

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

ELITE DENTAL SPECIALISTS PC,
individually as an Illinois Corporation and as a
Class of Representative for a Class of Insureds
Similarly Situated,

Plaintiff,

vs.

STATE FARM & CASUALTY CO.,

Defendant.

Case No. 2020-CH-05946

Judge Michael T. Mullen

MEMORANDUM OPINION AND ORDER

This matter comes to be heard on Defendant State Farm & Casualty Co.’s Motion to Dismiss Plaintiff Elite Dental Specialist’s Chancery Declaratory Class Action Complaint pursuant to Code of Civil Procedure section 735 ILCS 5/2-615. The Court has reviewed the briefs submitted by the parties, as well as heard the parties’ oral arguments. For the reasons discussed below, Defendant’s motion is granted with prejudice.

I. Background

Plaintiff, Elite Dental Specialists PC (“Elite Dental”) operates three dental medical offices located at 2124 Ogden Avenue, Aurora, Illinois, 1000 South Randall Road, Geneva Illinois and 13600 South Illinois Route 59, Plainfield, Illinois. Declaratory Class Action Complaint (“Compl.”) ¶¶ 5, 7. All three offices are insured by State Farm & Casualty Co. (“State Farm”) under State Farm Policy 93-KN-A388-5. The Policy includes coverage for Loss of Income and Extra Expense for 12 months for “actual loss sustained.” *Id.* ¶ 6. Elite Dental alleges that the COVID-19 virus inflicted physical loss on the premises, property and equipment of each of the three offices and further that the COVID-19 virus led to the suspension of operations at

each of the three insured offices for a “series of months.”¹ Elite Dental further alleges that the COVID-19 virus necessitated the suspension of the operations at each of the three offices so they could be restored to their pre-COVID-19 condition via cleaning and sterilization. *Id.* ¶ 10.

A. Elite Dental’s Claim

In November 2019, State Farm issued policy 93-KN-A388-5 (“the Policy”) that was effective for the policy period from November 28, 2019 to November 28, 2020. Ex. A of MTD, at SF003. The policy included an Endorsement for Loss Of Income and Extra Expense for 12 months for “actual loss sustained” (“the Endorsement”). Ex. A of MTD, at SF007, SF019. On September 21, 2020, Elite Dental filed its present Complaint in which it alleged that State Farm improperly denied Elite Dental’s claim for loss of income that had arisen from COVID-19. Compl., Letter of Denial at 1. In response, State Farm maintained that it did not have any record of Elite Dental’s referenced claim and requested that Elite Dental’s attorney provide State Farm with any information regarding the claim. *Id.* Subsequently, State Farm opened a claim and reached a coverage determination. More specifically, on November 20, 2020, State Farm denied Elite Dental’s claim on the basis that the type of loss that had been described within the claim did not constitute “an accidental direct physical loss to the Covered Property” as required under the policy and further that “losses caused by COVID-19 were specifically excluded under the policy.” *Id.* Specifically, State Farm stated:

Unfortunately, there is no coverage for the loss of income from the result of a mandatory shutdown due to the COVID-19 (Coronavirus). Coverage under the CMP 4705 Loss Of Income and Extra Expense endorsement, requires a Covered Cause Of Loss insured under the CMP– 4100 Businessowners Coverage Form Policy. This means there must be an accidental direct physical loss to Covered Property that is not otherwise excluded from coverage. The sort of loss described in your complaint and otherwise identified in your claim does not comprise accidental direct physical loss to Covered Property. Additionally, losses caused by a virus, such as COVID-19 (Coronavirus), are specifically excluded under the policy. Therefore, in the absence of a Covered Cause Of Loss, coverage under the Loss of Income and Extra Expense endorsement would not apply. Additional exclusions, described below, also apply and eliminate coverage. *Id.*

¹ The Court notes that the Centers for Disease Control and Prevention states that SARS-Cov-2 is the virus that causes the disease COVID-19. Science Brief: SARS-CoV-2 and Potential Airborne Transmission; Centers for Disease Control and Prevention, Updated October 5, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/more/scientific-brief-sars-cov-2.html>; Coronavirus Disease 2019 (COVID-19), Centers for Disease Control and Prevention, <https://www.cdc.gov/dotw/covid-19/index.html>. The Court will refer to the virus and disease by their respective names except when quoting the parties.

