

NO. X07-HHD-CV21-6136840-S

: SUPERIOR COURT

WNT FARMINGTON, LLC D/B/A
WOOD 'N TAP, et al

: COMPLEX LITIGATION
DOCKET

VS.

: AT HARTFORD

TWIN CITY FIRE INSURANCE
COMPANY, HARTFORD FIRE
INSURANCE COMPANY D/B/A THE
HARTFORD, THE HARTFORD
FINANCIAL SERVICES GROUP, INC.

FILED

APR 04 2022

: APRIL 4, 2022

HARTFORD J.D.

MEMORANDUM OF DECISION RE: MOTIONS FOR SUMMARY JUDGMENT,
125 and 128

Before the court in this insurance dispute are the parties' cross motions for summary judgment. The plaintiffs,¹ Connecticut limited liability companies that operate restaurants throughout Connecticut, and a clothing store in Norwalk, are insured under policies of insurance issued by the defendants, Defendants Twin City Fire Insurance Company ("Twin City"), Hartford Fire Insurance Company, and The Hartford Financial Services Group, Inc. (the defendants). Defendants"). The plaintiffs assert in their motion for summary judgment that they are entitled to coverage under the policies' loss of business income and civil authority provisions because they suffered "direct physical loss" because of the current pandemic. The defendants deny the plaintiffs suffered

¹ The plaintiffs are WNT Farmington, LLC d/b/a Wood 'N Tap ("WNT Farmington, LLC"), WNT Newington, LLC d/b/a Wood 'N Tap ("WNT Newington, LLC"), WNT Hamden, LLC d/b/a Wood 'N Tap ("WNT Hamden, LLC"), WNT IV, LLC, WNT V, LLC, WNT VI, LLC, WNT VII, LLC, 3X Charm, LLC d/b/a Que Whiskey Kitchen ("3X Charm, LLC"), 410 Queen Street Partners, LLC, Café Aura, LLC, Craft Kitchens, LLC d/b/a Match Burger Lobster ("Craft Kitchens, LLC"), BML Associates, LLC d/b/a Match ("BML Associates, LLC"), Ward Family, LLC d/b/a Rooster 2 Co ("Ward Family, LLC"), Ward & Families LLC d/b/a Flora ("Ward & Families LLC"), and Simply Casual, Inc. and will be referred to as the plaintiffs.

“direct physical loss” as required for coverage. Moreover, in their view, the claims of the plaintiffs are excluded by the virus exclusion present in the policies. Because the court joins with the vast majority of state and federal decisions concluding that the identical or similar virus exclusion bars coverage for COVID-19 related claims, the court grants summary judgment in favor of the defendants.

The following facts, derived from the pleadings and stipulation of facts agreed upon by the parties; Entry # 124; are relevant to this decision. The identical policies issued by the defendants to the plaintiffs, styled as a “Spectrum Business Owner’s Policy,” are comprehensive all-risk business owner’s insurance policies that, inter alia, provide coverage for loss of Business Income caused by “direct physical loss of or damage to” to covered property. “Generally, ‘all-risk’ policies cover all causes of loss unless they are expressly excluded.” *Holmes v. Safeco Insurance Co. of America*, 171 Conn. App. 597, 604, 157 A.3d 1147 (2017). The policies contain a virus exclusion that provides that the “[defendants] will not pay for loss or damage *caused directly or indirectly* by any of the following. Such 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 or any activity of “fungi”, wet rot, dry rot, bacteria or virus This exclusion applies whether or not the loss event results in widespread damage or affects a substantial area.” (Emphasis added).

The plaintiffs allege in their complaint that their “action arises out of defendants’ failure to provide insurance coverage for the losses sustained and expenses incurred by plaintiffs due to the necessary suspension of full-service restaurant operations caused by

the ongoing disaster, Coronavirus (COVID-19) Pandemic.² The plaintiffs further allege that they have suspended or limited routine operations because of the Covid-19 Pandemic.³ They allege that the defendants have refused to pay them under the provisions of the Policies. In their complaint, the plaintiffs allege breach of contract, breach of the covenant of good faith and fair dealing, and violations of the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110b(a) et seq., based on a violation of the Connecticut Unfair Insurance Practices Act (CUIPA), General Statutes § 38a-816 et seq. Additionally, Connecticut Dermatology seeks declaratory relief, pursuant to General Statutes § 52-29, that it is entitled to coverage from the defendants.

This court previously had the occasion to address identical claims made under policies containing the identical virus exclusion. *Connecticut Dermatology Group, PC et al. v. Twin City Fire Ins. Co. et al.*, Superior Court, Complex Litigation Docket at Hartford X07, Docket No. 216139388S, 2022 WL 294252 (January 10, 2022, Noble, J.). The court adopts the standards applicable to a motion for summary judgment and the analysis employed in that decision as to the applicability of the broad virus exclusion to the plaintiffs' claim and the lack of persuasive effect of the plaintiffs' argument that the exclusions omission of the word "pandemic" renders it inapplicable to the present case.

² "COVID-19 (coronavirus disease 2019) is a disease caused by a virus named SARS-CoV-2 and was discovered in December 2019 in Wuhan, China. It is very contagious and has quickly spread around the world." <https://www.cdc.gov/coronavirus/2019-ncov/your-health/about-covid-19/basics-covid-19.htm>, last visited March 28, 2022. "An outbreak is called an **epidemic** when there is a sudden increase in cases. As COVID-19 began spreading in Wuhan, China, it became an epidemic. Because the disease then spread across several countries and affected a large number of people, it was classified as a **pandemic**." (Emphasis in original.) <https://www.cdc.gov/coronavirus/2019-ncov/science/about-epidemiology/identifying-source-outbreak.html>, last visited March 28, 2021. The current pandemic described above is herein referred to as the "pandemic."

³ The plaintiffs also assert coverage is afforded by the policies under a "Civil Authority Provision" which provides coverage when "access to the plaintiffs' premises is specifically prohibited by order of a civil authority as a direct result of a Covered Cause of Loss to property in the immediate are of the plaintiffs' premises." Because the virus exclusion is also applicable to this coverage provision it is not discussed.

In accordance with the court's reasoning in *Connecticut Dermatology Group, PC*,
summary judgment is granted in favor of the defendants as to all counts of the complaint.

THE COURT

435707

Cesar A. Noble
Judge, Superior Court