NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

WAWA, INC., Plaintiff, v. STARR SURPLUS LINES INSURANCE COMPANY, et al., Defendants.	: : : : : : : : :	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: CAMDEN COUNTY DOCKET NO. CAM-L-688-21 (CBLP) **OPINION**

Decided: June 23, 2022

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STEVEN J. POLANSKY, P.J.Cv.

I. INTRODUCTION

Defendants have filed a motion to dismiss plaintiff's First Amended Complaint pursuant to Rule 4:6-2.

Defendants previously filed a motion to dismiss pursuant to Rule 4:6-2. Subsequent thereto, the court granted a motion by plaintiff to amend the complaint. The original motion filed by defendants was dismissed without prejudice as moot on February 17, 2022 as a result of the court granting the motion for leave to file an amended complaint.

II. PLAINTIFF'S FIRST AMENDED COMPLAINT

Plaintiffs allege that they are a chain of more than 900 convenience retail stores throughout New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Florida and Washington D.C. More than 600 of these stores also offer gasoline sales. Plaintiff describes its business as offering fresh food service including their own brands, build-to-order sandwiches, beverages and freshly brewed coffee, along with soup, sides and snacks. The majority of the stores operate 24 hours a day, 365 days a year. Plaintiff alleges that as a result of the pandemic and civil closure orders, they experienced partial or temporary suspensions of operations. Specifically, they allege the following:

> 10. The insuring agreement in the Policies covers "all risk of direct physical loss or damage to property." Under the Policies' express terms, coverage is provided to Wawa where, among other circumstances, Wawa's use of its property is prevented, diminished or restricted to prevent the spread of Coronavirus and resulting loss or damage to the covered premises. Due to the Pandemic, Wawa's covered premises were rendered essentially nonfunctional and unusable for the on-the-go food services for which the premises had at all times been used before the Pandemic's onset, depriving Wawa of the physical use intended for its premises and causing it to suffer physical loss of the insured premises. The premises also suffered physical damage or the imminent threat of physical damage due to the impact that the Coronavirus had and imminently would have had to the airspace and other physical components of the premises.
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> 11. The dangers posed by the Coronavirus have caused Wawa to incur substantial losses. These risks rendered covered premises, at least temporarily, unfit for their intended functions.
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> 12. Wawa suffered physical loss or damage to their property due to the presence, or risks of the presence, of Coronavirus and/or COVID-19 at its premises, which did or would have physically and tangibly altered the airspace within its premises and their surfaces from a safe and functional condition to a physically changed and essentially non-functional condition, or would have caused such physical impact, absent the extreme preventative and costly remedial measures that Wawa employed.
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> 13. Further, despite Wawa's rigorous efforts to prevent the presence of Coronavirus at its own stores, due to Wawa's business as a convenience store, where customers "stop" on their way to patronizing nearby "Attraction Properties," as such term is defined by the Policies, Wawa also suffered physical loss of its covered property because such "Attraction Properties" were closed or limited due to the presence and/or risk of Coronavirus at those properties. Certain of the Policies expressly provide coverage for such losses.

> 14. Thus, Wawa has incurred substantial losses caused by the actual presence of Coronavirus at such third-party locations. Wawa has incurred additional losses resulting from the risk posed to property and persons at Wawa and/or third-party locations by the physical prevalence of Coronavirus in communities where Wawa stores are located. The risk or threat of the Coronavirus spreading to Wawa and non-Wawa properties and persons there has rendered relevant property unreasonably dangerous and/or unfit for their intended purposes, to Wawa's extreme financial detriment.
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> 15. That Wawa's losses in fact were caused by the presence, or risks of the presence of Coronavirus and/or COVID-19 at or near its premises is further confirmed by the recent business closures and/or suspension of operations undertaken at the businesses' own initiatives, in the absence of any government order mandating closure or restriction, in response to the Coronavirus variant commonly known as Omicron.

It is alleged that as of January 1, 2020 when these policies were issued, the defendants were aware of the growing Pandemic in China. It is asserted that while some insurers modified their policies to specifically exclude the Pandemic or the virus, the insurers named as defendants in this matter failed to include such an exclusion in their insurance policies.

