial suspensions of other businesses, and many other elements underscore the scientific and governmental assumption that COVID-19 has a direct physical impact on premises everywhere. While economically devastating, this precept is a common theme to all of the Closure Orders in the United States.¹⁰ The Closure Orders aim to save lives by "flattening the curve."¹¹

⁶ <https://www.cnbc.com/2020/03/23/cdc-coronavirus-survived-in-princess-cruise-cabins-up-to-17-days-after-passengers-left.html>

⁷ Centers for Disease Control and Prevention, *Social Distancing, Quarantine and Isolation*, Coronavirus Disease 2019 (COVID-19) (April 4, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>; Harlan M. Krumholz, *If You Have Coronavirus Symptoms, Assume You Have the Illness, Even if You Test Negative*, The New York Times (April 1, 2020), <https://www.nytimes.com/2020/04/01/well/live/coronavirus-symptoms-tests-false-negative.html>.

⁸ *When Could Things Reopen? How each State is Responding to COVID-19*, National Public Radio (April 9, 2020), <https://www.npr.org/2020/03/12/815200313/what-governors-are-doing-to-tackle-spreading-coronavirus>.

⁹ *COVID-19 Expert Reality Check*, John Hopkins Bloomberg School of Public Health (April 6, 2020), <https://www.globalhealthnow.org/2020-02/coronavirus-expert-reality-check>.

¹⁰ Harvey V. Fineberg, *Ten Weeks to Crush the Curve*, New England Journal of Medicine (April 1, 2020), https://www.nejm.org/doi/full/10.1056/NEJMe2007263?query=featured_coronavirus.

¹¹ Kathy Katella, *5 Things Everyone Should Know About the Coronavirus*, Yale Medicine (April 13, 2020), <https://www.yalemedicine.org/stories/2019-novel-coronavirus/>.

51. West Bend's denial that a virus can cause direct physical loss or damage are contrary to well-established and peer-reviewed science developed and accepted over the past 156 years. West Bend's arguments also ignore current, cutting-edge science about COVID-19 that is saving lives in America today.

52. West Bend failed to investigate, consider or even attempt to understand the scientific reasoning and basis of the Closure Orders, with which Plaintiff was required to comply, leading directly to Plaintiff's business income and other losses.

53. In discovery and at trial, Plaintiff will present scientific evidence to support that COVID-19 causes a direct physical impact and to enable to jury to justly and fairly determine the controversies created by West Bend's coverage positions and denials. *See* Fed. R. Evid. 702; Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993).

Defendant Owes Business Income Loss Coverage

54. Closure Orders are necessary because COVID-19 is a dangerous disease that causes direct physical impact on Premises that must, accordingly, close or suspend certain business activities to preserve human life. Plaintiff's doors are locked and its business shuttered due to the Closure Orders. Plaintiff suffered a complete loss of its business premises under the Closure Orders. Plaintiff suffered a direct physical loss of its hair salon and the business premises that enabled it to provide products and services.

55. Under well-accepted legal and scientific principles sustained "a direct physical loss of . . . property at the described premises," Defendant owes coverage for the resulting Business Income losses. (Ex. A pp. 4-5 of 45).

Defendant Owes Civil Authority Coverage

56. The Closure Orders were an "action of civil authority" that prohibited Plaintiff "access to the described premises" to use for its business purposes. (Ex. A. p. 6 of 45). Thus, Plaintiff suffered a complete loss of access to its business premises under the Closure Orders.

57. Because the Closure Orders prohibited access to every "non-essential" business in Illinois, "access to the area immediately surrounding" a "damaged property" was prohibited by governmental order encompassing many locations. (Ex. A, p. 6 of 45).

58. Moreover, the Closure Orders were a response to “damaged property” with dangerous physical conditions threatening to human life within one mile of Plaintiff’s business. Salon Envy is located at 2658 N. Halsted Street in Chicago, and therefore less than a mile from Advocate Illinois Masonic Medical Center, 836 W Wellington Ave, Chicago, IL 60657.

59. This proximity of Plaintiff’s premises to a health care facility, where persons suffering (and on information and belief, dying) from COVID-19 were located, is just one among many facts that West Bend would have discovered had it properly investigated Plaintiff’s claims before making its form denials.¹²

60. COVID-19 can also spread on particulate matter in the air. Plaintiff’s business premises is in an urban area with pollution in the air.¹³ As a result, COVID-19 was spread throughout other locations within one mile of Plaintiff’s premises.¹⁴

61. Therefore, Plaintiff has sustained business income losses: a) by action of civil authority prohibiting access to its hair salon; b) because of dangerous COVID-19 within an area of a mile (if not on Plaintiff’s actual premises), and c) as a result of COVID-19 creating a dangerous physical condition to which civil authority responded, Defendant owes coverage under Civil Authority Coverage. (Ex. A, p. 6 of 45).

