

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ANDREW BORROK PART 53

Justice

-----X

RAYMOURS FURNITURE COMPANY, INC.,

Plaintiff,

- v -

LEXINGTON INSURANCE COMPANY, ARCH SPECIALTY
INSURANCE COMPANY, ASPEN SPECIALTY
INSURANCE COMPANY, ATEGRITY SPECIALTY
INSURANCE COMPANY, ALLIED WORLD NATIONAL
ASSURANCE COMPANY, EVANSTON INSURANCE
COMPANY, PICC PROPERTY AND CASUALTY
COMPANY LIMITED, STARR SPECIALTY LINES
INSURANCE AGENCY, INTERSTATE FIRE & CASUALTY
COMPANY

Defendant.

-----X

INDEX NO. 655167/2020

MOTION DATE 12/18/2020,
12/21/2020,
09/30/2021

MOTION SEQ. NO. 001 002 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 32, 34, 35, 36, 37, 38, 39, 48, 49, 50, 51

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 26, 27, 28, 29, 30, 31, 33, 40, 41, 42, 52

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 61, 62, 63, 71

were read on this motion to/for LEAVE TO FILE.

The motions to dismiss (Seq. Nos. 001 and 002) must be granted because under these policies, the business interruption insurance coverage exists only for damage caused by “direct physical loss, damage or destruction” (NYSCEF Doc. No. 12, at 20). Here there wasn’t any. Covid-19 and any of the essential hygiene procedures necessary to facilitate the operation of Raymours Furniture Company, Inc.’s (**Raymours**) retail business simply does not constitute anything covered by the policies (*Roundabout Theatre Co. v Continental Cas. Co.*, 302 AD2d 1 [1st Dept

2002]; *Gap, Inc. v 170 Broadway Retail Owner, LLC*, 195 AD3d 575 [1st Dept 2021], *rev'g* 2020 NY Misc LEXIS 9794 [2020]). The business interruption here wasn't from Covid-19, rather it was caused by governmental shutdown orders which temporarily restricted non-essential business operations. For the avoidance of doubt, Raymours opened its stores as soon as governmental restrictions lifted and there was no change, at the time, in the effects of any Covid-19 particles.

Additionally, it is clear that were this not to be the case, the pollution and contamination exclusion would still apply (NYSCEF Doc. No. 12 at 68). Therefore, the motion must be granted and case is dismissed as against defendants Lexington Insurance Company, Arch Specialty Insurance Company, Aspen Specialty Insurance Company, Ategrity Specialty Insurance Company, Allied World National Assurance Company, Evanston Insurance Company, Starr Specialty Lines Insurance Agency, and Interstate Fire & Casualty Company.

The cases cited by Raymours do not suggest a different result. By way of example *Atlantic Cement Co., Inc. v Fidelity & Cas. Co. of New York* involved the issue of whether or not the exclusion for intentional harm applied when plant operations caused physical damage to property by blasting vibrations and dust (91 AD2d 412 [1st Dept 1983]).

Motion for leave to file a notice of supplemental authority in support of Defendant's motion to dismiss the complaint (Seq. No. 004) is denied as moot.

ORDERED that the motion of defendants Lexington Insurance Company, Arch Specialty Insurance Company, Aspen Specialty Insurance Company, Ategrity Specialty Insurance Company, Allied World National Assurance Company, Evanston Insurance Company, Starr Specialty Lines Insurance Agency, and Interstate Fire & Casualty Company, to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

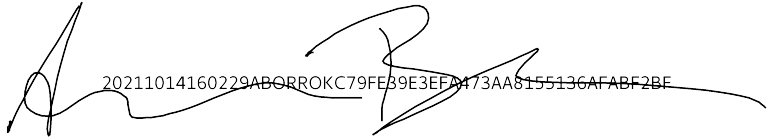
ORDERED that the action is severed and continued against the remaining defendant PICC Property and Casualty Company Limited; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that the remaining parties are directed to appear for a remote preliminary conference on November 1, 2021 at 11:30 AM.


20211014160229ABORROK79FEB39E3EFA473AA8155136AFABF2BF

10/14/2021
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER				
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE