UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 1:20-cv-22615-WILLIAMS

MALAUBE, LLC,

Plaintiff,

vs.

GREENWICH INSURANCE COMPANY,

Defendant.

DEFENDANT, GREENWICH INSURANCE COMPANY'S MOTION TO DISMISS

Defendant, Greenwich Insurance Company moves to dismiss with prejudice Plaintiff Malaube, LLC's Amended Complaint for failure to state a claim upon which relief can be granted, under Federal Rule of Civil Procedure 12(b)(6).

STATEMENT OF THE RELIEF REQUESTED

Plaintiff seeks a judicial declaration that Greenwich committed a breach of contract and that Plaintiff's alleged loss of business income is covered by the commercial property insurance policy issued by Greenwich. The existence, or nonexistence, of insurance coverage presents a pure question of law, and as a matter of law, Plaintiff has not alleged any facts that give rise to coverage.

Plaintiff asserts that two Florida Emergency Orders -- one issued by Miami-Dade Mayor Carlos Gimenez on March 17, 2020 and the other issued by Florida Governor Ron DeSantis on March 20, 2020 in response to the COVID-19 pandemic -- resulted in the Plaintiff's loss of business income. [See Document 5 at Page 3-4, ¶ 15, 20]. That claim cannot survive under the Policy, for three reasons.

First, the Policy's virus exclusion expressly excludes losses that are caused by a virus that is capable of inducing physical distress, illness or disease. [See Document 5-1 at Page 67]. The COVID-19 virus, formally known as "severe acute respiratory syndrome coronavirus 2," is, without a doubt, a virus. The losses alleged by Plaintiff that were caused by the COVID-19 virus fall squarely within this unambiguous exclusion and coverage must be denied.

Second, without "direct physical loss of or damage to" Plaintiffs "Covered Property" from a "Covered cause of Loss," there is no Business Income coverage or Extra Expense coverage under the Policy. [See Document 5-1 at Page 53-61]. Plaintiff has not alleged any "direct physical loss of or damage to property" at the insured premises, nor can it credibly do so. There is no coverage as a matter of law, so the Court should dismiss this claim.

Third, there can be no Civil Authority coverage under the Policy unless the civil authority action (A) is the result of physical damage to certain other property from a Covered Cause of Loss, and (B) prohibits Plaintiff from accessing the insured property. [See *Id*.] Plaintiff does not allege, and cannot credibly allege, that either of these contractual requirements are met. The Florida Emergency Orders were issued to promote social distancing, not due to any physical property damage, and Plaintiff was never prohibited from accessing its property. [See Document 5 at Page 4, ¶ 19].

STATEMENT OF THE BASIS FOR THE REQUEST

Under the *Erie* doctrine, "the construction of insurance contracts is governed by substantive state law." *Sphinx Intern., Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 412 F.3d 1224, 1227 (11th Cir. 2005) (quoting *Provau v. State Farm Mut. Auto Ins. Co.*, 772 F.2d 817, 819 (11th Cir. 1985)). Florida applies the traditional rule of *lex loci contractus* to insurance contracts, such that "the law of the jurisdiction where the contract was executed governs the rights and liabilities of

the parties in determining an issue of insurance coverage." *State Farm Mut. Auto. Ins. Co. v. Roach*, 945 So. 2d 1160, 1163 (Fla. 2006) (citing *Sturiano v. Brooks*, 523 So,2d 1126, 1129 *Fla. 1988). *See also Gulf Tampa Drydock Co. v. Great Atl. Ins. Co.*, 757 F.2d 1172, 1174 (11th Cir. 1985) ("Florida adheres to the traditional rule that the legal effects of terms of the insurance policy and rights and obligations of persons insured thereunder are to be determined by the law of the state where the policy was issued.")

Greenwich issued Policy No. PHK-0950951 to Malaube, LLC d/b/a Spris Artisan Pizza in the state of Florida, covering property located at 5748 Sunset Drive, Miami, Florida 33143 (the "Policy"). [See Document 5 at Page 2, ¶ 7,8]. Accordingly, Florida law controls the interpretation of the subject insurance policy.