Defendant Owes Communicable Disease Business and Extra Expense Coverage

62. Under all of these facts, West Bend also owed coverage to Plaintiff under the Policy’s Communicable Disease Business and Extra Expense Coverage. (Ex. A, p 8 of 45).

¹² According to Google, of which this Court can take judicial notice, the distance is 0.5 mile. https://www.google.com/search?q=2658+North+Halsted+Street%2C+Chicago%2C+IL+to+836+W+Wellington+Ave%2C+Chicago%2C+IL+60657&rlz=1C1GGRV_enUS748US748&oq=2658+North+Halsted+Street%2C+Chicago%2C+IL+to+836+W+Wellington+Ave%2C+Chicago%2C+IL+60657&aqs=chrome..69i57.5226j0j7&sourceid=chrome&ie=UTF-8

¹³ <https://www.usatoday.com/story/news/health/2020/04/27/coronavirus-found-air-pollution-particles-preliminary-study-finds/3033646001/>

¹⁴ <https://www.chicagotribune.com/coronavirus/ct-viz-covid-19-cases-by-zip-code-20200407-aikakoyycje4fbqvferzjffkg4-htmlstory.html>

63. Defendant admits that there are only two conditions required for coverage under Communicable Disease Business and Extra Expense Coverage (Ex. A, p. 8 of 45): (1) that there be a government ordered shutdown, and (2) that there be virus at the insured premises. (Ex. B. p. 4).

64. As set forth at length in this Complaint above, both of those conditions are met, by the Closure Orders, and the scientific and legal presumptions of COVID-19's presence and present danger everywhere.

65. The Closure Orders presume, and life-saving science dictates, that COVID-19 is present at the business premises of each shuttered business, including the hair salon owned by the Plaintiff. These facts will be presented to the jury at trial by means of scientific evidence which is probative of and essential to justly and fairly determining the controversies created by West Bend's coverage positions and denials. *See* Fed. R. Evid. 702; Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993).¹⁵

66. Moreover, this coverage is for losses due to "an outbreak of a 'communicable disease.'" (Ex. A., p. 8 of 45). Given the government ordered shutdown of Plaintiff's premises, it defies all logic and common sense for West Bend to deny that there was an outbreak of a communicable disease in the area of Plaintiff's business premises. Plaintiff is entitled to coverage under Communicable Disease Business and Extra Expense Coverage. (Ex. A, p 8 of 45).

Defendant's Purported Virus Exclusion Fails

67. Moreover, to the extent that Defendant may attempt to rely on a purported virus "exclusion" in its Policy (Ex. A., p. 35 of 45; Ex. B. p. 2), that exclusion is ineffective for numerous reasons.

68. First, Defendant's Policy grants Communicable Disease Business and Extra Expense Coverage (among others) and then impermissibly attempts to take coverage away by hopelessly overbroad

¹⁵ Sheri Fink & Mike Baker, 'It's Just Everywhere Already': How Delays in Testing Set Back the U.S. Coronavirus Response, The New York Times (March 10, 2020), <https://www.nytimes.com/2020/03/10/us/coronavirus-testing-delays.html?campaignId=7JFJX>; COVID-19 Expert Reality Check, John Hopkins Bloomberg School of Public Health (April 6, 2020), <https://www.globalhealthnow.org/2020-02/coronavirus-expert-reality-check>.

purported exclusionary language, which introduces ambiguity into the Policy that must be construed against Defendant.

69. Secondly, even if a virus exclusion were somehow enforceable, it must be narrowly construed under Illinois law. The following illustrate a non-exclusive list of why Defendant's purported virus exclusion fails:

- a. "It is the insurer's burden to affirmatively demonstrate the applicability of an exclusion." Pekin Insurance Co. v. Miller, 367 Ill. App. 3d 263, 267 (Ill. App. Ct. 2006).
- b. When an insurer relies upon exclusionary policy language to deny or limit coverage, the language's application to the facts must be clear and free from doubt. Cohen Furniture Co. v. St. Paul Insurance Co. of Illinois, 214 Ill. App. 3d 408, 412–13 (Ill. App. Ct. 1991). The language here is neither clear nor free from doubt given the language of the policy granting broad and numerous coverages, including for virus, when weighed against the facts and science and all of the issues put into contention by the current crisis compelling Plaintiff's shutdown, and Defendant's factual denials that any of this presents "direct physical loss or damage."
- c. In situations where insurance policy language is ambiguous or uncertain, then that language must be construed in favor of the insured and against the insurer who wrote the policy language at issue. Outboard Marine Corp. v. Liberty Mutual Insurance Co., 154 Ill. 2d 90, 108-09 (Ill. 1992).
- d. When a question arises as to coverage where more than one cause contributed to a loss, some of which are covered and some of which may be excluded under a policy, courts will narrowly construe the exclusion language, as it is in derogation of coverage. Bozek v. Erie Insurance Group, 46 N.E.3d 362, 368 (Ill. App. Ct. 2015).

