SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3780-20

GABRIELLA'S LLC, d/b/a GABRIELLA'S ITALIAN STEAKHOUSE, PATRICIA'S OF HOLMDEL, LLC, OEK NJ LLC, d/b/a OVER EASY KITCHEN, and OVER EASY LLC, d/b/a OVER EASY KITCHEN,

Plaintiffs-Appellants,

v.

THE HARTFORD INSURANCE GROUP,[1] TWIN CITY FIRE INSURANCE COMPANY, and UTICA FIRST INSURANCE COMPANY,

Defendants-Respondents.

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Argued March 22, 2023 – Decided September 29, 2023

Before Judges Accurso, Firko, and Natali.

[1] The Hartford Insurance Group was voluntarily dismissed from the case and is not participating in this appeal.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Docket No. L-1178-20.

Stephanie L. DeLuca argued the cause for appellants (Maggs, McDermott & DiCicco, LLC, attorneys; Michael M. DiCicco, of counsel and on the briefs; Stephanie L. DeLuca, on the briefs).

David J. Bloch argued the cause for respondent Utica First Insurance Company (Farber Brocks & Zane LLP, attorneys; David J. Bloch, on the brief).

Anjali S. Dalal (Wiggin and Dana LLP) of the New York bar, admitted pro hac vice, argued the cause for respondent Twin City Fire Insurance Company (James L. Brochin (Steptoe & Johnson, LLP), Sarah D. Gordon (Steptoe & Johnson, LLP) of the District of Columbia bar, admitted pro hac vice, Jonathan M. Freiman (Wiggin and Dana LLP) of the Connecticut and Pennsylvania bars, admitted pro hac vice, and Anjali S. Dalal, attorneys; James L. Brochin, Sarah D. Gordon, Jonathan M. Freiman, and Anjali S. Dalal, on the brief).

The opinion of the court was delivered by

FIRKO, J.A.D.

Plaintiffs operate four restaurants in New Jersey that were shut down for several months in 2020 under Governor Philip D. Murphy's COVID-19 Executive Orders. Gabriella's and Patricia's were insured by defendant Twin City Fire Insurance Company (Twin). Over Easy Kitchen of Holmdel (OEKH) and Over Easy Kitchen of Marlboro (OEKM) were insured by defendant Utica First Insurance Company (Utica). Plaintiffs appeal from an order dismissing

with prejudice their amended complaint seeking a declaration that Twin and Utica should pay the lost business income and extra expenses they incurred while the restaurants were closed or operating at a reduced capacity, contending Twin and Utica breached their policies by denying coverage.

Plaintiffs argue they suffered a direct physical loss of damage to their properties, triggering coverage under the Business Income, Extra Expense, and Interruption by Civil Authority provisions of their policies. Plaintiffs also contend the virus exclusion provisions in their policies do not apply, or Twin and Utica should be barred from asserting that exclusion under the regulatory-estoppel doctrine and as violative of New Jersey public policy. After the trial court rejected those arguments, we considered and rejected all those arguments as applied to almost identical insurance policies. See Mac Prop. Grp., LLC v. Selective Fire & Cas. Ins. Co., 473 N.J. Super. 1 (App. Div. 2022). Because our holdings and reasonings in Mac Property apply to plaintiffs' Twin and Utica Policies, we affirm the order dismissing plaintiffs' amended complaint with prejudice.

I.

A.

The Twin Policies

Gabriella's and Patricia's had businessowners' insurance policies issued by Twin covering the periods of September 11, 2019, through September 11, 2020, and July 26, 2019, through July 26, 2020, respectively. During these periods, Gabriella's was located in Red Bank and Patricia's was located in Holmdel. The Twin Policies included coverage for business income, extra expense, and loss caused by civil authority. The Twin Policies issued to Gabriella's and Patricia's contain identical language for these three provisions.

The Business Income provision states in pertinent part that Twin will "pay for the actual loss of Business Income [plaintiffs] sustain due to the necessary suspension of [their] 'operations' during the 'period of restoration.'" "Period of restoration" is defined as the period of time beginning with the "date of direct physical loss or physical damage caused by or resulting from a Covered Cause of Loss at the 'scheduled premises'" and ending when the property "should be repaired, rebuilt or replaced with reasonable speed and similar quality."