B. Elite Dental's Complaint

In Count I of its three-count Complaint, Elite Dental seeks a declaratory judgment that it is entitled to coverage pursuant to the terms of State Farm Policy 93-KN-A388-5 for its losses as none of its losses were excluded under Section I. More specifically, in Count I, Elite Dental alleges that the COVID-19 virus led to the suspension of operations at each of its three dental offices as the COVID-19 virus caused damages to the premises, property and equipment and that this constituted a physical loss to said property. Compl. ¶ 9, 10. Elite Dental further alleges that due to the presence of the COVID-19 virus, Elite Dental's operations were suspended so that the premises could be restored to their pre-COVID-19 condition through cleaning and sterilization. *Id.* ¶ 10.

In Count II, Elite Dental contends that State Farm's denial of its claim was "vexatious and unreasonable" and made "without just cause." Elite Dental requests that this Court award it an appropriate remedy pursuant to Illinois Insurance Code section 215 ILCS 5/155. In Count III, Elite Dental requests a certification of a class of persons who were similarly situated and similarly denied coverage by State Farm for business interruption Loss of Income coverage due to "accidental damages occasioned by COVID-19."

C. Contract Terms

The contract terms for State Farm Businessowners Insurance Policy Number 93-KN-A388-5 are as follows:

1. Loss of Income and Extra Expense Endorsement

LOSS OF INCOME AND EXTRA EXPENSE

This endorsement modifies insurance provided under the following:
BUSINESSOWNERS COVERAGE FORM

The coverage provided by this endorsement is subject to the provisions of **SECTION I – PROPERTY**, except as provided by below.

COVERAGES

1. Loss Of Income

- a. We will pay for the actual “Loss Of Income” you sustain due to the necessary “suspension” of your “operations” during the “period of restoration”. The “suspension” must be caused by accidental direct physical loss to property at the described premises. The loss must be caused by a Covered Cause Of Loss. . . .

State Farm Businessowners Insurance Policy Number 93-KN-A388-5 Ex. A to Motion to Dismiss at SF019 (¶1 (a)) (emphasis in original).

...

3. Extended Loss Of Income

- a. If the necessary “suspension” of your “operations” produces a “Loss Of Income” payable under this policy, we will pay for the actual “Loss Of Income” you incur during the period that:
...
- b. “Loss Of Income” must be caused by accidental direct physical loss at the described premises caused by any Covered Cause of Loss.

State Farm Businessowners Insurance Policy Number 93-KN-A388-5 Ex. A to Motion to Dismiss at SF019 to 20 (¶3 (a)(b)) (emphasis in original).

2. State Farm Businessowners Coverage Form

SECTION I – PROPERTY

When a Limit Of Insurance is shown in the Declarations for that type of property as described under **Coverage A – Buildings, Coverage B – Business Personal Property**, or both, we will pay for accidental direct loss to that Covered Property at the premises described in the Declarations caused by any loss as described under **SECTION I – COVERED CAUSES OF LOSS**.

State Farm Businessowners Insurance Policy Number 93-
KN-A388-5 Ex. A to Motion to Dismiss at SF043,
SECTION I – PROPERTY (emphasis in original).

SECTION I – COVERED CAUSES OF LOSS

We insure for accidental direct physical loss to Covered Property unless the loss is:

1. Excluded in SECTION I – EXCLUSIONS; or

...

State Farm Businessowners Insurance Policy Number 93-
KN-A388-5 Ex. A to Motion to Dismiss at SF044,
SECTION I – COVERED CAUSES OF LOSS (§1)
(emphasis in original).

SECTION I – EXCLUSIONS

1. We do not insure under any coverage for any loss of which would not have occurred in the absence of one or more of the following excluded events. We do not insure for such loss regardless of: (a) the cause of the excluded event; or (b) other causes of the loss; or (c) whether other causes acted concurrently or in any sequence with the excluded event to produce the loss; or (d) whether the event occurs suddenly or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result of any combination of these:

...

j. Fungi, *Virus* Or Bacteria

- (1) Growth, proliferation, spread or presence of “fungi” or wet or dry rot;
or
- (2) Virus, bacteria or other microorganism that induces or is capable of including physical distress, illness or disease; and
- (3) We will also not pay for:
 - (a) Any loss of use or delay in rebuilding, repairing or replacing covered property, including any associated cost or expense, due to interference at the described premises or location of the rebuilding, repair or replacement of that property, by “fungi”, wet or dry rot, virus, bacteria or other microorganism;

(b) Any remediation of “fungi”, wet or dry rot, virus, bacteria or other microorganism, including the cost or expense to:

...

iii. Contain, treat, detoxify, neutralize or dispose of or in any way respond to or assess the effects of the “fungi”, wet or dry rot, virus, bacteria or other micro-organism; or”

...

State Farm Businessowners Insurance Policy Number 93-KN-A388-5 Ex. A to Motion to Dismiss at SF045 to 46, (¶1), (j ¶1-3(a)(b)) (emphasis added).

II. Analysis

In response to Elite Dental’s Complaint, State Farm filed a Motion to Dismiss the Complaint pursuant to Section 2-615 of the Code of Civil Procedure. 735 ILCS 5/2-615. State Farm’s motion asserts that Elite Dental’s claim is: 1) barred by the policy’s Virus Exclusion; and 2) does not constitute an “accidental direct physical loss.” Specifically, State Farm maintains that Elite Dental’s Complaint ultimately alleges that COVID-19 was the single, direct and immediate cause of any of Elite Dental’s losses. Consequently, the cited Virus Exclusion bars any recovery as a matter of law and requires the dismissal of Elite Dental’s Complaint with prejudice. As a separate basis for its request that this Court dismiss Elite Dental’s Complaint with prejudice, State Farm notes that the COVID-19 virus has not physically altered the appearance, shape, color, structure or other material of any of the insured properties. State Farm maintains that Elite Dental’s losses are solely “economic losses” that were not caused by a “direct loss” to any property. Thus, State Farm argues that as Elite Dental cannot establish that any damages fall within the terms of the policy, Elite Dental’s Complaint must be dismissed with prejudice.

A. Standard of Review

A Section 2-615 motion to dismiss challenges a complaint’s legal sufficiency based on facially apparent defects. *K. Miller Constr. Co. v. McGinnis*, 238 Ill. 2d 284, 291 (2010) (citing *Pooh-Bah Enter., Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009)). This motion presents the question of whether the allegations of the complaint, “when construed in the light most favorable to the plaintiff, are sufficient to set forth a cause of action upon which relief may be granted.” *Carter v. New Trier E. High Sch.*, 272 Ill. App. 3d 551, 555 (1995) (citing *Duncan v. Rzonca*,

133 Ill. App. 3d 184, 190-91 (1985)). Therefore, to avoid dismissal, “the complaint must sufficiently set forth every essential fact to be proved.” *Id.* If the complaint “fails to allege such facts, the deficiency may not be cured by liberal construction.” *Id.*

