

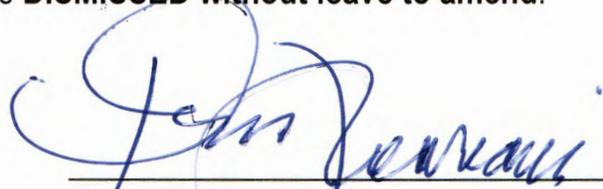
(3d Cir. 2005) (not precedential). (Doc. 69 at 6.) In its reply brief, Plaintiff states that these cases present “controlling authority” supporting their argument that the motion to dismiss should be denied. (Doc. 71 at 1-3.) Plaintiff’s argument is unavailing. Plaintiff does not point to any decision within the Third Circuit or elsewhere which has relied on this authority to find that the business interruption caused by COVID-19 is a covered loss. On the contrary, district courts within the Circuit have squarely rejected a plaintiff’s reliance on the cited authority. See, e.g., *KWB Enterprises, Inc. v. Nationwide Gen. Ins. Co.*, No. 20-CV-5195, 2022 WL 282533, at *3 (E.D. Pa. Jan. 31, 2022); *Delaware Valley Mgmt., LLC v. Cont’l Cas. Co.*, No. 2:20-CV-4309, ---F. Supp. 3d---, 2021 WL 5235277, at *5 (E.D. Pa. Nov. 10, 2021); *Kahn v. Pennsylvania National Mutual Casualty Ins. Co.*, 517 F. Supp. 3d 315 (M.D. Pa. 2021); *Windber Hospital v. Travelers Property Casualty Co. of America*, Civ. A. No. 3:20-CV-80, 2021 WL 1061849 (W.D. Pa. Mar. 18, 2021). Because Plaintiff has not shown error on the basis alleged, this objection is OVERRULED.

- b. With the second objection, Plaintiff contends that Magistrate Judge Carlson erred in implicitly concluding that the government shutdown orders do not cause direct physical loss. (Doc. 69 at 20.) Plaintiff cites three cases in support of this objection: *In re Society Ins. Co. COVID–19 Bus. Interruption*

Protection Litig., 2021 WL 679109, at *8–*10 (N.D. Ill. 2021); *Studio 417, Inc. v. Cincinnati Ins. Co.*, 478 F. Supp. 3d 794, 800–03 (W.D. Mo. 2020); and *Schleicher & Stebbens Hotels, LLC v. Starr Surplus Lines Ins. Cos.*, No. 217–2020–CV–309, slip op. at 21–23 (Merrimack Cty., N.H. Super. Ct.). (Doc. 69 a 20). The reported decisions cited by Plaintiff are recognized outliers. See, e.g., *Tria WS LLC v. American Automobile Ins. Co.*, 530 F. Supp.3d 533 at 539, 543–44 & n.5 (E.D. Pa. 2021). Further, the proposition that an insured suffered “a direct physical loss” to property due to COVID-19 shutdown orders has been rejected by the “decisions of every other circuit and the vast majority of district courts to address the issue.” *Goodwill Indus., of Central Oklahoma v. Philadelphia Indem. Ins. Co.*, 21 F.4th 704, 710 (10th Cir. 2021). *Goodwill* was decided on December 21, 2021, and this Court’s review of subsequent appellate circuit court decisions confirms that no circuit has decided that COVID-19 caused a direct physical loss which would be covered under a policy’s business income provision. See, e.g., *10012 Holdings, Inc. v. Sentinel Ins. Co., Ltd.*, 21 F.4th 216 (2d Cir. 2021); *Uncork and Create, LLC v. Cincinnati Ins. Co.*, 27 F.4th 926 (4th Cir. 2022); *Terry Black’s Barbeque, L.L.C. v. State Automobile Mut. Ins. Co.*, 22 F.4th 450 (5th Cir. 2022); *Brown Jug, Inc. v Cincinnati Ins. Co.*, 27 F.4th 398 (6th Cir. 2022); *East Coast Entertainment of Durham, LLC V. Houston Casualty Co. and American*

Claims Management, No. 21-2947, ---F.4th---, 2022 WL 1086377 (7th Cir. Apr. 12, 2022). Because Plaintiff has not shown error on the basis alleged, this objection is **OVERRULED**.

- c. With the foregoing determinations, Plaintiff's third objection regarding error in Magistrate Judge Carlson's finding that Plaintiff did not present evidence of bad faith (Doc. 69 at 22) is **OVERRULED**.
2. Magistrate Judge Carlson's R&R (Doc. 67) is **ADOPTED** for the reasons set forth therein as supplemented by this Order.
3. The "Motion by the Cincinnati Casualty Insurance Company (Improperly Named the Cincinnati Insurance Companies) to Dismiss Plaintiff's Complaint (Doc. 59) is **GRANTED**.
4. Plaintiff's Complaint (Doc. 2 at 3-31) is **DISMISSED without leave to amend**.



Robert D. Mariani
United States District Judge