To trigger Business Income coverage, "the 'suspension' must be caused by direct physical loss of or damage to property at the 'scheduled premises' . . . caused by or resulting from a Covered Cause of Loss." "Suspension" is defined as "the partial slow down or complete cessation of [the insured] business activities."

The Extra Expense provision states in pertinent part that Twin "will pay reasonable and necessary Extra Expense [plaintiffs] incur during the 'period of restoration' that [the insured] would not have incurred if there had been no direct physical loss or physical damage to property at the 'scheduled premises.'" (Emphasis added).

The Civil Authority provision extends coverage "to apply to actual loss of Business Income [plaintiffs] sustain when access to [their] 'scheduled premises' is specifically prohibited by order of a civil authority as the direct result of a Covered Cause of Loss to property in the immediate area of the 'scheduled premises.'" This provision further provides coverage "will end . . . when access is permitted to [the] 'scheduled premises.'"

The Twin Policies additionally included an endorsement, which contains a virus exclusion provision:

> I. "Fungi," Wet Rot, Dry Rot, Bacteria And Virus
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> We will not pay for loss or damage caused directly or indirectly by any of the following. Such a loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss:
>
> (1) Presence, growth, proliferation, spread of any activity of "fungi," wet rot, dry rot, bacteria or virus.

> (2) But if "fungi," wet rot, dry rot, bacteria or virus results in a "specified cause of loss" to Covered Property, we will pay for the loss or damage caused by that "specified cause of loss."
>
> This exclusion does not apply:
>
> (1) When "fungi," wet or dry rot, bacteria or virus results from fire or lightning; or
>
> (2) To the extent that coverage is provided in the Additional Coverage – Limited Coverage for "Fungi," Wet Rot, Dry Rot, Bacteria and Virus with respect to loss or damage by a cause of loss other than fire or lightning.

This exclusion applies whether or not the loss event results in widespread damage or affects a substantial area.

B.

The Utica Policies

OEKH and OEKM had businessowners' insurance policies issued by Utica covering the periods of August 21, 2019, through August 21, 2020, and January 11, 2020, through January 11, 2021, respectively. During these periods, OEKH was located in Holmdel and OEKM was located in Marlboro.

The Utica Policies included coverage for loss of income, extra expense, and interruption by civil authority. The Utica Policies issued to OEKH and OEKM contain identical language for these three provisions.

The Loss of Income provision states in pertinent part, Utica will "provide the Loss of Income . . . during the 'restoration period' when [plaintiffs'] business[es] sustain a necessary 'interruption' resulting from direct physical loss or damage . . . as a result of a covered peril." "Coverage will only apply when the loss or damage to . . . property [that] occurs at the . . . premises or . . . within 100 feet of the described premises."

"Restoration period" is defined as "the time it should take to resume . . . normal business activities" beginning "seventy-two hours after the time of direct physical loss or damage caused by a covered peril," with respect to Earnings, or beginning "immediately after the time of direct physical loss or damage caused by a covered peril," with respect to Extra Expense. The restoration period ends on "the date that the property should be rebuilt, repaired, or replaced with reasonable speed and similar quality." "Interruption" is defined as "the reduction or complete stoppage of . . . business activities, or all or part of the described premises become unfit for rental occupancy."

Under the Extra Expense provision, Utica states it will "pay the necessary extra expenses . . . incur[red] to resume or continue [plaintiffs'] normal business activities as nearly as practicable." This provision also states Utica will "pay only the extra expenses that are necessary during the 'restoration period.'"

The Interruption by Civil Authority provision extends coverage "to include loss[es] while access to . . . premises is specifically denied by an order of civil authority." It further states the order "must be a result of damages to property other than at the . . . premises that is caused by a covered peril."

The Utica Policies additionally contained a virus exclusion provision, which states, "Utica do[es] not pay for loss, cost, or expense caused by, resulting from, or relating to any virus, . . . that causes disease, illness, or physical distress or that is capable of causing disease, illness, or physical distress." Further, the virus exclusion "applies to, but is not limited to any loss, cost, or expense as a result of: (a) any contamination by any virus, bacterium, or other microorganism; or (b) any denial of access to property because of any virus, bacterium, or other microorganism."

C.

The Executive Orders

In March 2020, in response to the COVID-19 pandemic, Governor Murphy declared a state of emergency and issued Executive Orders which suspended non-essential business operations, including restaurants. See Exec. Order No. 103 (Mar. 9, 2020), 52 N.J.R. 549(a) (Apr. 6, 2020); Exec. Order No.

