

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

BRADLEY HOTEL CORP., doing business)
as Quality Inn & Suites Bradley, and all)
others similarly situated,)

Plaintiffs,)

v.)

ASPEN SPECIALTY INSURANCE)
COMPANY,)

Defendant.)

20 C 4249

Judge Charles P. Kocoras

ORDER

Before the Court is Defendant Aspen Specialty Insurance Company’s (“Aspen”) motion to dismiss Plaintiff Bradley Hotel Corp.’s (“Bradley Hotel”) Complaint under Federal Rule of Civil Procedure 12(b)(6). For the following reasons, the Court will grant the motion.

STATEMENT

For the purposes of this motion, the Court accepts as true the following facts from the Complaint. *Alam v. Miller Brewing Co.*, 709 F.3d 662, 665-66 (7th Cir. 2013). All reasonable inferences are drawn in Bradley Hotel’s favor. *League of Women Voters of Chicago v. City of Chicago*, 757 F.3d 722, 724 (7th Cir. 2014).

Plaintiff Bradley Hotel is an Illinois corporation with its principal place of business in Bradley, Illinois. Bradley Hotel operates the Quality Inn & Suites Bradley.

Defendant Aspen is a North Dakota corporation with its principal place of business in Rocky Hill, Connecticut. Aspen is a surplus lines insurance carrier.

In 2019, Aspen sold to Bradley Hotel an “all-risk” insurance policy (the “Policy”). All-risk policies cover loss or damage to the covered premises resulting from all risks except those expressly excluded. Bradley Hotel alleges that Aspen failed to provide coverage to it for losses incurred as a result of the COVID-19 pandemic.

On March 16, 2020, Illinois Governor J.B. Pritzker issued Executive Order 2020-07, which suspended in person dining and gathering of 50 or more people. As a result of this Executive Order, Bradley could no longer offer in-person dining in its hotel restaurant and the banquet hall could no longer host large gatherings. On March 20, 2020, Governor Pritzker issued Executive Order 2020-10 (the “Stay-At-Home Order”), which required individuals to stay at their place of residence except to conduct essential activities, such a grocery shopping. The Stay-At-Home Order also prohibited non-essential travel and required non-essential businesses to cease operations. Hotels were expressly identified as essential businesses to the extent they are used for lodging and delivery or carry-out food services. As a result of the Executive Orders, Bradley Hotel alleges that it has suffered significant losses in business.

Bradley Hotel alleges that the losses it suffered are covered under the Policy but that that Aspen has denied coverage. The Policy includes a “Business Income (And Extra Expense) Coverage Form,” which states:

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. The loss or damage must be caused by or result from a Covered Cause of Loss.¹

The Policy also provides coverage for related extra expenses:

- a. Extra Expense Coverage is provided at the premises described in the Declarations only if the Declarations show that Business Income Coverage applies at that premises.
- b. Extra Expense means necessary expenses you incur during the “period of restoration” that you would not have incurred if there had been no direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss.

We will pay Extra Expense (other than the expense to repair or replace property) to:

- (1) Avoid or minimize the “suspension” of business and to continue operations at the described premises or at replacement premises or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location.
- (2) Minimize the “suspension” of business if you cannot continue “operations.”

We will also pay Extra Expense to repair or replace property, but only to the extent it reduces the amount of loss that otherwise would have been payable under this Coverage Form.²

Additionally, the Policy provided for “Civil Authority” coverage:

In this Additional Coverage, Civil Authority, the described premises are premises to which this Coverage Form applies, as shown in the

¹ 1:20-cv-4249, Dkt. # 1, ¶ 33.

² 1:20-cv-4249, Dkt. #1, ¶ 35.

Declarations. When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and Necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

(1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and

(2) The action of 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, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Civil Authority Coverage for Business Income will begin 72 hours after the time of the first action of civil authority that prohibits access to the described premises and will apply for a period of up to four consecutive weeks from the date on which such coverage began.

Civil Authority Coverage for Extra Expense will begin immediately after the time of the first action of civil authority that prohibits access to the described premises and will end:

(1) Four consecutive weeks after the date of that action; or

(2) When your Civil Authority Coverage for Business Income ends; whichever is later.³

The Policy does not contain exclusions for viruses or communicable diseases.

Based on these facts, Bradley Hotel filed a two-count complaint on July 20, 2020.

Bradley Hotel alleges that Aspen breached the insurance contract by denying coverage (Count I) and seeks a declaratory judgement that its losses are covered by the Policy

³ 1:20-cv-4249, Dkt. # 1, ¶ 39.

(Count II). October 2, 2020, Aspen moved to dismiss the complaint under Rule 12(b)(6).

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) “tests the sufficiency of the complaint, not the merits of the case.” *McReynolds v. Merrill Lynch & Co.*, 694 F.3d 873, 878 (7th Cir. 2012). The allegations in the complaint must set forth a “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). A plaintiff need not provide detailed factual allegations, but it must provide enough factual support to raise its right to relief above a speculative level. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

A claim must be facially plausible, meaning that the pleadings must “allow . . . the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The claim must be described “in sufficient detail to give the defendant ‘fair notice of what the . . . claim is and the grounds upon which it rests.’” *E.E.O.C. v. Concentra Health Servs., Inc.*, 496 F.3d 773, 776 (7th Cir. 2007) (quoting *Twombly*, 550 U.S. at 555). “[T]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,” are insufficient to withstand a 12(b)(6) motion to dismiss. *Iqbal*, 556 U.S. at 678.

