

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

TONY WILLIAMS DANCE CENTER LLC,

Plaintiff,

v.

HARTFORD FIRE INSURANCE COMPANY,

Defendant.

Civil Action No.: 1:20-cv-13312

COMPLAINT

Plaintiff Tony Williams Dance Center LLC files this Complaint for declaratory judgment and damages against Defendant Hartford Fire Insurance Company (“Defendant” and/or “Hartford Insurance”), alleging the following:

NATURE OF THE CASE

1. This is a civil action seeking declaratory relief and damages arising from Plaintiff’s contract of insurance with Hartford Insurance.
2. On March 23, 2020, the Governor of Massachusetts issued an order mandating Plaintiff to close its business in response to the COVID-19 pandemic.
3. Plaintiff had in place commercial insurance issued by Hartford Insurance, and expected it would cover, among other damages, business income losses from a pandemic and closure by a civil authority.
4. Importantly, the policy was entered into and became effective on February 15, 2020, which is after Hartford Insurance must have had had knowledge that the novel

coronavirus, SARS-CoV-2, the causative agent for COVID-19, could cause direct physical loss of or damage to property and/or a pandemic was underway.

5. By January 31, 2020, two weeks before the policy was sold to Plaintiff, the U.S. Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the entire U.S., and businesses in China were being closed due to the presence and rapid spread of COVID-19.

6. Despite its knowledge, Hartford Insurance sold a policy to Plaintiff which did not include any exclusion for virus or pandemic.

7. Plaintiff's insurance policy is an "all risk" policy which provides coverage for all non-excluded business losses. Therefore, the policy provides coverage for Plaintiff's losses.

8. Under the Policy, Hartford Insurance promised to cover these losses, and is obligated to pay for them.

9. Nevertheless, in breach of its contractual obligations, as well as Massachusetts General Laws Chapter 93A, §§ 2 and 11 and Chapter 176D § 9, Hartford Insurance has failed to pay for Plaintiff's losses.

10. As a result, Plaintiff seeks declaratory relief that its business is covered under its insurance policy for all business losses that have been suffered and sustained, and requests an award of monetary damages for Hartford Insurance's breach of the policy and violation of Massachusetts General Laws Chapter 93A.

THE PARTIES

11. Plaintiff Tony Williams Dance Center LLC ("Plaintiff") is a Massachusetts limited liability company, with its principal place of business at 284 Amory Street, Jamaica Plain, Massachusetts 02130.

12. Defendant Hartford Insurance Company, is a foreign corporation organized under the laws of Connecticut, with its principal place of business located at One Hartford Plaza, Hartford, Connecticut 06155.

JURISDICTION

13. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1332 because complete diversity of citizenship exists between Plaintiff and Defendant and the amount in controversy is greater than \$75,000, exclusive of interest and costs.

14. Plaintiff is a citizen of the Commonwealth of Massachusetts.

15. Defendant is a citizen of Connecticut.

16. Venue is proper in the District of Massachusetts pursuant to 28 U.S.C. §1391(b)(1) because the Plaintiff resides in this District. Venue is also proper pursuant to 28 U.S.C. §1391(b)(3) because Defendant is subject to this Court's personal jurisdiction.

FACTUAL BACKGROUND

A. Insurance Coverage

17. On or about February 15, 2020, Plaintiff purchased insurance from Hartford Insurance, policy number ***5623 (the "Policy")(redacted in accordance with Fed. R. Civ. Pro. 5.2(a)), expecting to be insured against losses, including, but not limited to, business income losses at its premises located at 284 Amory Street, Jamaica Plain, Massachusetts 02130 (the "Insured Premises"). The policy is attached as Exhibit 1.

18. Plaintiff purchased from Hartford Insurance, among other coverages, Business Income and Extra Expense loss coverage for losses sustained due to the suspension of business operations, and coverage for closure by Order of Civil Authority.