107 (Mar. 21, 2020), 52 N.J.R. 554(a) (Apr. 6, 2020) (hereinafter collectively referred to as the "Executive Orders").

As a result, plaintiffs were forced to close their businesses to the public or had to confine their services to take-out and limit their hours of operation. Plaintiffs alleged they suffered a substantial loss of business and income when the Executive Orders were in effect. Plaintiffs sought coverage through their insurance policies with Twin and Utica. However, Twin and Utica declined coverage because they alleged the policies did not cover the COVID-19 related losses. In addition, Twin and Utica alleged coverage was barred by the policies' virus exclusions.

In response, plaintiffs brought suit for a declaratory judgment and to compel Twin and Utica to provide Business Interruption and Extra Expense Coverage, as well as coverage under the Civil Authority provision. Plaintiffs also sought a declaration that the policies' virus exclusions did not bar coverage for their losses.

Twin removed this action to federal court. Plaintiffs filed a motion to remand claiming removal was untimely and defective. The federal court granted plaintiffs' motion and remanded to the Law Division.

Twin and Utica moved to dismiss under Rule 4:6-2(e), arguing the plain language of the policies did not cover the losses at issue. Following argument[2] on the motions to dismiss, the trial court granted the motions and dismissed plaintiffs' amended complaint with prejudice, finding there was no direct physical loss of or damage to plaintiffs' properties, and that the virus exclusions applied because the Governor issued the Executive Orders in response to the COVID-19 virus.

In its thorough oral opinion, the trial court cited three cases, Port Authority v. Affiliated FM Insurance Company, 311 F. 3d 226 (3d Cir. 2002),[3] Wakefern Food Corporation v. Liberty Mutual Fire Insurance Company, 406

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[2] The transcript of the trial court's decision states oral argument was conducted but the parties did not provide this section of the transcript in their appendices.

[3] In Port Authority, the Third Circuit held that an insured which owned a building with "asbestos . . . present in the components of a structure, but . . . not in such form or quantity as to make the [structure] unusable" had not suffered a "loss" under the insured's all risk policy. Port Authority, 311 F.3d at 236. Only the actual release of the asbestos fibers or the "imminent threat" of such a release could qualify as a "loss" under the all-risk policy. Ibid. The Third Circuit recently affirmed this principle in Wilson v. USI Ins. Serv. LLC, 57 F.4th 13, 138 (3d Cir. 2023). We find in the record no imminent threat of a "release" which would eliminate or destroy the functionality of plaintiffs' property or render it useless or uninhabitable. Id. at 142. The imminent threat posed by COVID-19 has always been to the individuals that may patronize plaintiffs' places of business, not the places of business themselves.

N.J. Super. 524 (App. Div. 2009), and an unpublished federal district court case.[4] The trial court emphasized the terms "direct physical and property . . . [were] the operative words" that were "dispositive" in this matter. Under the Business Income and Extra Expense provisions, the trial court determined coverage was not extended because plaintiffs' losses were "not due to any physical loss or damage to real or personal property but . . . [were] rather due to the macro impacts of COVID-19."

The trial court distinguished Port Authority because here, plaintiffs did not allege the presence of COVID-19 at any of their establishments. In addition, the trial court noted the policy language in Port Authority did not contain

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[4] The court erred in citing this opinion. Rule 1:36-3 provides:

> No unpublished opinion shall constitute precedent or be binding upon any court. Except for appellate opinions not approved for publication that have been reported in an authorized administrative law reporter, and except to the extent required by res judicata, collateral estoppel, the single controversy doctrine or any other similar principle of law, no unpublished opinion shall be cited by any court. No unpublished opinion shall be cited to any court by counsel unless the court and all other parties are served with a copy of the opinion and all contrary unpublished opinions known to counsel.

Unreported decisions "serve no precedential value, and cannot reliably be considered part of our common law." Trinity Cemetery v. Wall Twp., 170 N.J. 39, 48 (2001) (Verniero, J. concurring).

limiting language such as "direct physical loss or damage to real or personal property."

The trial court determined Wakefern was not analogous to plaintiffs' claims because in that case, tangible items, such as generators and power lines, were physically damaged by a power outage, whereas here, no tangible property of plaintiffs was harmed, and there was no physical damage to their premises. In addition, the trial court highlighted that Wakefern addressed a much narrower policy that did not require a direct physical loss. Finally, the trial court found plaintiffs' reliance on the federal case misplaced. In that case, the court determined there was a direct physical loss of or damage to the premises where ammonia was released into the air resulting in the facility being uninhabitable. In the matter under review, the trial court determined no similar conclusion could be drawn because there was no allegation that COVID-19 physically transformed the air on plaintiffs' properties or rendered their premises uninhabitable.