Plaintiff asserts that Covid-19 is spread through airborne particles or droplets which are spread when infected people enter their store. It is further alleged that these droplets remain in the physical airspace and land on, attach to or adhere to objects or surfaces. Plaintiff claims that this renders their property unsafe. Plaintiff further alleges that due to the Pandemic, it suspended self-serve operations within its stores. It is further asserted that Wawa temporarily closed stores each time an employee tested positive for Covid-19. It is claimed that attraction properties closed or limited their operations as a result of the Coronavirus in compliance with government directives, thereby depriving Wawa of much of its customer base.

III. INSURANCE POLICIES

Wawa purchased property insurance with multiple insurers on a quota-share basis providing proportional coverage for losses up to $250,000,000. The policies cover both real and personal property. Business interruption and extra expense coverage is also provided.

The period of recovery for business interruption and extra expense coverage is defined as the length of time that would be required with the exercise of due diligence and dispatch to rebuild, repair or replace the property that has been destroyed or damaged.

The master policy insures:

> This policy insures against all risk of direct physical loss or damage to property including General Average, Salvage and all other charges on shipments insured hereunder except as hereinafter excluded.

Coverage is provided on buildings and structures at replacement cost if replacement is required or, if the item can be repaired, the cost of repair, whichever is less. If the item can be repaired but is not, then the maximum amount recoverable is the actual cash value of the damaged property.

The extension of coverage for decontamination and clean up expense is limited to the removal or disposal of water, soil or any similar substance required to mitigate circumstances pertaining to seepage, pollution and/or contamination.

The Starr policy contains an authorities endorsement that excludes coverage as follows:

> Except as specifically stated in this policy or endorsement attached hereto, the company shall not be liable for loss, damage, costs, expenses, fines or penalties incurred, sustained by or imposed on the Insured at the order of any Government, Agency, Court, or other Authority arising from any cause whatsoever.

IV. CONTENTIONS

Defendants assert that the complaint fails to allege direct physical loss or damage to property. They argue that for a loss to be covered, there must be a change in the physical condition of the property which totally impairs its functionality, in that mere loss of use not caused by some physical condition is insufficient to trigger coverage under the insurance policies.

Defendants Hiscox, Beazley, XL Catlin, Antares, Neon and Convex argue that their insurance policies contain identical microorganism exclusions as well as identical seepage and/or pollution and/or contamination exclusions which would preclude plaintiff's claim. Defendant Crum & Forster asserts that its policy contains a different microorganism exclusion. Defendant Everest asserts its insurance policy contains a seepage and/or pollution and/or contamination exclusion precluding coverage. Finally, defendants Starr and Everest assert that their policies contain an authorities exclusion which precludes coverage.

Plaintiff asserts that the First Amended Complaint alleges that Covid-19 caused physical loss and damage to its property. It is claimed that Covid-19 rendered the Wawa properties "physically incapable of performing their essential function". Plaintiff goes on to state that "Wawa has alleged that the actual presence and imminent threat of Covid-19 and its convenience stores...harmed and physically altered the premises, so as to render them, in many instances, unable to carry out essential functions, thereby depriving Wawa of its functional use of insured properties."

Plaintiff argues that the utility of the property in the absence of damage or structural alteration is sufficient to trigger coverage. Plaintiff further argues that it is the risk of direct physical loss, damage or destruction which is covered, and that actual physical damage or destruction is not required. Plaintiff asserts that structural alteration is not required to establish physical loss or damage.

Plaintiff points to the following paragraphs of the complaint as establishing coverage under the policy:

FAC ¶ 12 Wawa suffered physical loss or damage to its property due to the presence, or risks of the presence, of Coronavirus and/or COVID-19 at its premises, which did or would have physically and tangibly altered the airspace within its premises and their surfaces from a safe and functional condition to a physically changed and essentially non-functional condition, or would have caused such physical impact, absent the extreme preventative and costly remedial measures that Wawa employed.

FAC ¶ 117 Respiratory particles (including droplets and airborne aerosols) are physical substances that tangibly alter physical property in the interiors of buildings including the airspace therein to make them unsafe, untenantable and uninhabitable for their intended purpose, particularly with respect to the prevention of the spread of the disease, without taking extreme measures to protect against the risk of spread.

