IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

SIREN SALON, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 20 C 3108
	)	
LIBERTY MUTUAL INSURANCE COMPANY,	)	Judge Joan H. Lefkow
	)	
	)	
Defendant.	)	

ORDER

Defendant Liberty Mutual Insurance Co.'s motion for judgment on the pleadings (dkt. 23) is granted. See statement[1]

STATEMENT

I. Background[2]

In 2019, Siren Salon, Inc. purchased an insurance policy ("the Policy") from Liberty Mutual. (Dkt. 1 ¶ 21.) Under the Policy, Liberty Mutual promised to pay "for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss." (*Id.* ¶ 24.) Payments would cover any loss of "Business Income" and "Extra Expense" that Siren Salon may encounter due to a covered cause of loss or damage. (*Id.* ¶¶ 30, 33.) The Policy defines a "Covered Cause of Loss" as a "[d]irect physical loss unless the loss is excluded or limited." (*Id.* ¶ 25.)

Coverage was excluded, however, 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." ("the Virus Exclusion"). (*Id.* ¶ 27.) The Virus Exclusion applied "regardless of any other cause or event that contributes concurrently or in any sequence to the loss," "whether or not the loss event results in widespread damage or affects a substantial area." (Dkt. 1 Ex. D at 92.)

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[1] The court has jurisdiction under 28 U.S.C. § 1332. Venue is proper under 28 U.S.C. § 1391(b)(2).

[2] Unless otherwise noted, the following facts are taken from Siren Salon's complaint and are presumed true for the purpose of resolving the pending motion. *Brack* v. *Dart*, No. 11 C 8192, 2013 WL 2251741, at * 1 (N.D. Ill. May 22, 2013)

In March 2020, in response to the global COVID-19 pandemic caused by the SARS-CoV-2 coronavirus ("the Coronavirus"), Illinois Governor J.B. Pritzker issued COVID-19 Executive Order No. 8, instructing that "non-essential business and operations must cease." (*Id.* ¶¶ 9–10.) Salons like Siren Salon were deemed non-essential. (Dkt. 1 ¶ 11.)

Thus, on March 21, 2020, Siren Salon was forced to close and has been out of business since. (*Id.* ¶ 17.) Siren Salon has suffered significant losses of business income and incurred extra expenses as a result. (*Id.* ¶ 19.) After Siren Salon notified Liberty Mutual of its losses, Liberty Mutual denied all coverage. (*Id.* ¶¶ 45, 47.) Siren Salon sued Liberty Mutual for breach of contract. (*Id.* at 8–9.) Liberty Mutual answered (dkt. 20) and now moves for judgment on the pleadings. (Dkt. 23.)

Under Rule 12(c) of the Federal Rules of Civil Procedure, a party may move for judgment on the pleadings after a complaint and answer have been filed. Fed. R. Civ. P. 12(c); *Buchanan-Moore* v. *Cty. of Milwaukee*, 570 F.3d 824, 827 (7th Cir. 2009). A Rule 12(c) motion for judgment on the pleadings is meant to resolve cases only "when the material facts are not in dispute and a judgment on the merits can be achieved by focusing on the content of the pleadings and any facts of which the court will take judicial notice." *Bank of N.Y. Mellon* v. *Estrada*, No. 12 C 5952, 2013 WL 3811999, at *1 (N.D. Ill. July 22, 2013). A court must "accept all well-pleaded allegations in the complaint as true and draw all reasonable inferences in favor of the plaintiff." *Brack* v. *Dart*, No. 11 C 8192, 2013 WL 2251741, at * 1 (N.D. Ill. May 22, 2013) (quoting *Forseth* v. *Vill. of Sussex*, 199 F.3d 363, 364 (7th Cir. 2000)). A court may grant a Rule 12(c) motion "only if it appears beyond doubt that the [nonmoving party] cannot prove any facts that would support his claim for relief." *Estrada*, 2013 WL 3811999, at *1 (quoting *Buchanan–Moore*, 570 F.3d at 827). "But the court 'need not ignore facts set forth in the complaint that undermine the plaintiff's claim or give weight to unsupported conclusions of law.'" *Brack*, 2013 WL 2251741, at *1 (quoting *Buchanan–Moore*, 570 F.3d at 827).