The trial court also concluded plaintiffs could not obtain coverage under the Civil Authority provision because the owners were never barred from their properties. In particular, the trial court explained the Executive Orders simply limited plaintiffs' services, as they were allowed access to their buildings and

were permitted "to prepare" and "sell food." The trial court noted the statewide implication of the Executive Orders and underscored the "obvious intent of . . . Civil Authority coverage . . . is for circumstances . . . due to safety limitations, [such as] a hurricane, tornado, earthquake, bomb, [or] building collapse," which was not the case here.

Lastly, the trial court concluded that even if coverage were extended under any of the above-stated provisions, Twin and Utica's virus exclusions precluded indemnification. Specifically, the trial court found the virus exclusions applied because the Governor's stay-at-home orders were a direct result of the COVID-19 virus, and noted "any arguments to the contrary [would] def[y] logic and common sense, as these orders were expressly issued to mitigate the spread of a highly contagious novel virus."

The trial court also rejected plaintiffs' defense of regulatory-estoppel to the applicability of the virus exclusion and reasoned the amended complaint did not offer any factual support for that theory, and the defense would not change the outcome as it did "not void clear and unambiguous provisions nor rescind an otherwise unambiguous insurance policy."

On appeal, plaintiffs argue the limitations imposed by the Executive Orders constituted physical loss or damage to their properties. Plaintiffs contend

the virus exclusion does not bar coverage because it was the Governor's Executive Orders, and not the virus itself, that caused the restaurants' closures and were the proximate cause of their losses. They also argue that even if the virus exclusions did apply, the doctrine of regulatory-estoppel bars Twin and Utica from asserting it. These arguments are unavailing. Thus, we affirm the challenged order substantially for the reasons outlined by the trial court. We add the following comments.

II.

We use a de novo standard to review all of plaintiffs' arguments. The appeal comes before us challenging an order dismissing the amended complaint for failure to state a claim, and appellate courts apply a de novo standard of review to orders of dismissal. See Baskin v. P.C. Richard & Son, LLC, 246 N.J. 157, 171 (2021). Accordingly, we assume the allegations in the pleadings are true and afford the pleader all reasonable inferences. Sparroween, LLC v. Township of West Caldwell, 452 N.J. Super. 329, 339 (App. Div. 2017). "Where, however, it is clear that the complaint states no basis for relief and that discovery would not provide one, dismissal of the complaint is appropriate." Ibid. (quoting J.D. ex rel. Scipio-Derrick v. Davy, 415 N.J. Super. 375, 397 (App. Div. 2010)).

The issues on this appeal involve the interpretation of insurance policies. "In interpreting insurance contracts, we first examine the plain language of the policy and, if the terms are clear, they 'are to be given their plain, ordinary meaning.'" Pizzullo v. N.J. Mfrs. Ins. Co., 196 N.J. 251, 270 (2008) (quoting Zacarias v. Allstate Ins. Co., 168 N.J. 590, 595 (2001)). "If the language is clear, that is the end of the inquiry." Chubb Custom Ins. Co. v. Prudential Ins. Co. of Am., 195 N.J. 231, 238 (2008).

"Exclusions in insurance contracts 'are presumptively valid and will be given effect if [they are] 'specific, plain, clear, prominent, and not contrary to public policy.'" Mac Property, 473 N.J. Super. at 35 (quoting Princeton Ins. Co. v. Chunmuang, 151 N.J. 80, 95 (1997)). Further, exclusionary provisions "containing 'an anti-concurrent or anti-sequential clause' ha[ve] been interpreted to unambiguously bar coverage for losses resulting in any manner from an excluded cause." Id. at 37 (quoting Wear v. Selective Ins. Co., 455 N.J. Super. 440, 454-55 (App. Div. 2018)). "Thus, coverage is excluded for a loss attributable to a given cause 'regardless of whether any other cause, event, material or product contributed concurrently or in any sequence' to that loss." Ibid. (quoting Wear, 455 N.J. Super. at 454).