19. Plaintiff did not participate in the drafting of its Hartford Insurance Policy.

20. Plaintiff did not participate in the negotiation of its Hartford Insurance Policy.

21. Plaintiff possessed no power or ability to alter or negotiate any terms contained in the Hartford Insurance Policy.

22. The Hartford Insurance Policy is an “all-risks” policy which provides coverage for the Insured Premises unless specifically excluded.

23. Consistent with the all-risk nature of the Policy, Hartford Insurance agreed to pay for all losses caused by “Covered Causes of Loss,” defined as “RISKS OF DIRECT PHYSICAL LOSS” unless the loss is excluded or limited in the Policy. See Ex. 1, page 2 of 25.

24. In the Policy, Hartford Insurance also promised to pay for losses of business income sustained due to the suspension of operations caused by “direct physical loss of or damage” to property at the Insured Premises. This coverage is identified as “Business Income.” See Ex. 1, p. 10 of 25, Section 5(o).

25. The Hartford Insurance Policy also provided that the insurance coverage applied to extra expense that would not have been incurred if there had been no direct physical loss or damage to property at the Insured Premises. This coverage is identified as “Extra Expense”. See Ex. 1, p. 10 of 25, Section 5(p).

26. In addition, the Hartford Insurance Policy provided that the insurance coverage applied to the actual loss of business income sustained incurred when access to the Insured Premises is prohibited by order of civil authority as the result of a covered cause of loss to property in the immediate area of Plaintiff’s Insured Premises. This coverage is identified as “Civil Authority.” See Ex. 1, p. 11 of 25, Section 5(q).

27. The reasonable expectation of Plaintiff was that the Business Income, Extra Expense, and Civil Authority coverage contained in the Policy provided coverage when a pandemic and/or a civil authority forced closure of its business.

28. The Hartford Insurance Policy does not exclude losses caused by a pandemic.

29. The Hartford Insurance Policy does not exclude losses caused by a virus.

30. In fact, the Policy explicitly covers losses caused by a virus.

31. The Policy included a “Limited Fungi, Bacteria or Virus Coverage” form, which provided limited coverage for losses caused by a virus, not applicable to the facts herein, and excluded all other losses caused by a virus. See Ex. 1, Limited Fungi, Bacteria or Virus Coverage form.

32. However, the Policy included a “Massachusetts Changes” endorsement, which modified the Limited Fungi, Bacteria or Virus Coverage form by deleting the term “virus” from any provision therein. See Ex. 1, Massachusetts Changes form.

33. To the extent the term “virus” was deleted from a provision excluding losses regarding viruses, it means that losses caused by viruses are affirmatively covered under the Policy.

34. Under an “all risk” policy, if an exclusion is removed or deleted from a policy, then it is a covered risk.

B. Coronavirus Pandemic

35. COVID-19 is a highly contagious airborne virus which rapidly spread across the world, including the United States.

36. As of July 12, 2020, there have been approximately 3.3 million confirmed COVID-19 cases in the United States, and over 130,000 deaths¹.

37. On January 31, 2020, United States Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the entire United States to aid the nation's healthcare community in responding to COVID-19.

38. On March 10, 2020, Governor Charles D. Baker of the Commonwealth of Massachusetts issued Executive Order No. 591 in which he declared a State of Emergency in the Commonwealth of Massachusetts in response to the COVID-19 outbreak.

39. On March 23, 2020, Governor Baker issued COVID-19 Order No. 13, which temporarily closed businesses that do not provide essential services and prohibited gatherings of more than 10 people.

40. On March 31, 2020, April 28, 2020 and May 15, 2020 Governor Baker entered Orders No. 21, 30 and 32, respectively, extending the closure of non-essential businesses.

41. Plaintiff operates a dance school in the Jamaica Plain neighborhood in the City of Boston, which is open every day of the week. The dance school contains three studios, and numerous classes are conducted each day for children, teenagers, and adults.

42. The Insured Premises is located within the Sam Adams Brewery Complex, which is a complex of several buildings that house numerous businesses, including the Sam Adams brewery.