FAC ¶ 119 In this regard, Coronavirus adheres to surfaces and objects, harming and physically altering property by becoming a part of its surface and making physical contact with it unsafe and unusable for its intended purpose. Once Coronavirus is in, on, or near property, it is easily spread by the air, people and objects, from one area to another, causing additional direct physical loss of or damage to property.

FAC ¶ 148 Critically, cleaning surfaces in an indoor space also will not remove the aerosolized Coronavirus particles from the air that can be inhaled and cause people to develop COVID-19—no more than cleaning friable asbestos particles that have landed on a surface from that surface will remove the friable asbestos particles suspended in the air .... Nor will routine cleaning prevent an infected person from entering an indoor space and exhaling Coronavirus particles and virions into the air and surrounding environment. What was and is necessary to repair airspace and surfaces within a premises to address the dangers of spread of Coronavirus requires factual and expert input and analysis.

FAC ¶ 149 As Defendants are aware, ... [an] epidemiology expert ... explained that to entirely clean the insured property would take a minimum of 24 or 48 hours, during which time functions would need to be suspended to allow cleaning to take place. "Assuming a 48-hour cleaning, we see that even at the lowest background prevalence considered (0.1%), re-introduction would be expected before cleaning could be completed in over one half of instances; with a 24-hour cleaning, re-introduction would be expected before cleaning could be completed in roughly one in three instances. . . . [The insured] would, in effect, need to remain continuously closed in order to address introductions of COVID-19 at the rate they would be expected to occur."

FAC ¶ 154 As Defendants are aware, and consistent with the physical loss and damage CAM-L-000688-21 05/26/2022 9:09:52 PM Pg 41 of 76 Trans ID: LCV20222039521 32 experienced by Wawa at its covered properties, experts have opined in other similar matters as to the precise mechanism by which such damage occurs. In Treasure Island, referenced supra, the insured's virology expert, Dr. Angela Rasmussen, opined as follows:

> "COVID-19 is a communicable disease that impacts and physically damages Treasure Island's property in the following way: persons on site with COVID19 shed the SARS-CoV-2 virus into the air and surfaces at Treasure Island. This results in tangible, demonstrable, and detectable physical alternation and transformation to the air and surfaces rendering them dangerous transmission vehicles for the potentially deadly disease."
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> "The impact and physical damage caused by persons with COVID-19 is not temporary and is sustained through any occupation of the property. Because COVID-19 is an infectious viral disease that can be transmitted to susceptible people, it causes additive, sustained property damage.... Due to the size of the property at Treasure Island, cleaning and disinfection alone are insufficient to remediate the damage."

FAC ¶ 155 In the same case, the insured's epidemiology expert... opined ... as follows: "Individuals with COVID-19 at Treasure Island altered the physical characteristics of surfaces and the air of occupied spaces at the location and at facilities in the vicinity with respiratory secretions and aerosols. As a result, the surfaces and air of occupied spaces at Treasure Island became vehicles for COVID-19 transmission."

FAC ¶ 156 At times relevant to this Complaint, Wawa was aware that certain of its employees had contracted COVID-19. Given the high percentage of asymptomatic cases of COVID-19, it is statistically certain that the actual number of individuals present at insured premises who contracted COVID-19 was substantially greater than the number of individuals known to have contracted COVID-19, and that Coronavirus at such times physically altered Wawa's properties, and if no restrictions had been put in place by Wawa, would have continuously altered such properties.

V. ANALYSIS

The test for determining the adequacy of the pleading is whether a cause of action is suggested by the facts. Velantzas v. Colgate-Palmolive Corp., 109 N.J. 189 (1998). The court must search in depth and with liberality to determine if a cause of action can be gleaned even from an obscure statement, particularly if further discovery is conducted. Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 772 (1989). The court in Printing Mart cautioned that a Rule 4:6-2(e) motion to dismiss "should be granted in only the rarest of instances." Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 772 (1989); see also Lieberman v. Port Auth. of N.Y. & N.J., 132 N.J. 76, 79 (1993). The Rule requires that plaintiffs must receive "every reasonable inference of fact ["and a reviewing court must search the complaint "in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary."] Printing Mart, 116 N.J. at 746 (quoting DiCristofaro v. Laurel Grove Mem'l Park, 43 N.J. Super. 244, 252 (App. Div. 1957)). Every reasonable inference is therefore accorded to the plaintiff. Banco Popular North America v. Gandi, 184 N.J. 161, 165-66 (2005).