Under Florida law, the interpretation of an insurance contract is a matter of law to be decided by the court." *AIX Specialty Ins. Co. v. Ashland 2 Partners, LLC*, 383 F. Supp. 3d 1334, 1337 (M.D. Fla. 2019) (citing *Gulf Tampa Drydock Co. v. Great Atl. Ins. Co.*, 757 F.2d 1172, 1174 (11th Cir. 1985)). "Rule 12(b)(6) authorizes a court to dismiss a claim on the basis of a dispositive issue of law." *Neitzke v. Williams*, 490 U.S. 319, 326 (1989*). See also Executive 100, Inc. v. Martin County*, 922 F.2d 1536, 1539 (11th Cir. 1991) ("Federal Rule of Civil Procedure 12(b)(6) authorizes a court to dismiss a complaint on the basis of a dispositive issue of law.").

Plaintiff has alleged the facts of its claimed loss and has appended to its Complaint a copy of the insurance policy that describes the coverage. "A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes," including the Court's consideration of a motion to dismiss. Fed. R. Civ. P. 10(c); *Solis-Ramirez v. U.S. Dept. of Justice*, 758 F.2d 1426, 1430 (11th Cir. 1985) ("Under Rule 10(c) Federal Rules of Civil Procedure, such attachments are considered part of the pleadings for all purposes, including a Rule 12(b)(6) motion."). Moreover,

to the extent that any of the Amended Complaint's allegations conflict with the exhibit, "the exhibit controls." *Hoefling v. City of Miami*, 811 F.3d 1271, 1277 (11th Cir. 2016) ("A district court can generally consider exhibits attached to a complaint in ruling on a motion to dismiss, and if the allegations of the complaint about a particular exhibit conflict with the contents of the exhibit itself, the exhibit controls.*"). See also Griffin Industries, Inc. v. Irvin*, 496 F.3d 1189, 1206 (11th Cir. 2007) ("when the exhibits contradict the general and conclusory allegations of the pleading, the exhibits govern.").

In this case, the Complaint alleges the following: Plaintiff obtained a policy of commercial property insurance from Greenwich for its Italian restaurant in Miami, Florida [See Document 5 at Page 2, ¶ 7,8]. On March 17, 2020, in response to the COVID-19 pandemic, Miami-Dade Mayor, Carlos Gimenez, signed an order to close all restaurants for dining in, and only permitting takeout and delivery. Further, on March 20, 2020, in response to the COVID-19 pandemic, Florida Governor Ron DeSantis issued an executive order closing all onsite dining at restaurants. [See Document 5 at Page 3, ¶ 13-14]. The shutdowns ordered by both the Miami-Dade Mayor and the Florida Governor caused the Plaintiff to sustain business losses. [See Document 5 at Page 3, ¶ 15-20].

Greenwich has informed Plaintiff that its claim is not covered pursuant to the terms of the subject insurance policy because the Plaintiff did not experience any physical loss or damage to the insured premises and the government shutdown orders were not issued as the result of any such physical loss or damage from a covered cause of loss. Greenwich further informed the Plaintiff that, even if there was physical loss or damage to insured property or the government shutdown orders were issued as a result of physical loss or damage from a covered cause of loss, the subject

insurance policy excludes loss or damage caused by or resulting from any virus, bacteria or other microorganism that induces or is capable of inducing physical distress, illness or disease.

Plaintiff's allegations relate to purely economic losses brought on by an excluded external event, not as the result of damage or direct physical loss to its insured property. That coverage determination is correct as a matter of law, and the Court should dismiss this lawsuit. *See Houston Specialty Ins. Co. v. Vaughn*, 2016 WL 7386957, at 3* (M.D. Fla. Aug. 4, 2016) ("dismissal is warranted under Rule 12(b)(6) if, assuming the truth of the complaint's factual allegations, a dispositive legal issue precludes relief"); *Mama Jo's, Inc. v. Sparta Ins. Co.*, 2018 WL 3412974, at 10* (S.D. Fla. June 11, 2018) ("Plaintiff cannot recover under the Business Income (And Extra Expense) Coverage because Plaintiff cannot show that there was any suspension of operations caused by 'physical damage.'").