43. Aside from the Sam Adams Brewery, there are approximately 50 businesses in the complex, which employ approximately 500 people.

¹ <https://coronavirus.jhu.edu/us-map> (Accessed on July 13, 2020)

44. Within the building that houses the Insured Premises, there are approximately 18 other businesses, including, a gym, a restaurant and event space, a pre-school, and a music school.

45. There is heavy foot traffic in the Sam Adams Brewery Complex.

46. Within walking distance from the complex there are healthcare facilities, including, The Dimock Center and Brookside Community Health Center.

47. Upon information and belief, those health centers treat individuals with COVID-19.

48. As a result of Civil Authority Orders, and the ongoing pandemic, Plaintiff's Insured Premises closed on or about March 23, 2020, and hopes to reopen, in some capacity, when "Phase 3" reopening begins in the City of Boston on or about July 13, 2020.

49. As of July 12, 2020, there were 105,629 confirmed cases of COVID-19 in Massachusetts, and 8,110 deaths among confirmed cases; and Suffolk County, the county in which the Insured Premises is located, had 20,301 confirmed cases of COVID-19 and 1,020 deaths².

50. Plaintiff's business is highly susceptible to rapid person-to-person and person-to-property contamination of COVID-19.

51. Given the nature of Plaintiff's business and its location, Plaintiff and its Insured Premises were physically impacted by actual COVID-19 contamination and/or the probability of COVID-19 contamination and Civil Authority mitigation efforts.

52. The Civil Authority Order prohibiting access to property are a result of damage to property and the dangerous physical conditions resulting from that damage.

² <https://www.mass.gov/info-details/covid-19-response-reporting#covid-19-daily-dashboard> (Accessed July 13, 2020).

53. As a result of COVID-19, the pandemic and resulting Civil Authority orders, Plaintiff suffered business income losses which are covered by the Hartford Insurance Policy.

C. Plaintiff's Claim For Coverage Under The Policy

54. On or about May 21, 2020, Plaintiff submitted a notice of loss to Hartford Insurance claiming a business income loss. The claim letter is attached as Exhibit 2.

55. On or about May 28, 2020, in response to Plaintiff's notice of claim, Hartford Insurance sent Plaintiff a correspondence asking the following questions:

1. Was someone at the scheduled premises or dependent property with corona virus?
 - a. If so, how have you confirmed they had coronavirus?
 - b. What kind of contract did the person have with your property?
2. If someone has been confirmed with corona virus at the premises, have you taken any remediation actions?
 - a. If so, what steps have been taken?
 - b. Did you hire a remediation contractor? If so, who?

See Ex. 3, correspondence from Hartford Insurance.

56. To the extent Hartford Insurance asked a question about remediation actions undertaken due to coronavirus, it is an acknowledgement that COVID-19 causes direct physical loss of or damage to property.

57. The questions posed by Hartford Insurance are an admission that COVID-19 causes direct physical loss of or damage to property.

58. The questions posed by Hartford Insurance are an admission that losses caused by COVID-19 are covered under the Policy.

59. Hartford Insurance's May 28, 2020 correspondence did not include any reservation of rights or indicate that the questions were posed without acknowledgement that COVID-19 causes direct physical loss of or damage to property.

60. On or about June 5, 2020, counsel for Plaintiff sent Hartford Insurance a letter responding to the questions posed. The letter is attached as Exhibit 4.

61. Plaintiff's letter set forth, *inter alia*, that it was highly likely that someone with COVID-19 was at the Insured Premises and/or in the immediate area; and that any remediation efforts were premature insofar as the Insured Premises remained closed and the civil authority orders remained in effect.

62. On or about June 8, 2020, Hartford Insurance sent Plaintiff a letter denying coverage under the Policy. The denial letter is attached as Exhibit 5.

63. Hartford Insurance's denial letter quoted several provisions of the Policy, including the Business Income and Civil Authority provisions, and set forth that they do not provide coverage.