Policies of insurance are generally interpreted in favor of the insured and against the insurer. Salem Group v. Oliver, 128 N.J. 1 (1992). This in part is based upon the public policy of interpreting the insurance policy against the drafter. Werner Industries, Inc. v. First State Insurance Company, 112 N.J. 30 (1988). All ambiguities and uncertainties in the insurance policy are resolved in favor of the insured and against the insurer. Sparks v. St. Paul Ins. Co., 100 N.J. 325 (1985); Killeen Trucking, Inc. v. Great American Surplus Lines Ins. Co., 211 N.J. Super. 712 (App. Div. 1986).

The court must enforce the clear and unambiguous terms of the policy of insurance. Erdo v. Torcon Construction Co., 275 N.J. Super. 117 (App. Div. 1994). The test for determining whether an ambiguity exists is whether the phrasing of the policy of insurance is sufficiently confusing such that the average policy-holder cannot make out the boundaries of coverage. Nunn v. Franklin Mutual Ins. Co., 274 N.J. Super. 543 (App. Div. 1994); Ryan v. State Health Benefits Comm'n, 260 N.J. Super. 359 (App. Div. 1992). A disagreement between the insurer and the insured concerning interpretation of the language of an insurance policy does not alone create an ambiguity. Aviation Charters, Inc. v. Avemco Ins. Co., 335 N.J. Super. 591 (App. Div. 2000), affirmed as modified 170 N.J. 76 (2000). A policy of insurance is ambiguous only where reasonably intelligent persons would differ regarding its meaning. Id. Where the insurance policy language is clear and unambiguous, the Court need not consider the claimed reasonable expectations of the insured. Katchen v. Government Employer's Ins. Co., 457 N.J. Super. 600, 607 (App. Div. 2019), appeal dismissed 241 N.J. 354 (2020); see Passaic Valley Sewerage Commissioners v. St. Paul Fire & Marine Ins. Co., 206 N.J. 596, 608 (2011).

Words utilized in the insurance policy are interpreted in accordance with their plain and ordinary meaning. Voorhees v. Preferred Mutual Ins. Co., 128 N.J. 165 (1992); Daus v. Marble, 270 N.J. Super. 241 (App. Div. 1994). Where the policy language will support two interpretations, only one of which will support a finding of coverage, the court will choose the interpretation favoring the

insured and find that coverage exists. Meeker Sharkey Associates, Inc. v. National Union Fire Ins. Co. of Pittsburgh, 208 N.J. Super. 354 (App. Div. 1986).

Governor Philip Murphy under Executive Order 103 declared a public health emergency, finding that the spread of COVID-19 within New Jersey constituted an imminent public health hazard. The Order authorized and empowered the State Director of Emergency Management, in conjunction with the Commissioner of the Department of Health, to take any emergency measures they deemed necessary. This Executive Order did not order the closure of any business or other commercial establishment.

On March 21, 2020, the Governor issued Executive Order 107 instituting emergency measures in accordance with the public health emergency and state of emergency declared in Executive Order 103. That Order required that all New Jersey residents remain at home or at their place of residence unless they fell within one of nine enumerated exceptions set forth in the Order. That Order further prohibited gatherings of individuals at parties, celebrations or social events. The premises of all non-essential retail businesses were ordered to close to the public. Only essential retail businesses were permitted to remain open.

Both parties cite to a litany of unreported decisions reaching conclusions either in their favor, or finding that motions to dismiss were premature. Both parties rely upon the New Jersey Appellate Division decision in Wakefern Food Corp. v. Liberty Mutual Fire Ins. Co., 406 N.J. Super. 524 (App. Div.), certif. denied 200 N.J. 209 (2009) to support their position.

In the Wakefern Food Corp. case, the claim arose out of a failure in the North American electrical grid which caused a four-day electrical blackout over portions of the Northeastern United States and Eastern Canada. Wakefern suffered losses due to food spoilage during the power outage. The insurance policy issued by Liberty Mutual Fire Insurance Company contained a specific endorsement providing coverage for damage due to the loss of electrical power. The policy required that the interruption of coverage be caused by physical damage from a covered peril to any power house, generating plant, substation, power switching station, gas compressor station, transformer, telephone exchange, transmission lines, connections or supply pipes which furnish electricity to a covered location.