MEMORANDUM OF LAW

I. PLAINTIFF FAILS TO ALLEGE FACTS SUFFICIENT TO STATE A CLAIM FOR RELIEF THAT IS PLAUSIBLE ON ITS FACE

To survive a Rule 12(b)(6) motion to dismiss, Plaintiffs must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic v. Twombly*, 550 U.S. 544, 570 (2007). The "[f]actual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Id.* at 555. A claim is plausible when the plaintiff pleads facts that allow the court to draw a "reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). When considering a motion to dismiss, this Court may "consider certain materials—documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice—without converting the motion to dismiss into a motion for summary

judgment." *U.S. v. Ritchie*, 342 F.3d 903, 907. "A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes." Fed. R. Civ. P. 10(c). Here, the Court may consider the following documents, which Plaintiff attached to its Complaint or incorporated by reference in the Complaint: the Policy and the Florida Emergency Orders. [*See* Document 5-1].

A. Florida's Rule of Policy Construction

Under Florida law, the terms of an insurance policy should be taken and understood in their ordinary sense. *Essex Ins. Co. v. Zota*, 607 F. Supp 2d 1340 (S.D. Fla. 2009). Further, "insurance contracts are construed in accordance with the plain language of the policies." *Siegle v. Progressive Consumers Ins. Co.*, 819 So. 2d 732, 739 (Fla. 2002) (citing *Prudential Property & Casualty Ins. Co. v. Swindal*, 622 So.2d 467, 470 (Fla. 1993)). At all times, "it is the function of the court to give effect to and enforce the contract as it is written," and a policy's terms "should be given their plain and unambiguous meaning as understood by the 'man-on-the-street.'" *Harrington v. Citizens Prop. Ins. Corp.*, 54 So. 3d 999, 1001 (Fla. 4th DCA 2010). It is a general rule in Florida that, "[w]here policy language is subject to differing interpretations, the terms should be construed liberally in favor of the insured and strictly against the insurer." *State Farm Fire & Cas. Co. v. CTC Development Corp.*, 720 So. 2d 1072 (Fla. 1998). However, in order for an insurance contract to be found ambiguous under Florida law, there must be a genuine inconsistency, uncertainty, or ambiguity in meaning that remains after resorting to the ordinary rules of construction. *Volusia County Cattlemen's Association, Inc. v. Western World Insurance Company*, 218 F. Supp. 3d 1343 (M.D. Fla. 2016). If the language found in an insurance policy is not ambiguous or otherwise susceptible of more than one meaning, the court's task is to apply the plain meaning of the words and phrases used to the facts before it. *Flaxman v. Government Employees Ins. Co.*, 993 So. 2d 597 (Fla. 4th DCA 2008).

Florida law dictates that "a court may not ascribe to a policy term a "meaning deemed more socially responsible or desirable to the insured," nor may it "rewrite contracts, add meaning that is not present, or otherwise reach results contrary to the intentions of the parties." *See Harrington*, 54 So. 3d 999, 1001 (Fla. 4th DCA 2010). Florida law places the burden on the insured, as the entity presenting the claim for coverage, to prove that the claim falls within the policy's affirmative grant of coverage. *LaFarge Corp. v. Travelers Indem. Co.*, 118 F.3d 1511, 1516 (11th Cir. 1997). Accordingly, Plaintiff, as the party alleging that its claims are covered under the Policy and that Greenwich breached its contractual obligations, bears the initial burden of proving its claims are covered under the Policy (although Greenwich acknowledges that if coverage is established in the first instance, the burden of proof is on Greenwich as to any exclusions).

B. The Virus Exclusion Precludes Plaintiff's Claim

The Policy's virus exclusion expressly excludes coverage for Plaintiff's claim however caused—whether directly or indirectly. The language of that exclusion is unambiguous and precludes claims for "loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease." [See Document 5-1 at Page 67]. The subject insurance policy further states that "The exclusion set forth in Paragraph B. applies to all coverage under all forms and endorsements that comprise this Coverage Part or Policy, including but not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense or action of civil authority." [See *Id.*].

Plaintiffs admit that the Florida Emergency Orders that interfered with its business were "a result of the COVID-19 pandemic" [See Document 5 at Page 3, ¶ 18]. Therefore, Plaintiff's claims fall squarely within the Policy's clear and unambiguous virus exclusion. Given the plain

language of the Policy and the allegations in the Complaint, Plaintiff's claims are excluded from coverage under the virus exclusion and the Court should dismiss Plaintiff's Complaint.

C. Plaintiff's Claims for Business Income and Extra Expense Coverage Fail Because There Is No Alleged Physical Loss of or Damage to Covered Property

Even without the virus exclusion, which clearly bars the Plaintiff's claims, the claims also fail because Plaintiff does not allege the requisite direct physical loss of or damage to covered property. The Policy provides coverage for actual loss of business income the Plaintiff sustains due to the necessary "suspension" of the Plaintiff's "operations" but only to the extent such "suspension" was caused by "direct physical loss of or damage to property" at the insured premises. [See Document 5-1 at Page 53-61]. Additionally, the Policy provides coverage for extra expense, but only for those necessary expenses that the Plaintiff would not have incurred if there had been "no direct physical loss of or damage to property" at the insured premises. [See *Id*.] In both instances, the loss or damage must be caused by or result from a Covered Cause of Loss. Without direct physical loss of or damage to property at the insured premises from a Covered Cause of Loss, there is no Business Income or Extra Expense coverage under the Policy.

Under Florida law, the principle that a business income loss "must be caused by direct physical loss of or damage to property" at the insured premises is well-established. *See Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Texpak Group N.V.*, 906 So. 2d 300, 302 (Fla. 3d DCA 2005) ("business interruption and extra expense losses are covered only if 'resulting from' damage or destruction of real or personal property caused by a covered peril").

Under the plain meaning of the word, Plaintiff has not alleged any form of "physical" loss or damage to anything. As explained in the most recent edition of *Couch on Insurance*: "The requirement that the loss be 'physical,' given the ordinary definition of the term, is widely held to

exclude losses that are intangible or incorporeal, and, thereby to preclude any claim against the property insurer when the insured merely suffers a detrimental economic impact unaccompanied by a distinct, demonstrable, physical alteration of the property." 10A Couch on Insurance § 148.46 (3d Ed. 2019).

"In ordinary parlance and widely accepted definition, physical damage to property means a distinct, demonstrable, and physical alteration of its structure." *Port Auth. Of New York & New Jersey v. Affiliated FM Ins. Co.*, 311 F.3d 226, 235 (3d Cir. 2002). Florida law has established that cleaning is not considered direct physical loss. *See Mama Jo's*, 2018 WL 3412974, at *9 (S.D. Fla. June 11, 2018) (quoting *Universal Image Prods., Inc. v. Fed. Ins. Co.*, 475 F.App'x 569, 573 (6th Cir. 2012) ("[Plaintiff] seeks coverage for cleaning and moving expenses … as well as lost business income. These are not tangible, physical losses, but economic losses."). Also, a "direct physical loss 'contemplates an actual change in insured property then in a satisfactory state, occasioned by accident or other fortuitous event directly upon the property causing it to become unsatisfactory for future use or requiring that repairs be made to make it so.'" *Id.* at *9[1] (quoting *MRI Healthcare Ctr. Of Glendale, Inc. v. State Farm Gen. Ins. Co.*, 187 Cal. App. 4th 766, 779 (Cal. App. 4th 2010)).

Further, the meaning of "direct physical loss" is unambiguous. See *Newman Myers Kreines Gross Harris P.C. v. Great N. Ins. Co.*, 17 F.Supp.3d 323 (S.D.N.Y. 2014). In *Newman*, after certain areas in New York City preemptively shut off the power in preparing for Superstorm Sandy, the court concluded that the policy language requiring direct physical loss or physical damage did

[1] The claim in *Mama Jo's* involved nearby roadwork which caused dust and debris contamination of the restaurant. The court held damage to the property meant that actual damage or alteration to the property requiring repairs would be needed in order to trigger the policy coverage. *See Mama Jo's*, at *9 (S.D. Fla. June 11, 2018).

not cover a law firm that was unable to access its offices during the outage. The court offered the following explanation:

> The critical policy language here – "direct physical loss or damage" – similarly and unambiguously, requires some form of actual, physical damage to the insured premises to trigger loss of business income and extra expense coverage. … The words "direct" and "physical," which modify the phrase "loss or damage," ordinarily connote actual, demonstrable harm of some form to the premises itself, rather than forced closure of the premises for reasons exogenous to the premises themselves, or the adverse business consequences that flow from such closure.

