

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION**

**ROCK DENTAL ARKANSAS, PLLC, *ET AL.***

**PLAINTIFFS**

**VS.**

**NO. 4:21-cv-00526-BRW**

**CINCINNATI INSURANCE COMPANY**

**DEFENDANT**

**ORDER**

Pending is Defendant’s Motion to Dismiss (Doc. No. 5). Plaintiffs have responded.<sup>1</sup> For the reasons set out below, the motion is GRANTED. This case is DISMISSED.

**I. BACKGROUND**

Plaintiffs purchased Building and Personal Property Coverage and Business Income (and Extra Expense) insurance from Defendant. Plaintiffs suspended or reduced most of their business operations at it dental facility “due to COVID-19 and the resultant orders issued by state and local authorities in Arkansas and Missouri mandating the suspension of business for on-site, non-emergency services.”<sup>2</sup> Plaintiffs filed a claim under the policy and Defendant denied the claim.

**II. APPLICABLE LAW**

A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.”<sup>3</sup> To survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6), the factual allegations in a complaint “must be enough to raise a right to relief above the speculative

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<sup>1</sup>Doc. No. 8.

<sup>2</sup>Doc. No. 1.

<sup>3</sup>Fed. R. Civ. P. 8(a)(2).

level.”<sup>4</sup> A complaint must be dismissed if it does not plead “enough facts to state a claim for relief that is plausible on its face.”<sup>5</sup> “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”<sup>6</sup> The Court must find “enough factual matter (taken as true) to suggest” that “discovery will reveal evidence” of the elements of the claim.<sup>7</sup> The evaluation prompted by a 12(b)(6) motion requires the court to construe the complaint in the light most favorable to the plaintiff and to accept as true the factual allegations of the complaint.<sup>8</sup>

### III. DISCUSSION

Plaintiffs assert that the “presence of COVID-19 caused direct physical loss of or damage to the covered property under Plaintiffs’ policy by damaging and denying the full use of the covered property and by causing a necessary suspension of business operations”<sup>9</sup>

Despite Plaintiffs’ protestation to the contrary, the policy language is unambiguous.<sup>10</sup> When considering the contract as a whole, there is no coverage under the policy, because Plaintiffs have not alleged that COVID-19 was ever present in its buildings, which means they

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<sup>4</sup>*Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

<sup>5</sup>*Id.* at 570.

<sup>6</sup>*Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (stating that the plausibility standard does not require a probability but asks for more than a sheer possibility that a defendant has acted unlawfully).

<sup>7</sup>*Twombly*, 550 U.S. at 558, 556.

<sup>8</sup>*Erickson v. Pardus*, 551 U.S. 89, 93-94 (2007); see also *Park Irmat Drug Corp. v. Express Scripts Holding Co.*, 911 F.3d 505, 512 (8th Cir. 2018).

<sup>9</sup>Doc. No. 1.

<sup>10</sup>Plaintiffs assert that *Hampton Foods, Inc. v. Aetna Casualty & Surety Co.*, 787 F.2d 349 (8th Cir. 1986) supports their position that the policy language is ambiguous. However, that policy covered “risks of direct physical loss.” *Id.* at 351 (emphasis added). The word “risk” is not present in this policy as it relates to direct physical loss.

are unable to establish direct physical loss or damage. This is the same finding recently made by the Court of Appeals for the Eighth Circuit involving the same policy language and the same allegations.<sup>11</sup> Plaintiffs assert that *Oral Surgeons* is distinguishable because it applied Iowa law. However, there is no difference between Arkansas and Iowa law on this issue.

### **CONCLUSION**

For the reasons set out above, Defendant's Motion to Dismiss (Doc. No. 5) is GRANTED. The case is DISMISSED.

IT IS SO ORDERED this 28th day of July, 2021.

BILLY ROY WILSON  
UNITED STATES DISTRICT JUDGE

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<sup>11</sup>*Oral Surgeons, P.C. v. Cincinnati Ins. Co.*, 2 F.4th 1141 (8th Cir. 2021)