When reviewing the sufficiency of a complaint, the court must “accept as true all well-pleaded facts . . . and all reasonable inferences that may be drawn from those facts.” *K. Miller*, 238 Ill. 2d at 291 (citing *Pooh-Bah*, 232 Ill. 2d at 473). The court disregards legal and factual conclusions unsupported by specific allegations of fact, and exhibits attached to the complaint will control over any conflicting allegations. *Carter*, 272 Ill. App. 3d at 555; *Compton v. Country Mut. Ins. Co.*, 382 Ill. App. 3d 323, 326 (2008) (quoting *Abbott v. Amoco Oil Co.*, 249 Ill. App. 3d 774, 778-79 (1993)). Moreover, while the complaint must contain allegations of fact sufficient to establish a cause of action, “the plaintiff is not required to set out evidence; only the ultimate facts to be proved should be alleged, not the evidentiary facts tending to prove such ultimate facts.” *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 369 (2004) (quoting *Chandler v. Ill. Cent. R.R.*, 207 Ill. 2d 331, 348 (2003)). The critical inquiry is whether the allegations of the complaint, when construed in the light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted. *Blumenthal v. Brewer*, 2016 IL 118781, ¶ 19; *Bonhomme v. St. James*, 2012 IL 112393, ¶ 34.

B. The Virus Exclusion

State Farm moves to dismiss Elite Dental’s Complaint arguing that as the COVID-19 virus caused Elite Dental’s alleged losses, the clear and unambiguous Virus Exclusion bars coverage. In opposition, Elite Dental argues that the Virus Exclusion is inapplicable as it was not stated with necessary language and/or highlighted in bold type face as to allow this Court to conclude that the insured understood and accepted the exclusion. Consequently, Elite Dental concludes that the Business Interruption Endorsement is controlling and that its losses were covered by State Farm’s policy.

An insurance policy is a contract between the company and the policyholder, the benefits of which are determined by the terms of the contract unless the terms are contrary to public policy. *State Farm Mut. Auto. Ins. Co. v. Villicana*, 181 Ill. 2d 436, 453 (1998). In interpreting an insurance policy, the court must ascertain the intent of the parties, and construe the policy as a whole, with due regard to the risk undertaken, the subject matter of the policy and the purposes

of the entire contract. *Outboard Marine Corp. v. Liberty Mut. Ins. Co.*, 154 Ill. 2d 90, 108 (1992). Put another way, “(a) court’s primary objective in construing an insurance policy’s language is to ascertain and give effect to the parties’ intentions as expressed through that policy’s language.” *Nationwide Sec. Serv., Inc.*, 2016 IL App (1st) 143924, ¶ 26. Further, when construing an insurance policy, the words used must be given their plain, ordinary and popular meaning. *Western Cas. & Sur. Co. v. Brochu*, 105 Ill. 2d 486, 495 (1985); *Young v. Allstate Ins. Co.*, 351 Ill. App. 3d 151, 158 (2004); see *Aetna Cas. & Sur. Co. v. Beautiful Signs, Inc.*, 146 Ill. App. 3d 434, 435 (1986).

Under Illinois law “[a]n insurer has the right to limit coverage on a policy, and where an insurer has done so, a court must give effect to the plain language of the limitation, absent a conflict with the law.” *Phusion Projects, Inc. v. Selective Ins. Co.*, 2015 IL App (1st) 150172, ¶ 47. “[W]here an exclusionary clause is relied upon to deny coverage, its applicability must be clear and free from doubt because any doubts as to coverage will be resolved in favor of the insured.” *Gillen v. State Farm Mut. Auto. Ins. Co.*, 215 Ill. 2d 381, 393 (2005); *Empire Indem. Ins. Co. v. Chicago Province of the Soc’y of Jesus*, 2013 IL App (1st) 112346, ¶ 39; see also *Pekin Ins. Co. v. Wilson*, 237 Ill. 2d 446, 456, (2010) (“provisions that limit or exclude coverage will be interpreted liberally in favor of the insured and against the insurer” (quoting *American States Ins. Co. v. Koloms*, 177 Ill. 2d 473, 479 (1997)). “Absent absolute clarity on the face of the complaint that a particular policy exclusion applies, there exists a potential for coverage and an insurer cannot justifiably refuse to defend.” *Lorenzo v. Capitol Indem. Corp.*, 401 Ill. App. 3d 616, 620 (2010) (quoting *Novak v. Insurance Admin. Unlimited, Inc.*, 91 Ill. App. 3d 148, 151 (1980)). “[W]here the language of an insurance policy is clear and unambiguous, it will be applied as written.” *Hanover Ins. Co. v. MRC Polymers, Inc.*, 2020 IL App (1st) 192337, ¶ 30 (citing *State Farm Fire & Cas. Co. v. Hatherley*, 250 Ill. App. 3d 333, 337 (1993)). The insurer bears the burden of affirmatively demonstrating that a claim falls within an exclusion. *American Zurich Ins. Co. v. Wilcox & Christopoulos, L.L.C.*, 2013 IL App (1st) 120402, ¶ 34; *Continental Casualty Co. v. McDowell & Colantoni, Ltd.*, 282 Ill. App. 3d 236, 241 (1996).