Id. at 331. Further, the court in *Newman* distinguished cases involving issues such as asbestos and ammonia infiltration in properties on the grounds that those cases involved "some compromise to the physical integrity of the [insured] workplaces." *Id*. at 329 (citing cases); *see also Source Food Tech., Inc. v. United States Fid. & Guar. Co.*, 465 F.3d 834 (8th Cir. 2006) (rejecting insured's business interruption claim because [a]lthough the [insured's] beef product in the truck could not be transported to the United States due to the closing of the border to Canadian beef products, the beef product on the truck was not . . . physically contaminated or damaged in any manner" so there was no "direct physical loss to" the insured's property).

Here, Plaintiff does not allege that it was forced to eliminate onsite dining at the Insured Location because of direct physical loss of or damage to its property, nor has Plaintiff alleged that the COVID-19 virus has been detected at the Insured Location.[2] Instead, the Plaintiff's Complaint hinges on the fact that its onsite dining was closed because of the Florida Emergency Orders. [*See* Document 5 at Page 3, ¶ 13, 14]. "The Government Shutdowns caused [Plaintiff] to sustain significant losses and came as a direct result of the Government Shutdowns." [See *Id* at Page 4, ¶

[2] In any event, the presence of the virus on surfaces at the insured premises would not constitute physical loss or damage.

20.]. The Florida Emergency Orders were motivated not by property damage but by a desire "to address the public health crisis caused by the COVID-19 pandemic" [See *Id* at Page 4, ¶ 19.].

The March 20, 2020 Florida Emergency Order was issued following Governor DeSantis's March 1, 2020 Emergency Order declaring a state of emergency in the state of Florida as a result of the COVID-19 pandemic and was issued following the guidance of the Centers for Disease Control and Prevention ("CDC"). Governor DeSantis ordered that every restaurant suspend on-premises food consumption for customers, but allowed such establishments to operate their kitchens for the purpose of providing delivery or take-out orders. The Florida Emergency Orders have nothing to do with direct physical loss of or damage to Plaintiff's property (or any other damage to the Insured Location), and the March 20, 2020 emergency order does not render the Plaintiff's building uninhabitable or unusable. To the contrary, the March 20, 2020 emergency order states "I am committed to supporting retailers, restaurants and their employees as they pursue creative business practices that safely serve consumers during this temporary period of social distancing."

The requirement of a direct physical loss is both standard and necessary in property policies, and the Court must "give meaning and effect, if possible, to every word and phrase in the contract…and a construction which neutralizes any provision of a contract should never be adopted if the contract can be so construed as to give effect to all the provisions. *Westport Ins. Corp. v. Tuskegee Newspapers, Inc.*, 402 F.3d 1161, 1166 (11th Cir. 2005). The requirement of direct physical loss or damage to insured property is explicitly stated in the Policy's Business Income coverage provision. [*See* Document 5-1 at Page 53-61.] ("We will pay for the actual loss of Business Income you sustain due to the necessary 'suspension' of your 'operations' during the 'period of restoration'. The 'suspension' must be caused by direct physical loss of or damage to

property at premises which are described in the Declarations and for which a Business Income Limit of Insurance is shown in the Declarations.") To allow for losses that are not physical, and thus do not require physical repair, rebuilding, or replacement, would render that policy provision—and as a result, the entire coverage part—indeterminate. The terms "'rebuild', 'repair' and 'replace' all strongly suggest that the damage contemplated by the Policy is physical in nature." *Philadelphia Parking Auth. V. Fed. Ins. Co.*, 385 F. Supp 2d 280, 287 (S.D.N.Y. 2005).

The Policy at issue only covers a suspension of business operations if that suspension is caused by a direct physical loss to property at the insured premises, and it is indisputable that Plaintiff's Complaint does not allege any such physical loss or damage. The Plaintiff has not needed to repair or replace any covered property. Plaintiff's Complaint claims only the economic side-effect of reduced business income that was caused by the Florida Emergency Orders issued as a result of the COVID-19 pandemic, which is a non-physical, purely economic loss which does not give rise to coverage.

