

1 See Compl., Dkt. No. 1. This District has chosen to assign all such cases to the undersigned who
2 consolidated the earliest of these actions into ten cases. See, e.g., *Chorak v. Hartford Cas. Ins.*
3 *Co.*, 20-cv-00627. This Court recently published an Order in those cases holding there was no
4 coverage for losses due to COVID-19. See *Nguyen, et al. v. Travelers Cas. Ins. Co., et al.*, No.
5 20-cv-00597, 2021 WL 2184878 (W.D. Wash. May 28, 2021). The Court held that in all of the
6 relevant policies “direct physical loss of or damage to” covered property was required to trigger
7 coverage and COVID-19 did not cause physical loss or damage. *Id.* at *9–*13. Additionally, the
8 Court held that extension provisions, such as Extra Expense or Civil Authority, failed to provide
9 independent grounds for coverage where coverage was not triggered in the first instance. *Id.* at
10 *13–*14. Finally, the Court held that even if the policies provided coverage, a Virus exclusion
11 would subsequently bar coverage. *Id.* at *15–*16.

13 This case was filed after consolidation in those matters, and thus was not included in that
14 Order, but the same applies. Plaintiff’s Complaint points to several provisions as grounds for
15 coverage, including provisions for Business Income, Extra Expense, Extended Business Income,
16 and Civil Authority. Compl. ¶¶ 13, 17–18; see also Pl.’s Opp’n to Def.’s Mot. to Dismiss Compl.,
17 Dkt. No. 19 at 6–8 (“Resp.”). These provisions, however, all require direct physical loss of or
18 damage to covered property (or nearby property) to trigger coverage. See Mot., Ex. A, Dkt. No.
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1 19 (Insurance Policy of Glacial Cryotherapy LLC) at 49² (Business Income),³ 49 (Extra Expense),⁴
2 51 (Extended Business Income),⁵ and 50 (Civil Authority).⁶ ATherefore, given the Court's

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5 ² As the Policy uses an inconsistent numbering scheme, the Court will consistently refer to the page number derived
6 from the file uploaded to the Court's Case Management/Electronic Case Files system.

7 ³ Stating

8 We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your
9 "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of
10 or damage to property at premises which are described in the Declarations and for which a Business
11 Income Limit Of Insurance is shown in the Declarations. The loss or damage must be caused by or result
12 from a Covered Cause of Loss.

13 "Covered Cause of Loss" is further defined as "direct physical loss unless the loss is excluded or limited in this
14 Policy." Policy at 61.

15 ⁴ Stating

- 16 a. Extra Expense Coverage is provided at the premises described in the Declarations only if the
17 Declarations show that Business Income Coverage applies at that premises.
18 b. Extra Expense means necessary expenses you incur during the "period of restoration" that you would not
19 have incurred if there had been no direct physical loss or damage to property caused by or resulting from a
20 Covered Cause of Loss.

21 ⁵ Stating

22 If the necessary "suspension" of your "operations" produces a Business Income loss payable under this
23 policy, we will pay for the actual loss of Business Income you incur during the period that[.] . . .

24 However, Extended Business Income does not apply to loss of Business Income incurred as a result of
25 unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the
described premises are located.

Loss of Business Income must be caused by direct physical loss or damage at the described premises
caused by or resulting from any Covered Cause of Loss.

⁶ Stating

When a Covered Cause of Loss causes damage to property other than property at the described premises,
we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by
action of civil authority that prohibits access to the described premises, provided that both of the following
apply:

(1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a
result of the damage, and the described premises are within that area but are not more than one mile from
the damaged property; and

(2) The action of civil authority is taken in response to dangerous physical conditions resulting from the
damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to
enable a civil authority to have unimpeded access to the damaged property.

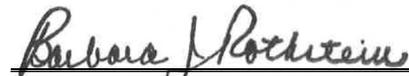
1 conclusion that COVID-19 does not cause physical loss or damage, these provisions fail to provide
2 coverage.

3 Additionally, Defendant argues that the Virus exclusion found in Plaintiff's policy would
4 bar coverage, even if Plaintiff could establish coverage in the first instance. *See* Mot. at 7–10; *see*
5 *also* Policy at 60.⁷ In its previous Order, the Court found that such Virus exclusions applied and
6 rejected arguments identical to the ones advanced by Plaintiff and does so here. *See Nguyen*, 2021
7 WL 2184878, at *15–*16; Resp. at 10–15.

8 Plaintiff advances claims for Declaratory Relief and Breach of Contract. *See* Compl. ¶¶
9 94–107. The conclusions *supra* determine coverage under Plaintiff's policy and establish that
10 Defendant did not unreasonable deny coverage. The Court hereby GRANTS Defendant's Motion
11 and dismisses Plaintiff's claims with PREJUDICE.
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13 SO ORDERED.

14 DATED this 2nd day of June, 2021.

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17 BARBARA J. ROTHSTEIN
18 UNITED STATES DISTRICT JUDGE
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24 ⁷ Stating

25 We will not pay for loss or damage caused by or resulting from any virus, bacterium or other
microorganism that induces or is capable of inducing physical distress, illness or disease.