

**United States District Court
District of Massachusetts (Springfield)
CIVIL DOCKET FOR CASE #: 3:20-cv-11261-MGM**

Guzman Picot v. Mapfre Insurance Company et al
Assigned to: Judge Mark G. Mastroianni
Cause: 28:2201 Constitutionality of State Statute(s)

Date Filed: 07/01/2020
Date Terminated: 07/26/2021
Jury Demand: Plaintiff
Nature of Suit: 110 Insurance
Jurisdiction: Federal Question

Plaintiff

Albertina Guzman Picot
*on behalf of itself and all others similarly
situated
doing business as
Salon Cabellos*

represented by **Daniel C. Levin**
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V.

Defendant

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Defendant

College Highway Insurance Agency, Inc.
 TERMINATED: 10/14/2020

represented by **William A. Schneider**
 (See above for address)
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Date Filed	#	Docket Text
07/01/2020	1	COMPLAINT filed by ALBERTINA GUZMAN PICOT d/b/a SALON CABELLOS, on behalf of itself and all others similarly situated against All Defendants Filing fee: \$ 400, receipt number 0101-8311347 (Fee Status: Filing Fee paid), filed by Albertina Guzman Picot. (Attachments: # 1 Civil Cover Sheet, # 2 Supplement Category Form, # 3 Exhibit 1, # 4 Exhibit 2)(Tarricone, Anthony) (Entered: 07/01/2020)
07/02/2020	2	Case transferred to Western Division (Springfield) (Vieira, Leonardo) (Entered: 07/02/2020)
07/02/2020	3	Case transferred in from Eastern Division (Boston) on 7/2/2020 Case Number 1:20-cv-11261. (Danieli, Chris) (Entered: 07/02/2020)
07/02/2020	4	ELECTRONIC NOTICE of Case Assignment. Judge Mark G. Mastroianni assigned to case. If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Katherine A. Robertson. (Danieli, Chris) (Entered: 07/02/2020)
08/13/2020	5	Summons Issued as to All Defendants. Counsel receiving this notice electronically should download this summons, complete one for each defendant and serve it in accordance with Fed.R.Civ.P. 4 and LR 4.1. Summons will be mailed to plaintiff(s) not receiving notice electronically for completion of service. (Healy, Bethaney) (Entered: 08/13/2020)

08/14/2020	6	NOTICE of Appearance by Michael F. Aylward on behalf of Mapfre Insurance Company (Aylward, Michael) (Entered: 08/14/2020)
08/14/2020	7	NOTICE of Appearance by William A. Schneider on behalf of Mapfre Insurance Company (Schneider, William) (Entered: 08/14/2020)
08/14/2020	8	WAIVER OF SERVICE Returned Executed by Mapfre Insurance Company. Mapfre Insurance Company waiver sent on 7/28/2020, answer due 9/28/2020. (Schneider, William) (Entered: 08/14/2020)
09/28/2020	9	MOTION to Dismiss by Mapfre Insurance Company.(Aylward, Michael) (Entered: 09/28/2020)
09/28/2020	10	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by College Highway Insurance Agency, Inc.. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Schneider, William) (Entered: 09/28/2020)
09/28/2020	11	MEMORANDUM in Support re 9 MOTION to Dismiss filed by Mapfre Insurance Company. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J) (Aylward, Michael) (Entered: 09/28/2020)
10/09/2020	12	NOTICE of Voluntary Dismissal by Albertina Guzman Picot (Tarricone, Anthony) (Entered: 10/09/2020)
10/09/2020	13	AMENDED COMPLAINT <i>CLASS ACTION</i> against Mapfre Insurance Company, filed by Albertina Guzman Picot. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Tarricone, Anthony) (Entered: 10/09/2020)
10/14/2020	14	Judge Mark G. Mastroianni: ELECTRONIC ORDER entered finding moot 10 Defendant College Highway Insurance Agency's Motion to Dismiss for Failure to State a Claim based on 12 Plaintiffs voluntary dismissal of all claims against College Highway Insurance Agency. The court also denies without prejudice 9 Mapfre Insurance Company's Motion to Dismiss as Plaintiffs filing of an amended complaint means the motion to dismiss is no longer directed at the operative complaint. (Lindsay, Maurice) (Entered: 10/15/2020)
10/30/2020	15	MOTION to Dismiss <i>Plaintiff's First Amended Class Action Complaint</i> by Mapfre Insurance Company.(Aylward, Michael) (Entered: 10/30/2020)
10/30/2020	16	MEMORANDUM in Support re 15 MOTION to Dismiss <i>Plaintiff's First Amended Class Action Complaint</i> filed by Mapfre Insurance Company. (Attachments: # 1 Exhibit Exhibit Index, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F, # 8 Exhibit G, # 9 Exhibit H, # 10 Exhibit I, # 11 Exhibit J, # 12 Exhibit K, # 13 Exhibit L, # 14 Exhibit M, # 15 Exhibit N, # 16 Exhibit O, # 17 Exhibit P, # 18 Exhibit Q, # 19 Exhibit R, # 20 Exhibit S, # 21 Exhibit T)(Aylward, Michael) (Entered: 10/30/2020)
11/13/2020	17	NOTICE of Appearance by Michael D. Lurie on behalf of Albertina Guzman Picot (Lurie, Michael) (Entered: 11/13/2020)
11/13/2020	18	MOTION for Leave to Appear Pro Hac Vice for admission of Laurence S. Berman Filing fee: \$ 100, receipt number 0101-8508634 by Albertina Guzman Picot. (Attachments: # 1 Affidavit Laurence S. Berman)(Lurie, Michael) (Entered: 11/13/2020)
11/13/2020	19	MOTION for Leave to Appear Pro Hac Vice for admission of Daniel C. Levin Filing fee: \$ 100, receipt number 0101-8508643 by Albertina Guzman Picot. (Attachments: # 1 Affidavit Daniel C. Levin)(Lurie, Michael) (Entered: 11/13/2020)
12/22/2020	20	Judge Mark G. Mastroianni: ELECTRONIC ORDER entered granting 18 Motion for Leave to Appear Pro Hac Vice. ALLOWED. Added Laurence S. Berman. Attorneys

		admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at www.mad.uscourts.gov. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form. (Lindsay, Maurice) (Entered: 12/22/2020)
12/22/2020	21	Judge Mark G. Mastroianni: ELECTRONIC ORDER entered granting 19 Motion for Leave to Appear Pro Hac Vice. ALLOWED. Added Daniel C. Levin. Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at www.mad.uscourts.gov. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form. (Lindsay, Maurice) (Entered: 12/22/2020)
12/22/2020	22	Judge Mark G. Mastroianni: ELECTRONIC ORDER entered. Plaintiff shall file any opposition to 15 Defendant's Motion to Dismiss on or before 1/15/2021. Failure to oppose the motion to dismiss may result in dismissal of the case. (Lindsay, Maurice) (Entered: 12/22/2020)
01/15/2021	23	MEMORANDUM in Opposition re 15 MOTION to Dismiss <i>Plaintiff's First Amended Class Action Complaint</i> filed by Albertina Guzman Picot. (Attachments: # 1 Text of Proposed Order, # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 3, # 5 Exhibit 4, # 6 Exhibit 5) (Levin, Daniel) (Entered: 01/15/2021)
01/27/2021	24	MOTION for Leave to File <i>Reply Brief</i> by Mapfre Insurance Company.(Schneider, William) (Entered: 01/27/2021)
01/28/2021	25	Judge Mark G. Mastroianni: ELECTRONIC ORDER entered granting unopposed 24 Defendant Mapfre Insurance Company's Motion to File a Reply Brief Per Local Rule 7.1(B)(3). Defendant may file a reply memorandum not to exceed ten pages on or before 2/5/2021. Counsel using the Electronic Case Filing System should file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include Leave to file granted on (date of order) in the caption of the document. (Lindsay, Maurice) (Entered: 01/28/2021)
01/29/2021	26	MEMORANDUM OF LAW by Mapfre Insurance Company to 23 Memorandum in Opposition to Motion,. (Attachments: # 1 Exhibit U, # 2 Exhibit V, # 3 Exhibit W, # 4 Exhibit X, # 5 Exhibit Y, # 6 Exhibit Z, # 7 Exhibit AA, # 8 Exhibit BB)(Schneider, William) (Entered: 01/29/2021)
03/02/2021	27	Notice of Supplemental Authorities re 15 MOTION to Dismiss <i>Plaintiff's First Amended Class Action Complaint Notice of Supplemental Authority in support of Plaintiff's Response in Opposition to Defendant's Motion to Dismiss</i> (Attachments: # 1 Exhibit A) (Levin, Daniel) (Entered: 03/02/2021)
03/04/2021	28	Notice of Supplemental Authorities re 15 MOTION to Dismiss <i>Plaintiff's First Amended Class Action Complaint</i> (Schneider, William) (Entered: 03/04/2021)
03/09/2021	29	Second Notice of Supplemental Authorities re 15 MOTION to Dismiss <i>Plaintiff's First Amended Class Action Complaint</i> (Schneider, William) (Entered: 03/09/2021)
03/19/2021	30	Third Notice of Supplemental Authorities re 15 MOTION to Dismiss <i>Plaintiff's First Amended Class Action Complaint</i> (Schneider, William) (Entered: 03/19/2021)
04/09/2021	31	Fourth Notice of Supplemental Authorities re 15 MOTION to Dismiss <i>Plaintiff's First Amended Class Action Complaint</i> (Schneider, William) (Entered: 04/09/2021)
07/26/2021	32	Judge Mark G. Mastroianni: ELECTRONIC ORDER entered granting 15 Motion to Dismiss. Plaintiff is the operator of a hair salon and purchaser of a businessowners insurance policy issued by Defendant. Her business was impacted by the spread of the COVID-19 pandemic and the governments response, which included orders issued by the