Recently, the Southern District of New York observed in a similar case, "[t]hat there is no damage to your property. . . .[The virus] doesn't damage the property. . . .[W]hat has caused the damage is that the governor has said you need to stay home. It is not that there is any particular damage to your specific property. . . .New York law is clear that this kind of business interruption needs some damage to the property to prohibit you from going [to the property]." *See* Exhibit A at 4:25-5:1, 8:16-18, and 15:12-14, *Social Life Magazine, Inc. v. Sentinel Ins. Co.*, No. 20-Civ-3311 (VEC) (S.D.N.Y. May 14, 2020) (denying insured's application for a preliminary injunction

requiring defendant insurer to immediately pay 90% of the insured's claim for loss of business income).[3]

On July 2, 2020, in another COVID-19 related coverage dispute, the facts of which are very similar to the underlying case, Judge Joyce Draganchuk, a state court judge in Mason, Michigan, granted an insurer Defendant's motion for summary disposition. *See* Exhibit B [*Gavrilides Management Company et al. vs. Michigan Insurance Company*, Case No. 20-258-CB-C30 (Ingham County)]. A true and correct copy of the Hearing Transcript of Michigan Insurance Company's Motion for Summary Disposition is attached as **Exhibit "B"**. Judge Draganchuk expressly decided that there must be "direct physical loss of, or damage to" the building, but there was none. *Id*. at page 18 – 20. This decision is notable because the court ruled that the policy language "direct physical loss of or damage to" warrants a conclusion that the virus "physically alters the integrity of the property . . . or tangible physical damage." *Id*. at 20. Further, the court expressly rejected the Plaintiff's argument that a governmental order which limits access to an insured building amounts to direct physical loss. *Id*.

This Court should reach the same conclusion under Florida law and dismiss Plaintiff's Business Income and Extra Expense breach of contract claim as a matter of law. [*See* Document 5 at Page 1, ¶ 1]. Additionally, the Plaintiff's related claims for a declaration that the Policy provides coverage for business interruption losses and extra expense losses fail for the same reasons. [See *Id*.].

[3] The court in *Social Life* also held that "loss of use from things like mold is different from you not being able to . . . use your premises because there is a virus that is running amuck in the community." *Id*. at 5:21-24. Unlike the Policy here, the policy at issue in *Social Life* did not include a virus exclusion. *See* Exhibit A at 3-4. Here, the Court can, if it wishes, dismiss Plaintiff's claims as a matter of law based on the Policy's virus exclusion, without reaching the "physical loss or damage" issue. Nonetheless, the *Social Life* court's reasoning is sound and equally applicable here.

D. Plaintiff's Claims for Civil Authority Coverage Fail Because There Is No Damage to Other Property and Plaintiff Was Not Prohibited from Accessing its Property

Plaintiff's claims under the Policy's Civil Authority coverage similarly fail due to the absence of physical damage to any property. *See, e.g.*, *Dickie Brennan & Co. v. Lexington Ins. Co.*, 636 F.3d 683, 686-87 (5th Cir. 2011) ("Civil authority coverage is intended to apply to situations where access to an insured's property is prevented or prohibited by an order of civil authority issued as a direct result of physical damage to other premises in the proximity of the insured's property."). When a Covered Cause of Loss causes "damage" to property other than the insured property, the Policy covers the actual loss of Business Income sustained and necessary Extra Expense caused by the action of a civil authority that "prohibits access" to the insured property only when: (1) access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the insured property is within that area; and (2) the action of the civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage. [See Document 5 at Page 4, ¶ 19]. Importantly, there can be no Civil Authority coverage under the Policy unless the civil authority action is the result of damage to certain other property from a Covered Cause of Loss.

Plaintiff's do not, and cannot, allege the facts necessary to satisfy these requirements for coverage. First, as discussed above, the Florida Emergency Orders have nothing to do with physical loss or damage to property and instead were issued to limit the spread of the virus through interpersonal contact. Second, the Florida Emergency Orders did not prohibit the Plaintiff from accessing its property. To the contrary, the opposite is true. The Florida Emergency Orders expressly allowed Plaintiff's business to remain open, and allowed Plaintiff to access its property and continue to operate the kitchen for the purpose of providing take-out and delivery services.

Simply put, the Policy's Civil Authority coverage does not provide coverage for Plaintiff's business income losses and the Court should dismiss the Plaintiff's Civil Authority claim as a matter of law. [See Document 5 at Page 3, ¶ 16].

CONCLUSION

For all the foregoing reasons, Greenwich respectfully requests that this Court enter an order dismissing Plaintiff's Complaint.

Dated: July 14, 2020

Respectfully submitted,

s/Christine M. Renella

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by CM/ECF on July 14, 2020, on all counsel or parties of record below.

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