64. Specifically, with respect to the Business Income coverage, Hartford Insurance set forth the following:

"The Business Income coverage is not provided for the insured's loss because there has been no physical loss or damage caused by or resulting from a Covered Cause of Loss to property at a scheduled premises."

See Ex. 5, denial letter, p. 3 of 6.

65. With respect to the Civil Authority coverage, Hartford Insurance set forth in relevant part the following:

"We have no information to indicate that a civil authority issued an order as a direct result of a covered cause of loss to property in the immediate area of your scheduled premises; accordingly, this additional coverage is not available for your claimed loss of business income."

See Ex. 5, denial letter, p. 4 of 6.

66. Hartford Insurance denied Plaintiff's claim for Business Income coverage despite Plaintiff showing that there had to have been the presence of COVID-19 at the Insured Premises.

67. Hartford Insurance denied Plaintiff's claim for Business Income coverage despite Plaintiff showing that there had to have been a physical loss or damage to the Insured Premises caused by COVID-19.

68. Hartford Insurance denied Plaintiff's claim for Civil Authority coverage despite the fact that (a) it previously conceded that COVID-19 causes a physical loss or damage to property; (b) the Civil Authority orders were a direct result of COVID-19 (i.e. a Covered Cause of Loss under the Policy); and (c) Plaintiff showed that there had to have been a physical loss or damage caused by COVID-19 in the immediate area of the Insured Premises.

69. Moreover, in an apparent effort to try to avoid accepting a valid claim for coverage for losses caused by a virus, Hartford Insurance claimed in its denial letter that COVID-19 is not a virus at all, but rather, it is a "pollutant".

70. Specifically, the denial sets forth in relevant part the following:

"The coronavirus is understood to be an irritant or contaminant which causes or threatens to cause physical impurity, unwholesomeness and threatens human health or welfare ... Accordingly, even if coverage were otherwise available for loss caused by coronavirus, the pollution exclusion could further bar coverage for the loss."

See Ex. 5, denial letter, p. 5 of 6.

71. The assertion by Hartford Insurance in its denial letter that COVID-19 is not a virus, but rather it is a pollutant under the terms of the Policy, is a gross misrepresentation of an insurance policy provisions relating to coverage at issue.

72. The assertion by Hartford Insurance in its denial letter that COVID-19 is not a virus, but rather it is a pollutant, is a gross misrepresentation of facts relating to coverage at issue.

73. The assertion by Hartford Insurance in its denial letter that COVID-19 is not a virus, but rather it is a pollutant, shows a failure by Hartford Insurance to conduct a minimal and/or reasonable investigation into Plaintiff's claim.

74. The assertion by Hartford Insurance in its denial letter that COVID-19 is an irritant is false.

75. The assertion by Hartford Insurance in its denial letter that COVID-19 is a contaminant is false.

76. The assertion by Hartford Insurance in its denial letter that COVID-19 is a pollutant is false.

77. The assertion by Hartford Insurance in its denial letter that COVID-19 is not a virus, but rather it is a pollutant, could not have been made in good faith.

78. The assertion by Hartford Insurance in its denial letter that "the pollution exclusion could further bar coverage for the loss", is a misrepresentation of the Policy and could not have been made in good faith.

79. On or about June 9, 2020, Plaintiff's counsel sent Hartford Insurance for willfully and knowingly committing unfair and deceptive business acts and/or practices in violation of M.G.L. c. 93A §§ 2 and 11. The letter is attached as Exhibit 6.

80. On or about June 19, 2020, Hartford Insurance sent correspondence to Plaintiff's counsel acknowledging receipt of the June 9, 2020 letter, and reasserting its denial of Plaintiff's claim. Hartford Insurance's correspondence is attached as Exhibit 7.

81. Plaintiff faithfully paid premiums to Hartford Insurance for coverage to ensure the survival of the business due to the business closure caused by a pandemic and/or ordered by the Civil Authority.