70. Here, the factual and scientific evidence to be presented at trial will demonstrate that the dominant cause of the losses suffered by the Plaintiff are the Closure Orders – and therefore, under the appropriate construction of the virus exclusion, the purported exclusion cannot apply.

71. Additionally, the virus exclusion is overly broad and violates public policy. It is against public policy for an Illinois-licensed insurance carrier such as West Bend to exercise the privilege of collecting premiums in Illinois in exchange for such broadly-worded and sold coverages and then attempt to exclude coverage on the ill-based, cursory and conclusory arguments Defendant has interposed in denying Plaintiff coverage.

72. Defendant's reliance on any purported virus exclusion fails.

CLAIMS BY PLAINTIFF: OVERVIEW

73. The conduct set forth at length above constitutes Defendant's breach of the Policy contract. Plaintiff has sustained damages as a result of that breach, in the form of substantial Business Income losses that continue to mount, including Extra Expense.

74. By engineering this scheme to avoid its obligations under the Policy, Defendant breached its contract and exhibited bad faith by putting itself at a tremendous economic advantage over practically all other American business enterprises who honor their contractual obligations and continue to carry this nation through the current COVID-19 crisis.

75. Defendant has engaged in consistent misconduct across its claims handling in this time of crisis. Defendant's reflexive denial of claims by Plaintiff and thousands of other insureds at their time of need is arbitrary and unreasonable, inconsistent with the facts and plain language of the Policy, and flies in the face of well-established science.

76. Defendant's denials were driven by a desire to preempt its own financial exposure to the economic fallout resulting from the COVID-19 crisis, rather than to initiate, as Defendant is obligated to do, a full and fair investigation of the claims and a careful review of the Policy Defendant sold in exchange for valuable premiums.

77. Defendant improperly shifted the burden on Plaintiff to retain counsel, initiate litigation (such as this), and expend great time, money, and opportunity cost. Instead of taking care of its employees and struggling business, Plaintiff has been forced to come to court to compel Defendant to honor its contractual obligations.

78. Plaintiff files this lawsuit for a declaratory judgment establishing that it is entitled to receive the benefit of the insurance coverage it purchased, for indemnification of the business losses it has sustained, for breach of contract, and for bad faith claims handling under 215 ILCS 5/155 – which entitles Plaintiff to penalties and attorneys' fees.

COUNT I
(DECLARATORY JUDGMENT)

79. Plaintiff incorporates by reference, as if fully set forth herein, the allegations set forth in paragraphs 1 to 78 above.

80. The Policy is an insurance contract under which Plaintiff paid premiums in exchange for Defendant's promise to pay losses for claims covered by the Policy, including, but not limited to, Business Income losses and losses incurred as a result of the Closure Orders that forced Plaintiff to close its business.

81. Plaintiff has complied with all applicable provisions of the Policy, including payment of the premiums in exchange for coverage under the Policy.

82. Defendant has arbitrarily, unreasonably, and without justification refused to reimburse Plaintiff for any losses incurred in connection with the covered business losses set out at length above.

83. An actual case or controversy exists regarding the Plaintiff's rights and Defendant's obligations under the Policy to reimburse Plaintiff for the full amount of losses incurred by Plaintiff.

84. Pursuant to 28 U.S.C. § 2201, Plaintiff seeks a declaratory judgment from this Court declaring the following: (a) Plaintiff's losses are insured under the Policy; (b) Defendant has waived any right it may have had to assert defenses to coverage or otherwise to seek to bar or limit coverage for those losses by issuing blanket coverage denials without conducting a claim investigation as required under Illinois law; and (c) Defendant is obligated to pay Plaintiff for the full amount of the losses incurred and to be incurred in connection with the covered business losses up to the applicable limits of coverage.

COUNT II
(BREACH OF CONTRACT)

85. Plaintiff incorporates by reference, as if fully set forth herein, the allegations set forth in paragraphs 1 to 84 above.

86. The Plaintiff's Policy is an insurance contract under which Plaintiff paid premiums in exchange for Defendant's promise to pay losses for claims covered by the Policy, including, but not limited to, Business Income losses and losses incurred as a result of the Closure Orders, as set forth at length above.

87. Plaintiff has complied with all applicable provisions of the Policy, including payment of the premiums in exchange for coverage, and yet Defendant has abrogated its insurance coverage obligations.

88. By denying coverage for the business losses incurred by Plaintiff and set forth at length above, Defendant has breached its coverage obligations under the Policy.