If a conflict exists between the provisions of the policy proper and the provisions of the attached rider or endorsement, the rider or endorsement will control, and, if any exceptions to the general area of protection exist, they must be stated in such language and bold type as to warrant

the conclusion that the insured understood and accepted them. *Protective Ins. Co. v. Coleman*, 144 Ill. App. 3d 682, 924 (2nd Dist. 1986) (citing *J. M. Corbett Co. v. Insurance Company of North America* 43 Ill. App. 3d 624, 627 (1st Dist. 1976)).

C. The Loss Of Income and Extra Expense Endorsement Does Not Control Over the Clear and Unambiguous Virus Exclusion

The Virus Exclusion is stated in such language and bold type within the Endorsements as to warrant the conclusion that Elite Dental understood and accepted them. The introductory paragraph of the “Loss of Income and Extra Expense Endorsement” specifically incorporates **SECTION 1 – PROPERTY** as part of the Endorsement in plain language and bold type face, with language directing the insured to said section. The first paragraph of **SECTION 1 – PROPERTY** then explicitly refers to **SECTION I – COVERED CAUSES OF LOSS** which is in bold typeface, and plainly directs the insured to said section. Similarly, **SECTION I – COVERED CAUSES OF LOSS** explicitly states that State Farm will pay for accidental direct loss subject to **SECTION I – COVERED CAUSES OF LOSS** and plainly directs the insured to said section. **SECTION I – COVERED CAUSES OF LOSS** then decidedly states State Farm will insure for accidental direct physical loss to Covered Property unless the loss is excluded in **SECTION I – EXCLUSION**. Lastly, **SECTION I – EXCLUSION** explicitly incorporates “Fungi, *Virus*, Or Bacteria” as excluded from coverage. (Emphasis added). This includes an cost or expense to “[c]ontain, treat, detoxify, neutralize, or dispose of or in any way respond to or assess the effects of the....virus”.

This Court finds that the Policy, not the Endorsement, controls as **SECTION I – EXCLUSIONS**, which includes the Virus Exclusion, is stated in such language and bold type within the Endorsements as to warrant the conclusion that Elite Dental understood and accepted them.

D. Elite Dental’s Claim Falls Within the Virus Exclusion

Seeking coverage for loss and damage to insured properties caused by a virus is specifically excluded by the Virus Exclusion in the State Farm policy that is at issue. It is uncontested by the parties that COVID-19, a novel coronavirus, is a virus. Elite Dental alleges that the damages caused by COVID-19, a virus, on the premises, property and equipment

constituted a physical loss to the properties at issue. Compl. ¶9. The factual scenario in this case is the exact type anticipated by the exclusion. The applicability of the exclusion is free from doubt. This Court determines that State Farm carried its burden in establishing that the policy, not the Endorsement controls, and that the Virus Exclusion is stated as an exception to the general area of protection and that it is clear and unambiguous and properly highlighted for any potential policyholder's review, including Elite Dental. Further, this Court determines that the Virus Exclusion applies to the facts alleged in the Complaint and excludes coverage. Accordingly, this Court finds that Elite Dental's claims for coverage under the Loss Of Income and Extra Expense Endorsement are excluded by the Virus Exclusion.