All the arguments raised by plaintiffs have been analyzed and rejected in our decision in Mac Property. The insurance coverage provisions, the Civil Authority provisions, and some of the virus-exclusion provisions that we analyzed in Mac Property are substantively identical to the provisions in the Policy. In Mac Property, several plaintiffs sought declaratory judgments enforcing Business Income and Civil Authority provisions to cover losses they incurred during the COVID-19 pandemic after being forced to shut down or restrict their operations. 473 N.J. at 12-16. We concluded the motion courts appropriately dismissed the plaintiffs' complaints with prejudice under Rule 4:6-2(e). Id. at 40. In reaching that determination, we noted there were "scores of federal and state appellate-level courts that . . . addressed" the issues raised by the plaintiffs and

> [t]he overwhelming majority of them . . . granted defendant insurers' motions to dismiss complaints seeking insurance coverage for business losses due to government orders barring or curtailing [the insureds'] operations . . . to curb the . . . pandemic because the losses were not due to physical loss or damage to their insured premises.
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> [Id. at 26-27.]

Instead, their losses were due to "restrictions imposed by [Executive Orders] to curb the COVID-19 pandemic." Id. at 41.

Plaintiffs contend Twin and Utica must provide coverage under the Business Income, Extra Expense, or Civil Authority Provisions of their Policies. Plaintiffs argue coverage was triggered because they incurred a direct physical loss or damage to their premises when the Executive Orders restricted public access to their establishments, maintaining a physical alteration is not required to sustain coverage under these provisions. They further assert the Executive Orders suspended their operations, as patrons were excluded from in-person dining, which resulted in a "partial shutdown or complete cessation of business."

In Mac Property, we held the term "direct physical loss of or damage to" was not ambiguous because "average policyholders" could understand that coverage extended only to instances where the insured property has suffered a detrimental physical alteration of some kind, or there was a physical loss of the insured property. Id. at 21-22. We reasoned the plaintiffs in Mac Property did not suffer any damage to their equipment or property "that caused their premises to lose their physical capacity to operate, and there was no physical alteration that made their premises dangerous to enter. Id. at 23. Specifically, none of the plaintiffs alleged COVID-19 was present on their properties, rendering them uninhabitable. Ibid. If it had not been for the Executive Orders, the plaintiffs

would have been able to continue functioning with their intended purposes. Ibid. We adopt the same rationale here.

Plaintiffs here did not suffer any "direct physical loss or damage" to their properties. Like the plaintiffs in Mac Property, plaintiffs here did not lose their physical capacity to operate. None of plaintiffs' properties required any repairs, rebuilding, or replacement due to damage. Further, there was no physical alteration making plaintiffs' restaurants dangerous to enter. Plaintiffs do not allege their premises were contaminated by COVID-19. As we noted in Mac Property, the policy's definition of restoration period by the time required to rebuild, repair, or replace the property would be meaningless if the insured were permitted to recover for purely economic losses under this provision. 473 N.J. Super. at 23. Therefore, Twin and Utica were not required to extend coverage under the Business Income provision of the Policies as there was no "directly physical loss or damage."

While we did not specifically address the language in the plaintiffs' Extra Expense provision in Mac Property, 473 N.J. Super. at 22, the coverage is inapplicable for two reasons. First, the Extra Expense provision also requires a "direct physical loss of or damage to property," which did not occur here, as discussed above, and also references coverage during restoration periods.

Second, our analysis in Mac Property relied, in part, on a Massachusetts Supreme Court case, which examined similar Business Income and Extra Expense provisions and determined that coverage was not triggered because there was no physical loss or damage to the plaintiffs' properties. Mac Property, 473 N.J. at 25-27. For the reasons described above, plaintiffs here similarly cannot demonstrate any physical loss or damage to their property. We conclude Mac Property's analysis is controlling, and thus coverage was not properly extended under the Extra Expense provision. Therefore, plaintiffs cannot recover under the Business Income and Extra Expense provisions of the Twin or Utica Policies.

We also considered the Civil Authority provision in Mac Property in light of Governor Murphy's Executive Orders. Id. at 27-30. In Mac Property, plaintiffs' policies provided the defendants would "pay for the actual loss of Business Income" sustained by the plaintiffs "caused by action of civil authority that prohibit[ed] access to" its premises. Id. at 27. In order for the Civil Authority coverage to be triggered, plaintiffs were required to show:

> (1) damage . . . done to other property within a certain distance of the insured premises; (2) this damage resulted from a "Covered Cause of Loss"; (3) the civil authority prohibited access to the insured premises because of the damage; and (4) the civil authority's action was taken in response to dangerous physical

> conditions resulting from the damage or the continuation of the covered cause of loss or to ensure civil authority's unimpeded access to the damaged area.
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> [Ibid.]