For the purposes of a Rule 12(c) motion, "the court considers the pleadings alone, which consist of the complaint, the answer, and any written instruments attached as exhibits." *Hous. Auth. Risk Retention Grp.* v. *Chi. Hous. Auth.*, 378 F.3d 596, 600 (7th Cir. 2004). In addition, a court may consider documents attached to the motion "if they are referred to in the plaintiff's complaint and are central to his claims." *Wright* v. *Assoc. Ins. Cos.*, 29 F.3d 1244, 1248 (7th Cir. 1994).

The parties dispute whether coverage was excluded under the Virus Exclusion. To address this dispute, the court must interpret the Policy. The interpretation of an insurance policy is a matter of state law. *Westfield Ins. Co.* v. *Vandenberg*, 796 F.3d 773, 777 (7th Cir. 2015). A court sitting in diversity applies the law of the forum state. *See Lodholtz* v. *York Risk Servs. Grp., Inc.*, 778 F.3d 635, 639 (7th Cir. 2015). Both parties here agree that Illinois law applies. Under Illinois law, the general rules governing interpretation of contracts also govern the interpretation of insurance policies. *Scottsdale Ins. Co.* v. *Columbia Ins. Grp.*, 972 F.3d 915, 919 (7th Cir. 2020). The goal is to "ascertain and give effect to the intention of the parties, as expressed in the policy language." *Id.* (quoting *Hobbs* v. *Hartford Ins. Co. of the Midwest*, 823 N.E.2d 561, 564, 214 Ill. 2d 11 (2005)). All provisions of the policy should be read together; every part of the contract must be given meaning, so no part is meaningless or surplusage. *Mkt. St. Bancshares, Inc.* v. *Fed. Ins. Co.*, 962 F.3d 947, 954–55 (7th Cir. 2020).

"If the words used in the policy are reasonably susceptible to more than one meaning, they are ambiguous and will be strictly construed against the drafter." *Cent. Ill. Light Co.* v. *Home Ins. Co.*, 821 N.E.2d 206, 213, 213 Ill. 2d 141 (2004) (citation omitted). But a contract is not ambiguous "merely because the parties disagree on its meaning." *Id.* at 214. Courts will not strain to find ambiguity where none exists. *Ill. Farmers Ins. Co.* v. *Hall*, 844 N.E.2d 973, 976, 363 Ill. App. 3d 989 (2006). Although "provisions that limit or exclude coverage are interpreted . . . liberally in favor of the insured and against the insurer," *Am. States Ins. Co.* v. *Koloms*, 687 N.E.2d 72, 75, 177 Ill. 2d 473 (1997), "[a]n unambiguous provision in an insurance policy must be enforced, even if it results in the limitation of the insurer's liability." *River* v. *Commercial Life Ins. Co*, 160 F.3d 1164 (7th Cir. 1998) (citation omitted).