The parties disputed whether the interruption of electrical power resulted in physical damage to the specified electrical equipment and property. The court there concluded that despite the differing explanations by experts as to why the power went out and why it remained out, ultimately the entire electrical system was incapable of producing electrical power for several days. The court's decision was based upon the specific language contained in the "Services Away Extension" which provided coverage for interruption of electrical service.

The Appellate Division in Arthur Anderson LLP v. Federal Ins. Co., 416 N.J. Super. 334 (App. Div. 2010) rejected a claim for business interruption losses alleged to have resulted from the September 11, 2001 attacks on the World Trade Center and the Pentagon. The insured asserted that it suffered a loss of earnings in excess of $200,000,000 as a result of these events. The court held that the insured could show no loss or damage to its real or personal property described in the

policy, and concluded that the insured had no insurable interest in the World Trade Center property or the Pentagon. Based upon this analysis, the court rejected the business interruption claim.

Port Authority of NY and NJ v. Affiliated FM Ins. Co., 311 F.3d 226 (3d Cir. 2002) involved a first-party claim alleging property damage as a result of the alleged existence or presence of friable asbestos in buildings owned by the insured. In analyzing these issues, the court noted the fundamental differences between third-party liability insurance policies and first-party insurance contracts, making decisions addressing coverage under third-party liability policies of limited benefit in addressing issues under a first-party property policy. Id. at 233. Relying upon 10 Couch on Insurance § 148:46 (3d ed. 1998), the court determined that "physical damage to property means 'a distinct, demonstrable and physical alteration' of its structure". Id. at 235. The court concluded that the mere presence of asbestos was insufficient to establish distinct and demonstrable physical harm required to trigger first-party insurance coverage. Id.

The Third Circuit affirmed the finding of the trial court that "a detrimental economic impact unaccompanied by a distinct, demonstrable, physical alteration of the property" does not constitute physical loss or damage covered under the first-party property insurance policy. Port Authority of New York and New Jersey v. Affiliated FM Ins. Co., 245 F. Supp. 2d 563, 579 (D.N.J. 2001), affirmed 311 F.3d 226 (2002).

The mere presence of the Coronavirus at or in the insured locations where general statements that the Coronavirus exists on surfaces in the air at insured properties is insufficient to establish property damage. See Unmasked Mgmt. v. Century-National Ins. Co., 514 F.Supp. 3d 1217, 1225 (S.D. Cal. 2021). It is governmental orders which caused plaintiffs to be unable to fully utilize their property, not physical casualty to the property. Where the virus is present and can be removed or neutralized through routine cleaning of surfaces with standard household cleanings, such a need does not trigger the insurance coverage.

The Sixth, Eighth and Ninth Circuit Court of Appeals have addressed similar Covid-19 related issues in reported decisions. The Sixth Circuit addressed the issue in Santo's Italian Café, LLC v. Acuity Ins. Co., 15 F.4th 398 (6th Cir. 2021). There the insured operated a restaurant. The State of Ohio issued an Order suspending all in-person dining at restaurants which had a substantial impact on the hospitality industry, similar to the industry impacted in the current case. There, as here, the policy provided that it would pay for direct physical loss or damage to covered property, and defined coverage to apply to the risks of direct physical loss or damage. Business interruption and extra expense coverage was provided "if the suspension was caused by direct physical loss or damage to property at the restaurant." The Court held that despite the presence of the Covid-19 virus, the restaurant itself had not been tangibly destroyed, explaining that a loss of use is not the same as a physical loss. Id. at 401. The Court concluded that direct physical loss or damage to property does not include the inability to use the property without there first being direct physical loss or damage to covered property. Id. at 405.