Commonwealth of Massachusetts that impaired her ability to operate her salon. She sought coverage for her losses from Defendant. After her claim was denied, she filed this action on behalf of herself and a putative class of other salon owners. Defendant has moved for dismissal arguing that the relevant policy unambiguously fails to provide coverage for the alleged losses and Plaintiff has, therefore, failed to state a claim on which relief can be granted.

The relevant insurance policy, attached to the complaint, provides business income loss, extra expense, and civil authority coverage. (Dkt. No. 13-1 at 32, 34-25.) Each of these provisions is a standardized form drafted by the Insurance Services Office (ISO). The coverage provisions only apply where there is a direct physical loss of or damage to property either at the insureds business premises or at another property if, in response, a civil authority issues an order that prevents access to the insureds business. The policy also includes a so-called virus exclusion which states that Defendant will not pay for loss or damage caused directly or indirectly by... [a]ny virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease. (*Id.* at 43-46.) Defendant asserts the policy does not provide coverage for the losses asserted by Plaintiff and that, even if they would otherwise be covered, the virus exclusion applies because the losses were indirectly caused by the COVID-19 virus. Plaintiff counters, arguing the policy language is ambiguous and that there are factual questions that must be resolved before the policy can be applied in this case.

In Massachusetts, [t]he interpretation of an insurance contract is a question of law. *Boston Gas Co. v. Century Indem. Co.*, 910 N.E.2d 290, 304 (Mass. 2009). Other courts, including courts in this district, have previously considered whether identical language provided coverage for losses related to the COVID-19 pandemic. For example, in *Kamakura, LLC v. Greater New York Mutual Ins. Co.*, No. 20-cv-11350-FDS, 2021 WL 1171630 (D. Mass. Mar. 9, 2021), Judge Saylor reviewed identical policy language providing coverage for business income loss and extra expense. He ruled that while [t]he spread of the coronavirus is of course physical in the sense that the virus is a submicroscopic organism,... under the plain language of the policy, it is the loss or damage itself that must be physical. *Id.* at *6. He explained that the policy language was not ambiguous and the Plaintiffs did not lose the use of their business property because of the presence of the coronavirus itself, but rather because of government orders intended to slow the spread of COVID-19. *Id.* at *7. Further, as the government orders were not issued as a result of damage to property, Judge Saylor concluded the plaintiffs had not stated a claim covered under the civil authority provision. *Id.* at *10-12. This court finds Judge Saylor's reasoning persuasive as to the question of coverage under the policy. The policy language clearly requires physical loss or damage and Plaintiff has not plausibly alleged either that COVID-19 was present inside her salon or that its presence in the larger social context caused any physical loss or damage. In the absence of ambiguity, Plaintiffs' expectations cannot enlarge coverage beyond the scope established by the terms in the policy. *Certain Interested Underwriters at Lloyds, London v. Stolberg*, 680 F.3d 61, 69 (1st Cir. 2012). The losses identified by Plaintiff are alleged to stem from governmental limitations, which were tied to a generalized public health response. The governments' limitations nor Plaintiffs' losses resulted from physical damage to Plaintiffs' business caused by COVID-19. Finally, even were this court to find that the coverage provisions in the policy applied or that coverage depends on disputed facts, Plaintiffs' policy, unlike the policies at issue in *Kamakura*, contained a virus exclusion, which, on its face, bars coverage for damages caused, directly or indirectly, by a virus. There is no question that the state orders restricting Plaintiffs' operation of her business were issued in response to the spread of the COVID-19 coronavirus, thus any losses flowing from those orders were indirectly caused by the COVID-19 coronavirus. Dismissal is, therefore, appropriate. This case may now be closed. (Lindsay, Maurice) (Entered: 07/27/2021)

07/26/2021

[33](#)Judge Mark G. Mastroianni: ORDER entered. Order of Dismissal. (Lindsay, Maurice)
(Entered: 07/27/2021)

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