The Virus Exclusion is unambiguous and excludes coverage in this case. Coverage is excluded if the loss is "caused directly or indirectly by . . . [a]ny virus. . . that induces or is capable of inducing physical distress, illness or disease." (Dkt. 1 Exh. D at 94.) The Virus Exclusion applies "regardless of any other cause or event that contributes concurrently or in any sequence to the loss," and "whether or not the loss event results in widespread damage or affects a substantial area." (*Id.* at 92.) In this case, a virus (the Coronavirus) capable of causing illness or disease (COVID-19) caused Siren Salon's loss at least indirectly (through the Executive Order). Because the pandemic has directly or indirectly closed so many businesses, several courts applying Illinois law have addressed this precise issue and reached the same conclusion. *Mashallah, Inc.* v. *W. Bend Mut. Ins. Co.*, No. 20 C 5472, 2021 WL 679227, at *2–4 (N.D. Ill. Feb. 22, 2021); *Riverwalk Seafood Grill Inc.* v. *Travelers Cas. Ins. Co. of Am.*, No. 20 C 3768, 2021 WL 81659, at *3 (N.D. Ill. Jan. 7, 2021); *AFM Mattress Co., LLC* v. *Motorists Commercial Mut. Ins. Co.*, — F. Supp. 3d —, 2020 WL 6940984, at *3–4 (N.D. Ill. Nov. 25, 2020). Courts across the country have overwhelmingly agreed. *See, e.g., Mena Catering, Inc.* v. *Scottsdale Ins. Co.,* — F. Supp. 3d —, 2021 WL 86777, at *9 (S.D. Fla. 2021) (collecting cases); *Palmdale Estates, Inc.* v. *Blackboard Ins. Co.*, No. 20-6158, 2021 WL 25048, at *3 (N.D. Cal. 2021) (finding that the "weight of authority" supports the application of the Virus Exclusion).

Siren Salon argues that the Virus Exclusion is ambiguous and must be construed not to apply to this case. Ambiguity exists when the contract is susceptible to more than one reasonable interpretation. *Cent. Ill. Light Co.*, 821 N.E.2d at 213. But a court will not strain to find ambiguity where none exists. *Hall*, 844 N.E.2d at 976. Siren Salon argues that it is ambiguous whether the Virus Exclusion was intended to encompass COVID-19 because it was developed by the Insurance Services Office in 2006 response to the SARS outbreak—an outbreak that occurred many years before the COVID-19 pandemic and that was much less widespread. The court need not consider the drafting history, however, because the Virus Exclusion is "clear, sweeping, and all-encompassing." *Riverwalk Seafood Grill*, 2021 WL 81659, at *3. The Policy precludes coverage for loss caused "directly or indirectly" by "any" qualifying virus, "regardless of any other cause" and "whether or not the loss event results in widespread damage or affects a substantial area." (Dkt. 1 Exh. D at 92.) "[T]he word 'any' here means all viruses that induce or are capable of inducing illness or disease." *AFM Mattress*, 2020 WL 6940984, at *4. Furthermore, "[t]here's no temporal limitation in the policy on when a given virus must have come into existence to be included in the virus exclusion." *Id.* Because there is only one reasonable interpretation of the exclusion, no ambiguity exists. The Virus Exclusion applies to the COVID-19 pandemic caused by the Coronavirus.

Siren Salon next argues that the Virus Exclusion is inapplicable because Siren Salon's losses were a direct result of the Executive Order, not the Coronavirus. The court finds this argument unpersuasive because it means, at most, that the losses were an indirect result of the Coronavirus and thus are still excluded. (Dkt. 1 Exh. D at 92 (excluding "loss or damage caused . . . indirectly by . . . [a]ny virus . . . .").) Siren Salon acknowledges, as it must, that the pandemic caused the Executive Order. (*See* dkt. 1 Exh. A at 12 (describing rationale for Executive Order as a "response to the outbreak of Coronavirus Disease 2019 (COVID-19)")); *see also N&S Rest. LLC* v. *Cumberland Mut. Fire Ins. Co.*, — F. Supp. 3d —, 2020 WL 6501722, at *3 (D.N.J. Nov. 5, 2020) ("COVID-19 is still a cause of the closure because the Virus Exclusion *specifically provides for such indirect causation*. . . . Therefore, because COVID-19 caused the Executive Order mandating closure of all non-essential businesses, the Virus Exclusion applies."). Thus, the losses are excluded as indirectly caused by a virus.

Because coverage is excluded as a matter of law, the court need not decide whether the losses were covered under the Policy. Liberty Mutual's motion for judgment on the pleadings (dkt. 23) is granted.

Date: March 22, 2021

U.S. District Judge Joan H. Lefkow