

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

SNOQUALMIE ENTERTAINMENT
AUTHORITY d/b/a SNOQUALMIE
CASINO and SACRED FALLS LLC d/b/a
SALISH LODGE & SPA,

Plaintiff,

v.

AFFILIATED FM INSURANCE
COMPANY,

Defendant.

NO. 21-2-03194-0 SEA

~~PROPOSED~~ ORDER GRANTING
PLAINTIFFS' MOTION FOR PARTIAL
SUMMARY JUDGMENT RE:
COVERAGE GRANT AND DENYING
DEFENDANT'S MOTION FOR PARTIAL
SUMMARY JUDGMENT

THIS MATTER came before the Court on Plaintiffs' Motion for Partial Summary Judgment Re: Coverage Grant and Defendant's Motion for Partial Summary Judgment. The Court has duly considered the oral argument of the parties, the files and records herein, and the below-listed pleadings, papers, declarations, and exhibits submitted by the parties, including the following:

1. Plaintiffs' Motion for Partial Summary Judgment RE: Coverage Grant;
2. Declaration of Kasey D. Huebner;

~~PROPOSED~~ ORDER GRANTING PLAINTIFFS' MOTION
FOR PARTIAL SUMMARY JUDGMENT RE: COVERAGE
GRANT AND DENYING DEFENDANT'S MOTION FOR
PARTIAL SUMMARY JUDGMENT - 1

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3. Declaration of Alan Stephens;
4. Declaration of Mary Lou Patterson;
5. Defendant Affiliated FM Insurance Company's Opposition to Plaintiffs' Motion For Partial Summary Judgment RE: Coverage Grant;
6. Plaintiffs' Reply In Support of Motion For Partial Summary Judgment RE: Coverage Grant;
7. Supplemental Declaration of Kasey D. Huebner;
8. Defendant's Motion for Partial Summary Judgment;
9. Declaration of Daniel R. Bentson In Support of Defendant's Motion For Partial Summary Judgment;
10. Declaration of Charles Gerba, Ph. D.;
11. Declaration of Richard A. Sunny In Support of Defendant's Motion For Partial Summary Judgment;
12. Plaintiffs' Opposition to Defendant's Motion for Partial Summary Judgment; and
13. Reply In Support of Defendant Affiliated FM Insurance Company's Motion for Partial Summary Judgment.

14. *Objections to Plaintiff's Proposed Order**
 IT IS HEREBY ORDERED as follows:

1. Plaintiffs' Motion for Partial Summary Judgment RE: Coverage Grant is GRANTED.
2. Defendant's Motion for Partial Summary Judgment is DENIED.
3. Pursuant to CR 56, the Court enters the following undisputed facts relevant to its conclusions of law.

** The Court carefully reviewed the substantial objections but objections as to the timing of the order are not well taken. The Court noticed the parties on August 27, 2021 that it wanted the order soon. The proposed order and the objections are submitted quite promptly.*

[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT RE: COVERAGE GRANT AND DENYING DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT - 2

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*John H. Gordon
 Judge
 Court
 perspective.*

1 4. Plaintiff Snoqualmie Entertainment Authority d/b/a Snoqualmie Casino is an
2 unincorporated governmental component and a subordinate instrumentality of the Snoqualmie
3 Indian Tribe (“Tribe”), a federally-recognized sovereign Indian tribe and signatory to the Treaty
4 of Point Elliott of 1855, with reserved rights thereunder, that is formed under the laws of the
5 Tribe.
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10 5. The Tribe wholly owns and operates, and does business as, among other
11 businesses and enterprises, the Snoqualmie Casino (“Casino”).
12
13
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15 6. The Casino is a Tribal business enterprise located on the Tribe’s Reservation in
16 King County, Washington.
17
18

19 7. The 170,000 square-foot Casino features eight restaurants, lounges and bars, an
20 11,000 square-foot ballroom, and a 51,000 square-foot gaming floor.
21
22

23 8. Plaintiff Sacred Falls LLC, a Washington State LLC managed by the Tribe, owns,
24 operates, and does business as the Salish Lodge & Spa (“Lodge”), which is located on Tribally-
25 owned fee land that is sacred to the Tribe, but is not located on the Tribe’s Reservation.
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29 9. The Lodge is a resort overlooking Snoqualmie Falls that offers luxury
30 accommodations, including 86 guest rooms, fine dining and spa services, and serves as a location
31 for weddings, corporate functions, and other special events.
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34

35 10. On February 29, 2020, in response to the COVID-19 pandemic, Governor Jay
36 Inslee issued Proclamation 20-5 declaring a state of emergency throughout Washington.
37
38

39 11. Shortly thereafter, Governor Inslee issued additional proclamations that
40 significantly limited public events throughout the State of Washington.
41
42
43
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45