89. As a result of Defendant's breaches of the Policy, Plaintiff has sustained substantial damages for which Defendant is liable, in an amount to be established at trial.

COUNT III
(STATUTORY PENALTY FOR BAD FAITH DENIAL OF INSURANCE)

90. Plaintiff incorporates by reference, as if fully set forth herein, the allegations set forth in paragraphs 1 to 89 above.

91. Upon receipt of Plaintiff's claim and (upon information and belief) upon receipt of each and every claim related to the Closure Orders, Defendant denied the claims, without conducting any investigation, let alone a "reasonable investigation based on all available information" as required under Illinois law. *See* 215 ILCS 5/154.6.

92. To make matters worse, based on information and belief, Defendant directed its insurance agents to send sham claims communications stating that Plaintiff's claims were not covered. Defendant formulated and executed on a plan to discourage policyholders such as Plaintiff from submitting claim notifications in order to avoid any responsibility for its policyholders' staggering losses, in violation of Illinois law.

93. On information and belief, Defendant has also propagated rumor and innuendo that a purported government bailout of business income claims may occur, further to discourage claims.

94. Defendant's denials were vexatious and unreasonable. Defendant's actions disregarded or ignored facts underlying the claims, ignored the law, and ignored the science designed to save human life.

95. Defendant's denials constitute "improper claims practices" under Illinois law – namely Defendant's: (1) refusal to pay Plaintiff's claims without conducting reasonable investigations based on all available information; and (2) failure to provide reasonable and accurate explanations of the bases in its denials. *See* 215 ILCS 5/154.6 (h), (n).

96. Defendant has neither offered any justifiable reason for its denials, nor raised any bona fide disputes as to the whether the claims were covered.

97. Therefore, pursuant to 215 ILCS 5/155, Plaintiff requests that, in addition to entering a judgment in favor of Plaintiff and against Defendant for the amount owed under the Policy at the time of judgment, the Court enter a judgment in favor of Plaintiff for an amount equal to the greater of: (1) 60% of the amount which the trier of fact finds that Plaintiff is entitled to recover under the Policy, exclusive of costs; and (2) \$60,000. *See* 215 ILCS 5/155.

98. Plaintiff further requests that the Court enter a judgment in favor of Plaintiff and against Defendant in an amount equal to the attorneys' fees and costs incurred by for the prosecution of this coverage action against Defendant, which amount will be proved at or after trial, pursuant to 215 ILCS 5/155.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Style Lounge Salon, Inc. prays that this Honorable Court enter an order and judgment in its favor and against Defendant West Bend Mutual Insurance Company as follows:

- (a) Enter a declaratory judgment on Count I of the Complaint in favor of Plaintiff and against Defendant declaring that: losses by Plaintiff incurred in connection with the Closure Orders and the necessary interruption of its businesses are insured losses under the Policy; that Defendant has waived any right it may have had to assert defenses to coverage or otherwise

seek to bar or limit coverage for the losses of Plaintiff by issuing blanket coverage denials without conducting a claim investigation as required under Illinois law; and that Defendant is obligated to pay Plaintiff for the full amount of the losses incurred and to be incurred in connection with the covered business losses related to the Closure Orders;

- (b) Enter a judgment on Count II of the Complaint in favor of Plaintiff and against Defendant and award damages for breach of contract in an amount to be proven at trial;
- (c) Enter a judgment on Count III of the Complaint in favor of Plaintiff and against Defendant in the amount equal to the greater of (1) 60% of the amount which the trier of fact finds that Plaintiff is entitled to recover under the Policy, exclusive of costs; and (2) \$60,000;
- (d) Enter a judgment in favor of Plaintiff and against Defendant in an amount equal to all attorneys' fees and related costs incurred for the prosecution of this coverage action against Defendant pursuant to 215 ILCS 5/155, such amount to be established at the conclusion of this action;
- (e) Award to Plaintiff and against Defendant prejudgment interest, to be calculated according to law, to compensate it for the loss of use of funds caused by Defendant's wrongful refusal to pay Plaintiff what it is rightfully owed under the Policy; and,
- (f) Award Plaintiff such other, further, and additional relief as this Court deems just and appropriate.

JURY DEMAND

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

Dated: June 25, 2020

Respectfully Submitted,
FUKSA KHORSHID, LLC

/s/ William E. Meyer, Jr.

William E. Meyer, Jr.
Attorney for Plaintiff

FUKSA KHORSHID, LLC
William E. Meyer, Jr. (ARDC No. 6207345) of counsel
Lema A. Khorshid (ARDC No. 6283237)
Vincent P. Formica (ARDC No. 6319168)

200 W. Superior, Suite 410
Chicago, IL 60654
T: 312.266.2221
F: 312.266.2224
williammeyer222@comcast.net
lema@fklawfirm.com
vince@fklawfirm.com