We considered the plain and unambiguous language contained in this provision—and decisions from sister states—and determined the trial courts were correct in their conclusions that the provision did not extend coverage because the Executive Orders did not prohibit access to the premises, or limit the owners from accessing their properties. Ibid. Rather, the Executive Orders only "restricted [the plaintiffs'] business activities." Ibid. We also reasoned the Civil Authority provision did not extend coverage because the plaintiffs' businesses were all closed to the public; and none were selectively closed due to damage from a nearby property. Ibid.

Here, plaintiffs fail to present any argument to justify a deviation from our conclusion in Mac Property. Plaintiffs' policies contain language identical to that we discussed in Mac Property, requiring "the civil authority prohibited access to the insured premises." Ibid. (emphasis added). The Executive Orders did not prohibit access to plaintiffs' properties. Nothing in the record indicates plaintiffs were prevented from entering their businesses. Instead, plaintiffs were permitted to maintain staff at their restaurants for take-out and delivery options.

And, the Executive Orders affected all businesses Statewide, and did not specifically target any of plaintiffs' restaurants.

Moreover, the virus-exclusion provisions in the Twin and Utica Policies are unambiguous and apply to preclude the coverage that plaintiffs are seeking. As we explained in Mac Property, "it is unequivocal that the virus was the sole reason the [Executive Orders] were issued." Id. at 40. The Policies, like some of those in Mac Property, contained a virus-exclusion provision "that included anti-concurrent and anti-sequential causation language, undoubtedly barring coverage" because the COVID-19 virus allegedly contributed to plaintiffs' business losses. See ibid.

The plaintiffs in Mac Property made substantially the same argument regarding regulatory-estoppel as plaintiffs assert here. Regulatory-estoppel applies when "an insurer makes misrepresentations to a regulatory body regarding the meaning and effect of language it has requested to include in its policies . . . ." Morton Int'l, Inc. v. Gen. Accident Ins. Co., 134 N.J. 1, 75-76 (1993). Relying on Morton, plaintiffs contend Twin and Utica are estopped from enforcing the virus-exclusion provisions because certain insurance industry trade groups, including the Insurance Services Office, Inc. (ISO) and American Association of Insurance Services (AAIS), made misrepresentations to State

regulators by stating the adoption of virus-exclusion provisions was only meant to clarify that coverage for disease-related agents in property insurance policies had never been in effect.

In Mac Property, we considered and rejected that argument, concluding that Morton is distinguishable. Id. at 32-34. We reasoned that the "ISO plainly stated that there would be no coverage for any virus-related claims" and, thus, had not made any misrepresentations, unlike the Insurance Rating Board in Morton, which had "made false statements that coverage would continue for the same types of pollution and damage going forward." Id. at 33-34. We further noted our conclusion was consistent with federal courts that had considered similar regulatory-estoppel arguments based on the ISO's statements. Id. at 32-33 (collecting cases).

In addition, we explained that the plaintiffs' regulatory-estoppel claim would inevitably fail because the defendants, like Twin and Utica, did not take a position regarding the interpretation that the plaintiffs incurred direct physical loss of or damage to their businesses. Id. at 33. The record here is devoid of any evidence of a false statement or misrepresentation to a regulatory body regarding the scope of the virus exclusions.

We are also unpersuaded by plaintiffs' argument that they should be entitled to discovery to establish defendants' previously covered losses caused by viruses, representations made to regulators that were misleading regarding the exclusion's effect on the insureds' coverage, and on the issue of how the exclusion failed to reduce premiums. We reiterate the record shows no indication of falsehoods or misrepresentations made by Twin or Utica to a regulatory body regarding the exclusion's effect on coverage. Similar to Mac Property, plaintiffs' arguments are unavailing because any statements made simply expressed the insurer's general intent to disallow coverage for losses resulting from "disease-causing agents." Therefore, discovery or the opportunity for plaintiffs to amend their [amended] complaint would be futile." Mac Property, 473 N.J. Super. at 34.

We conclude plaintiffs' remaining arguments—to the extent we have not addressed them—lack sufficient merit to warrant any further discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.