Other reported decisions have likewise required a distinct, demonstrable physical alteration to the property in order to trigger coverage from Covid-19. Mudpie, Inc. v. Travelers Casualty Ins. Co. of Am., 15 F.4th 885 (9th Cir. 2021) (direct physical loss or damage to property requires physical

alteration of property); Oral Surgeons, P.C. v. The Cincinnati Ins. Co., 2 F.4th 1141 (8th Cir. 2021) (holding that no coverage for mere loss of use where property has suffered no direct physical loss or harm). The Ninth Circuit in the Mudpie case was directly confronted with claims that orders issued by the City and County of San Francisco and the State of California required closure of the insured's business. Accepting this as true, the Court concluded that the loss of use of the premises due to the government closure order did not trigger business income coverage. Mudpie, 15 F.4th at 892. See also, Promotional Headwear Int'l v. Cincinnati Ins. Co., 504 F. Supp. 3d 1191, 1200 (D. Kan. 2020) (holding actual or tangible harm to or intrusion on the property itself required); Michael Cetta, Inc. v. Admiral Indemnity Co., 506 F. Supp. 3d 168, 179 (S.D.N.Y. 2020) (concluding that loss of use of the insured premises due to a government closure order does not trigger business income coverage without there first being direct physical loss or damage to the insured property).

On June 20, 2022, the Appellate Division issued its decision in Mac Property Group, LLC v. Selective Fire and Casualty Ins. Co., _____ N.J. Super. _____ (App. Div. 2022) which the Court finds to be disposition of the issues presented. This decision represents a consolidation of six separate appeals addressing first party insurance coverage for Covid-19 claims.

Various theories were asserted in the underlying claims. Plaintiffs in the Precious Treasures case and The Country Diner case alleged they were required to suspend operations and suffered direct physical loss of and damage to their property because they were unable to use their property for its intended purpose. Similar allegations were made by plaintiff MPG. Coverage was sought for both loss of business income, extra expense and order of civil authority.

First, the Court found that the term "direct physical loss or damage to" was not ambiguous. Slip Opinion at 23. The Court further concluded that the definition of period of restoration as ending on the date when the property should be repaired, rebuilt or replaced with reasonable speed clarifies the intended meaning of the term direct physical loss. Slip Opinion at 24.

The Appellate Division cited with approval the Seventh Circuit decision in Sandy Point Dental, P.C. v. Cincinnati Ins. Co., 20 F.4th 327, 337 (7th Cir. 2021) which held that "the mere presence of the virus on surfaces did not physically alter the property, nor did the existence of airborne particles carrying the virus". Slip Opinion at 28.

The Court cited with approval the Massachusetts Supreme Court decision in Verveine Corp. v. Strathmore Ins. Co., 184 N.E. 3d 1266, 1275-76 (Mass. 2022) which specifically rejected the argument that the term "risks of direct physical loss" was ambiguous and did not require there be a finding of actual physical loss or damage to cover property. Slip Opinion at 28-30. The Court rejected claims under the civil authority coverage for two reasons. First, the Executive Orders did not prohibit access to the insured premises and did not prevent the owners from being on their premises. Rather, the Executive Orders only restricted their business activities on the premises. Slip Opinion at 36. Further, the Executive Orders were not issued as a result of covered damage to nearby property, thereby precluding application of the civil authority coverage. Slip Opinion at 37. Finally, the New Jersey Court rejected the regulatory estoppel argument similar to arguments presented here. Slip Opinion at 37-42.

The Court's ultimate conclusions were summarized as follows:

> [W]e conclude the motion judges were correct in granting Rule 4:6-2(e) dismissals of plaintiffs' complaints with prejudice for failure to state a claim on the basis that plaintiffs' business losses were not related to any "direct physical loss of or damage to" covered properties as required by the terms of their insurance policies. We conclude plaintiffs' business losses were also not covered under their insurance policies' civil authority clauses, which provided coverage for losses sustained from governmental actions forcing closure or limiting business operations under certain circumstances. We further conclude defendants' denial of coverage was not barred by regulatory estoppel. ...

Slip Opinion at 6. Finally, the Court concluded that it was appropriate to grant dismissal with prejudice without leave to appeal. Slip Opinion at 52.

The gist of plaintiff's complaint is that the Covid-19 virus and the resulting civil closure orders caused business closures or otherwise rendered the insured properties unsafe for their usual and customary purposes. This court concludes consistent with the other courts which have addressed this issue that these circumstances do not constitute direct physical loss or damage triggering coverage under the insurance policies in the first instance.

V. CONCLUSIONS

The court concludes that despite the semantics in the language utilized in the complaint, the complaint itself fails to allege physical loss or damage to covered property which is a pre-condition to triggering coverage under the insurance policies at issue in this case. There is no need to repair or replace property as required in calculating the time-period for any business interruption or extra expense claim. For these reasons, the motion to dismiss will be granted with prejudice.