In light of the Court's conclusion, State Farm's Motion to Dismiss is granted as to Count I. Further, as there clearly was a proper basis for State Farm's denial of Elite Dental's claim, State Farm's conduct cannot be properly characterized as "vexatious" "unreasonable" or having been made in "bad faith." As such, Elite Dental's Count II which is brought pursuant to the provisions of Illinois Insurance Code section 215 ILCS 5/155 fails as a matter of law and is dismissed. In Count III, Elite Dental requests a certification of a class of persons who were similarly situated and similarly denied coverage by State Farm for business interruption Loss of Income coverage due to "accidental damages occasioned by COVID-19." Due to the Court's stated conclusions, Count III fails as a matter of law and is also dismissed.

III. Accidental Direct Physical Loss

While this Court has found that Elite Dental's claim is excluded by the Virus Exclusion, it will also address the issue of accidental direct physical loss. Illinois courts have defined direct physical loss to property as alteration in the physical condition of the property. Physical injury can be interpreted to mean property that is altered in appearance, shape, color or material dimension. *Universal Underwriters v. LKQ*, 2011 IL App 1st 101723, ¶24

Cases that have interpreted insurance contracts and what constitutes a "physical loss," have "widely held to exclude alleged losses that are intangible or incorporeal, such as a detrimental economic impact unaccompanied by a distinct, demonstrable, physical alteration of the property." *One Place Condo., LLC v. Travelers Prop. Cas. Co.*, 2015 U.S. Dist. LEXIS 56565, at *8 (N.D. Ill. Apr. 22, 2015) (Illinois law) (quotation marks and citation omitted). Our Supreme Court has concluded that "tangible property suffers a 'physical' injury when the

property is altered in appearance, shape, color or in other material dimension.” *Traveler's Ins. Co. v. Eljer Mfg.*, 197 Ill. 2d 278, 301 (2001).

Under the Endorsement issued to Elite Dental, any loss must be a “covered loss.” To qualify as a covered loss, the Policy requires an “accidental direct physical loss” that is not excluded under the Policy. Elite Dental contends that “the questions for the Court include whether ‘loss of use of tangible property’ is so broad (and not otherwise defined) as to include this situation, akin in many ways to asbestos cases and coverage.” Importantly, Elite Dental concedes that the property at issue was not altered in appearance, shape or color. Instead, Elite Dental argues that COVID-19 is similar to asbestos cases in which courts have found that the incorporation of asbestos into the property constitute “physical damages” as it became property which harmed human life and was a physical injury to the tangible property since it could not be used. *United States Fidelity & Guaranty Co. v. Wilkin Insulation Co.*, 144 Ill. 2d 64, 77-78 (1991).

Numerous other courts have examined similar arguments as those advanced by Elite Dental and rejected them. Although the Court has reviewed these decisions, it should be made clear that they are neither binding nor precedential. Yet, the reasoning contained within many of the decisions is sound and persuasive.

Here, the COVID-19 virus was not incorporated into the property. Further, “cases concerning damage due to asbestos, smoke, or other airborne perils do not inform the analysis of the effect of COVID-19 because they do not concern the presence of a virus like COVID-19, which can be cleaned and disinfected from surfaces.” *Berkseth-Rojas v. Aspen Am. Ins. Co.*, 2021 U.S. Dist. LEXIS 129797, at ¶ 15 (N.D. Texas July 13, 2021) (citing *Bachman's, Inc. v. Florists' Mut. Ins. Co.*, F.Supp.3d, 2021 U.S. Dist. LEXIS 49165, 2021 WL 981246, at *4 (D. Minn. Mar. 16, 2021) (dismissing complaint under Minnesota law, considering cases finding damage due to smoke and asbestos inapposite because “there can be no dispute that the virus can be easily eliminated with routine cleaning procedures”); *Out W. Rest. Grp. Inc. v. Affiliated FM Ins. Co.*, F. Supp. 3d, 2021 U.S. Dist. LEXIS 52462, at *5 & n.1 (N.D. Cal. Mar. 19, 2021) (listing cases and explaining that asbestos is different from COVID-19, because asbestos can be “physically incorporated into the building and therefore physically affect tangible property,” whereas COVID-19 “can be disinfected and cleaned”); *Dino Drop, Inc. v. Cincinnati Ins. Co.*, 2021 U.S. Dist. LEXIS 114891, at *5-6 (E.D. Mich. June 21, 2021) (citing