82. It was Plaintiff's reasonable expectation that if there was property loss caused by a virus and/or a pandemic and/or if civil authorities forced closure of Plaintiff's business, the loss of income would be covered under the Policy.

83. Plaintiff incurred, and continues to incur, a substantial loss of business income and additional expenses covered under the Hartford Insurance Policy.

84. As a result of Hartford Insurance's wrongful denial, Plaintiff has suffered and continues to suffer damages.

COUNT I
DECLARATORY RELIEF

85. Plaintiff incorporates by reference each paragraph of this Complaint as if fully set forth herein.

86. Under 28 U.S.C. §§2201 and 2202, this Court has jurisdiction to declare the rights and other legal relations of the parties in dispute.

87. Plaintiff's Policy is an insurance contract under which Hartford Insurance was paid premiums in exchange for promises to pay losses for claims covered by the Policy.

88. In the Policy, Hartford Insurance promised to pay for losses of business income sustained as a result of perils not excluded under the Policy.

89. Plaintiff suffered losses of business income due to direct physical loss and/or physical damage at the Insured Premises.

90. These losses triggered Business Income, Extra Expense, and Civil Authority coverage under the Policy, and additional coverages applicable to the losses claimed in this action.

91. Plaintiff has complied with all applicable provisions of its Policy, including payment of premiums.

92. Hartford Insurance, without justification, disputes that the Policy provides coverage for Plaintiff's losses.

93. Plaintiff seeks a Declaratory Judgment that its Policy provides Business Income, Extra Expense, and Civil Authority coverage because of losses attributable to COVID-19 and/or the pandemic and/or civil authority actions; and that Hartford Insurance is obligated to pay for the full amount of Plaintiff's losses.

94. An actual controversy exists between Plaintiff and Hartford Insurance because Hartford Insurance denied Plaintiff's claim for coverage.

95. Plaintiff's interest in the Hartford Insurance Policy and declaratory relief is direct, substantial, quantifiable, and immediate.

96. Declaratory Judgment is appropriate in the manner requested herein by Plaintiff.

COUNT II
BREACH OF CONTRACT
(Business Interruption and Extra Expense Coverage)

97. Plaintiff incorporates by reference each paragraph of this Complaint as if fully set forth herein.

98. Plaintiff's Policy is an insurance contract under which Hartford Insurance was paid premiums in exchange for promises to pay losses for claims covered by the Policy.

99. The Policy includes coverage for Business Income and Extra Expense incurred as a result of causes of losses not excluded.

100. Specifically, Hartford Insurance promised to pay for losses of business income and extra expense sustained as a result of a suspension of business operations.

101. COVID-19 and the pandemic have caused and continue to cause direct physical loss of or damage to the Insured Premises.

102. Because of the direct physical loss of or damage to property, Plaintiff has experienced a cessation of its business.

103. The suspension of business and losses triggered the Policy's Business Income and Extra Expense coverage.

104. Plaintiff complied with all requirements of the Policy.

105. Hartford Insurance was advised of Plaintiff's claims and demand for coverage under the Hartford Insurance Policy.

106. Hartford Insurance breached the terms and provisions of Policy by denying the claims of Plaintiff for all losses caused by COVID-19 and the pandemic.

107. The breach of the indemnification obligations under the Hartford Insurance Policy by Hartford Insurance has caused Plaintiff to suffer substantial loss and harm.

108. Plaintiff is entitled to damages as a result of Hartford Insurance's breach in an amount to be determined at trial, including pre-and post-judgment interest and any other costs and relief that this Court deems proper.

COUNT III
BREACH OF CONTRACT
(Civil Authority Coverage)

109. Plaintiff incorporates by reference each paragraph of this Complaint as if fully set forth herein.

110. Plaintiff's Policy is an insurance contract under which Hartford Insurance was paid premiums in exchange for promises to pay losses for claims covered by the Policy.