The parties agree that Illinois law applies to this case. In Illinois, the construction of an insurance policy is a question of law. *Country Mut. Ins. Co. v. Livorsi Marine*,

Inc., 222 Ill.2d 303, 311 (2006). An insurance policy is to be construed as a whole and requires the court to ascertain and give effect to the true intentions of the contracting parties. *First Ins. Funding Corp. v. Fed. Ins. Co.*, 284 F.3d 799, 804 (7th Cir. 2002) (applying Illinois law). “If the words used in the policy are clear and unambiguous, they must be given their plain, ordinary, and popular meaning.” *Cent. Ill. Light Co. v. Home Ins. Co.*, 213 Ill.2d 141, 153 (2004). However, “[a] policy provision is not rendered ambiguous simply because the parties disagree as to its meaning.” *Founders Ins. Co. v. Munoz*, 237 Ill.2d 424, 433 (2010).

The parties dispute primarily hinges upon whether Bradley Hotel’s losses are a “direct physical loss of or damage to” the hotel property. Aspen argues that there has been no direct physical loss of or damage to the property because there has been no physical alteration to the property. Bradley Hotel argues that defining “direct physical loss” to require physical alteration to the property would render “direct physical damage” superfluous. Therefore, Bradley Hotel argues, their allegations that they could not use the restaurant or the banquet hall in the same manner they could before the pandemic constitute a “direct physical loss.”

We agree with Aspen and the overwhelming majority of courts that have found no coverage when interpreting similar contractual language. *See e.g., T&E Chicago LLC v. Cincinnati Ins. Co.*, 2020 WL 6801845, at *4 (N.D. Ill. 2020) (collecting cases). For example, the policy in *Sandy Point Dental, PC v. Cincinnati Insurance Company* contains similar language to the Policy here. That policy said:

We will pay for the actual loss of “Business Income” you sustain due to the necessary “suspension” of your “operation” during the “period of restoration”. The “suspension” must be caused by direct physical “loss” to property at “premises” cause by or resulting from any Covered Cause of Loss.

2020 WL 5630465, at *2 (N.D. Ill. 2020) (cleaned up). Judge Gettleman held that the unambiguous terms of this policy required physical harm to the premises. 2020 WL 5630465, at *2 (N.D. Ill. 2020). He reasoned that “[t]he words ‘direct’ and ‘physical,’ which modify the word ‘loss,’ ordinarily connote actual, demonstrable harm of some form to the premises itself, rather than forced closure of the premises for reasons extraneous to the premises themselves, or adverse business consequences that flow from such closure.” *Id.* Therefore, “Plaintiff simply cannot show any such loss as a result of . . . [the] inability to access its own office. . . Plaintiff has not pled any facts showing physical alteration or structural degradation of the property. Nothing about the property has been altered since March 2020. Plaintiff need not make any repairs or change any part of the building to continue its business.” *Id.*

Here, the terms of the Policy require that “[t]he ‘suspension’ must be caused by direct physical loss of or damage to property. . .” Like the policy in *Sandy Point Dental*, the Policy here requires some sort of harm to the property. Bradley Hotel alleges that it could not use certain portions of the hotel, namely the restaurant and banquet hall, to the full extent they could before the pandemic. However, Bradley Hotel does not allege that the suspension of operations was a result of any physical loss of or damage to the property. It does not allege that the physical property was changed or altered in any

way. Instead, Bradley Hotel alleges that the suspension of service was due to Governor Pritzker's Executive Orders, not for any reason related to the hotel property. Thus, Bradley Hotel's allegations amount to the "forced closure of the premises for reasons extraneous to the premises themselves, [and] adverse business consequences that flow from such closure." *Id.* Under the unambiguous terms of the contract, this is not enough to trigger coverage.

The cases denying motions to dismiss involve different allegations than Bradley Hotel's here. For example, in *Studio 417, Inc. v. Cincinnati Ins. Co.*, the plaintiff alleged that the virus was directly on their premises, which forced the plaintiff to cease operations. 2020 WL 4692385, *4. Therefore, the Court concluded that under Missouri law, the plaintiff adequately alleged its losses were covered by insurance policy. *Id.* Aspen makes no such allegation here and, therefore, *Studio 417* does not alter our analysis.

Accordingly, Bradley Hotel's claims under the Business Income and Extra Expense provisions of the Policy are dismissed.

Bradley Hotel's claims under the Civil Authority provision of the Policy are similarly deficient. First, Bradley Hotel does not allege any damage to any property in their vicinity. Bradley Hotel alleges that properties across the entire State of Illinois were closed as a result of Governor Pritzker's Executive Orders, but not as a result of any damage to the properties. Second, access to the hotel was not prohibited because it was expressly exempt from the Executive Orders. Accordingly, Bradley Hotel's

claims under the Civil Authority provision are dismissed. *See Sandy Point Dental*, 2020 WL 5630465, at *3 (dismissing dental office's claim under civil authority provision because there was no damage to nearby properties and access to the insured property was not prohibited).

CONCLUSION

For the reasons mentioned above, the Court grants Aspen's motion to dismiss (Dkt. # 13). Civil case terminated. It is so ordered.

Dated: 12/22/2020



Charles P. Kocoras
United States District Judge