cases and explaining that "the mere presence of the virus on the physical structure of the premises does not amount to direct physical loss as coronavirus does not physically alter the appearance, shape, color, structure, or other material dimension of the property," and "the virus may be eliminated simply by cleaning and disinfecting surfaces"). Elite Dental has not pled nor could it plead that any of its losses resulted from an "accidental direct physical loss." Consequently, if this was the sole basis for State Farm's present Motion to Dismiss, this Court would grant said motion.

IV. Should Elite Dental be Allowed to Amend its Complaint?

Although Elite Dental has not formally sought to amend its Complaint, at this stage of the proceedings the Court is to liberally construe any request to amend a pleading. This Court has considered whether it would be appropriate to allow Elite Dental to amend its current Complaint, even though it has never requested the opportunity to do so in the event that the Court granted State Farm's motion and has never submitted a proposed Amended Complaint for the Court's consideration.

With that made clear, the Court may properly dismiss a complaint with prejudice without allowing a further pleading to be filed, if the Court concludes that any future Complaint would suffer from the same fatal flaw. *See Matthews v. Chicago Transit Auth.*, 2016 IL 117638, ¶ 54. A dismissal under section 2-615 of the Code should be made with prejudice "only where it is clearly apparent that the plaintiffs can prove no set of facts entitling recovery." *Uskup v. Johnson*, 2020 IL App (1st) 200330, ¶ 36 (citing *Norabuena v. Medtronic, Inc.*, 2017 IL App (1st) 162928, ¶ 39). If a plaintiff can state a cause of action by amending his complaint, dismissal with prejudice should not be granted. *Uskup*, 2020 IL App (1st) 200330, ¶ 36. Put another way, a cause of action will not be dismissed on the pleadings unless it clearly appears that no set of facts can be proved which will entitle the plaintiff to recover. *Beahringer v. Page*, 204 Ill. 2d 363, 369 (2003); *see also Elleby v. Forest Alarm Serv.*, 2020 IL App (1st) 191597, ¶ 24.

As State Farm's Virus Exclusion excludes any coverage for Elite Dental's losses, the Court specifically denies Elite Dental the opportunity to amend its current pleading as it is clearly apparent that no set of facts can be proven that would entitle Elite Dental to recover under the cited State Farm policy. Despite this Court's great empathy for Elite Dental, the Court grants State Farm's motion with prejudice.

V. Conclusion

Elite Dental's losses are excluded by State Farm's Virus Exclusion. Even if the Virus Exclusion was unclear and ambiguous, Elite Dental's losses were not due to an "accidental direct physical loss."

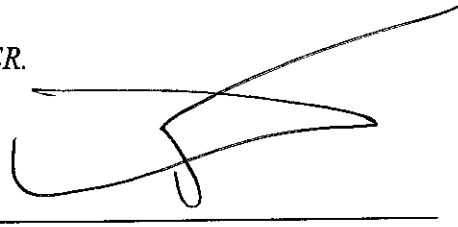
For the foregoing reasons, it is hereby ordered that:

1. Defendant's Motion to Dismiss the Plaintiffs' Chancery Declaratory Class Action Complaint pursuant to 735 ILCS 5/2-615 is granted; and
2. This case is dismissed with prejudice.

IT IS SO ORDERED.

THIS IS A FINAL AND APPEALABLE ORDER.

ENTERED:



Judge Michael T. Mullen, No. 2084

Judge Michael T. Mullen

AUG 04 2021

Circuit Court - 2084