111. COVID-19-related direct physical loss of or damage to properties in the immediate area of the Insured Premises caused civil authorities to prohibit access to the Insured Premises.

112. Plaintiff has experienced and continues to experience a loss under the Policy's civil authority coverage arising from the direct physical loss of or damage to property caused by COVID-19 and the resulting civil orders.

113. These actions, losses, and expenses triggered civil authority coverage under the Policy.

114. Plaintiff complied with all requirements of the Policy.

115. Hartford Insurance was advised of Plaintiff's claims and demand for coverage under the Hartford Insurance Policy.

116. Hartford Insurance breached the terms and provisions of Policy by denying the claims of Plaintiff for all losses caused by COVID-19 and the pandemic and the resulting civil authority orders.

117. The breach of the indemnification obligations under the Policy by Hartford Insurance has caused Plaintiff to suffer, and continue to suffer, substantial loss and harm.

118. Plaintiff is entitled to damages as a result of Hartford Insurance's breach in an amount to be determined at trial, including pre - and post-judgment interest and any other costs and relief that this Court deems proper.

COUNT IV
VIOLATION OF MASSACHUSETTS GENERAL LAWS, CHAPTER 93A

119. Plaintiff incorporates by reference each paragraph of this Complaint as if fully set forth herein.

120. M.G.L. c. 93A §2 provides that "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." M.G.L. c. 93A § 11 permits any person engaged in the conduct of trade or commerce

and injured by a violation of M.G.L. c. 93A § 2 to bring a civil action for damages and injunctive relief.

121. Hartford Insurance willfully and knowingly committed unfair and deceptive business acts and/or practices in violation of M.G.L. c. 93A §§ 2 and 11.

122. Hartford Insurance has engaged in unfair claims settlement practices in violation of, *inter alia*, M.G.L. c. 176D § 9(a), (d) and (f) by, among other things, misrepresenting pertinent facts and/or insurance policy provisions relating to coverages at issue, refusing to pay claims without conducting a reasonable investigation based upon all available information, and failing to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear.

123. Hartford Insurance's acts and practices are unfair and deceptive in material respects, offend public policy, are immoral, unethical, oppressive and unscrupulous and violate M.G.L. 176D § 9 and M.G.L. c. 93A § 2.

124. As a direct and proximate result of Hartford Insurance's unfair and deceptive acts and practices, Plaintiff has suffered injury.

125. Plaintiff would not have incurred these losses if Hartford Insurance had not engaged in acts and practices that were unfair and deceptive.

126. Based on the foregoing, Plaintiff is entitled to all remedies available pursuant to M.G.L. c. 93A, including, actual damages, double or treble damages, attorneys' fees and other reasonable costs.

REQUEST FOR RELIEF

Plaintiff Tony Williams Dance Center LLC requests that the Court enter judgment in its favor and against Defendants Hartford Fire Insurance Company, as follows:

A. As to Count I, a declaration that:

- i. All Business Income, Extra Expense, and Civil Authority losses and expenses incurred and sustained based on the facts and circumstances set forth above are insured and covered under Plaintiff's Policy; and,
- ii. Defendant is obligated to pay for the full amount of the Business Income, Extra Expense, and Civil Authority losses and expenses sustained and incurred, and to be sustained and incurred, based on the facts and circumstances set forth above;

B. As to Count II, a Judgment awarding monetary damages for breach of contract in an amount to be determined at trial.

C. As to Count III, a Judgment awarding monetary damages for breach of contract in an amount to be determined at trial.

D. As to Count IV, a Judgment awarding actual, double, treble and/or other statutory damages in amounts to be determined at trial

E. An order requiring Hartford Insurance to pay both pre-and post-judgment interest on any amounts awarded;

F. An award of costs and attorneys' fees; and

G. Such other or further relief as may be appropriate.

DEMAND FOR JURY TRIAL

The Plaintiff hereby demands at trial by jury as to all issues so triable.

Dated: July 13, 2020

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/s/ Samuel Karpel

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