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COURT OF COMMON PLEAS PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION – CIVIL

R. POSTELL  
COMMERCE PROGRAM

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V&S ELMWOOD LANES, INC.

Plaintiff,

v.

EVEREST NATIONAL INSURANCE CO.

Defendant.

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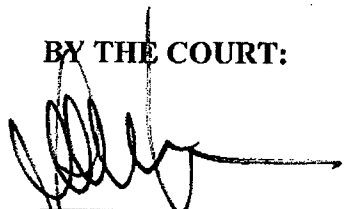
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: February Term, 2021  
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: No. 00180  
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ORDER

AND NOW, this 29th day of August 2022, upon consideration of Defendant's Motion for Summary Judgment, Plaintiff's response in opposition thereto, and all other relevant filings of record, it is hereby **ORDERED** that Defendant's Motion for Summary Judgment is **GRANTED** for the reasons as stated in the accompanying Memorandum Opinion.

Accordingly, it is further **ORDERED** that this action is **DISMISSED**.

BY THE COURT:

  
LEON W. TUCKER, J.

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FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
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**MEMORANDUM OPINION**

Presently before the Court is Defendant’s Motion for Summary Judgment. The case at bar stems from Plaintiff’s allegations that it was wrongfully denied insurance coverage for physical damage and loss of income, among other things, due to its business having to close down and/or reduce activity as a result of the COVID-19 pandemic and the resultant government shut down Orders stemming from such. While the arguments raised and responses in opposition thereto are voluminous, the Court finds that Defendant is entitled to summary judgment for one reason alone: the Policy’s “Virus Exclusion”.

In pertinent part, the Policy provided by Defendant to Plaintiff included an exclusion titled “Exclusion of Loss Due to Virus or Bacteria” (the “Virus Exclusion”). The Virus Exclusion begins by stating: “The exclusion set forth ... 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 ... and forms or endorsements that cover business

income, extra expense or action of civil authority.”<sup>1</sup> The Virus Exclusion goes on to state that Defendant “will not pay for loss or damages caused by or resulting from any virus ... that induces or is capable of inducing physical distress, illness or disease[.]”<sup>2</sup>

In considering this language, the Court concludes that this language is entirely unambiguous, and clearly and explicitly contemplates that any alleged losses, whether physical damage, loss of use or loss of income, as well as if the alleged loss or damage stems from civil authority orders, is precluded if caused by or resulting from any virus.

Here, there is no dispute that COVID-19 is a virus. However, Plaintiff attempts to argue away the Virus Exclusion’s preclusion of coverage by arguing, *inter alia*, that it was not a *virus* that caused physical damage, loss of use or loss of income, but rather, that it was the *civil authority orders* in the form of government shutdown orders that caused the alleged damage and/or loss. The Court finds this argument unavailing.

First and foremost, the language as founded in the Virus Exclusion explicitly states that the Virus Exclusion applies to “all coverage”, including endorsements or terms that would allow for coverage under “action of civil authority”. Secondly, the Virus Exclusion also contemplates that Defendant would not pay for loss or coverage “caused by or resulting from any virus”, demonstrating that a causal relationship of damage or loss from a virus would also preclude coverage. Finally, and with this last point in mind, to change the framing of alleged damage or loss away from the COVID-19 virus to the civil authority Orders is meritless, as the Virus Exclusion includes precluding coverage *resulting from* any alleged loss or damage from a virus, and “but-for” COVID-19, the civil authority Orders (or government shut down Orders) would

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<sup>1</sup> Ex. A to Def.’s Motion for Summary Judgment, at 84 (emphasis added).

<sup>2</sup> *Id.* (emphasis added).

not have been issued. Put simply, the COVID-19 virus and the government shut down Orders are so proximal and causally connected as to require application of the Virus Exclusion, regardless of how Plaintiff attempts to frame the origination or cause of the alleged damage or loss.

By way of further support, the Court further emphasizes that the above conclusion is in line with other recently decided cases in this Court as well as beyond this Court's jurisdiction. *See generally Lehigh Valley Baseball, LP v. Philadelphia Indemnity Ins. Co.*, 201200958 (Phil. Com. Pl. June 17, 2021); *Spector Gadon Rosen Vinci P.C. v. Valley Forge Ins. Co.*, 200501636 (Phil. Com. Pl. June 17, 2021); *Rhonda Hill Wilson v. Hartford Cas. Co.*, 492 F.Supp.3d 417 (E.D. Pa. 2020); *see also* Def.'s Memorandum of Law, p. 47 (docketed Apr. 11, 2022) (providing a list of outside jurisdictional cases which hold the same).


To conclude, the Court finds that Defendant's Motion for Summary Judgment must be granted based on the unambiguous Virus Exclusion as founded in the Policy at issue here.

**SO ORDERED.**

Dated:

8.29.22

BY THE COURT:



LEON W. TUCKER, J.

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