1 12. In response to Governor Inslee’s proclamations, the Snoqualmie Tribal Council—
2
3 the elected governing body with sole authority over the Casino—declared a Tribal State of
4
5 Emergency on March 11, 2020.
6

7 13. On March 16, 2020, Proclamation 20-13, “Statewide Limits: Food and Beverage
8
9 Services, Areas of Congregation,” prohibited the onsite consumption of food and/or beverages in
10
11 a public venue, including restaurant, bars, or other similar venues in which people congregate for
12
13 the consumption of food or beverages.
14

15 14. That same day, the Tribal Council passed Resolution 44-2020, which directed the
16
17 immediate closure of the Casino due to the COVID-19 pandemic.
18

19 15. Governor Inslee issued additional proclamations extending the closure orders, and
20
21 the Tribal Council passed corresponding resolutions requiring the Casino to remain closed.
22

23 16. Snoqualmie alleges that due to the COVID-19 closure resolutions passed by the
24
25 Snoqualmie Tribal Council, the Casino experienced significant losses, including business
26
27 interruption losses.
28

29 17. Although the Lodge is not subject to the Tribe’s closure resolutions because it is
30
31 not located on the Snoqualmie Indian Tribe’s Reservation, it was nonetheless subject to
32
33 Governor Inslee’s COVID-19 proclamations.
34

35 18. Snoqualmie alleges that due to the COVID-19 closure proclamations by Governor
36
37 Inslee, the Lodge suffered significant losses, including business interruption losses, that totaled
38
39 millions of dollars.
40

41 19. Defendant Affiliated FM Insurance Company (“AFM”) is an insurance company
42
43 incorporated in the State of Rhode Island that is authorized to write, sell, and issue insurance
44
45 policies in the State of Washington.

1 20. AFM sold Plaintiffs (collectively, “Snoqualmie”) an “all risk” insurance policy
2
3 that provides broad property and business interruption coverage under Policy No. TO287,
4
5 effective November 1, 2019 to November 1, 2020 (“Policy”).
6

7 21. The Policy’s “Named Insured” is “Snoqualmie Entertainment Authority, and its
8
9 wholly or majority owned subsidiaries and any interest which may now exist or hereinafter be
10
11 created or acquired which are owned, controlled or operated by any one or more of those named
12
13 insureds.”
14

15 22. The Policy’s Location Schedule identifies the addresses at which both the Casino
16
17 and Lodge are located as covered property.
18

19 23. The Policy covers the Casino and Lodge’s “property as described in [the Policy]
20
21 against ALL RISKS OF PHYSICAL LOSS OR DAMAGE, except as hereinafter excluded.”
22

23 24. The Policy’s Business Interruption Coverage “insures Business Interruption loss,
24
25 as provided in the Business Interruption Coverage, as a direct result of physical loss or damage
26
27 of the type insured:
28

- 29 1. To property as described elsewhere in this Policy and otherwise excluded by
30
31 this Policy;
- 32 2. Used by the Insured;
- 33 3. While at a **location** or while in transit as provided by this Policy; and
- 34
35 4. During the Period of Liability as described elsewhere in this Policy.”
36
37
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39 25. The Policy also provides an Additional Coverage for “Communicable Disease –
40
41 Property Damage,” as well as a Business Interruption Coverage Extension for “Communicable
42
43 Disease – Business Interruption.”
44
45

1 26. The Business Interruption Coverage Extension for Communicable Disease
2
3 provides:

4
5 If a **described location** owned, leased or rented by the Insured has the actual not
6
7 suspected presence of communicable disease and access to such **described location** is
8
9 limited, restricted, or prohibited by:

- 10
11 a) An order of an authorized governmental agency regulating such presence of
12
13 **communicable disease**; or
14
15 b) A decision of an Officer of the Insured as a result of the presence of such
16
17 **communicable disease**.

18
19 27. In relevant part, the Policy defines “**communicable disease**” as “disease which is:
20
21 1. Transmissible from human to human by direct or indirect contact with an affected individual
22
23 or the individual’s discharges, or 2. Legionellosis.”

24
25 28. In relevant part, the Policy’s Washington Amendatory Endorsement excludes
26
27 “loss or damage caused by . . . 10. **Contamination**, and any cost due to **contamination**
28
29 including the inability to use or occupy property or any cost of making property safe or suitable
30
31 for use or occupancy; nor will the foregoing constitute direct physical loss or damage insured by
32
33 this policy.”

34
35 29. The Policy defines “**contamination**” as “any condition of property due to the
36
37 actual or suspected presence of any foreign substance, impurity, pollutant, hazardous material,
38
39 poison, toxin, pathogen or pathogenic organism, bacteria, virus, disease causing or illness
40
41 causing agent, fungus, mold or mildew.”

42
43 30. The Policy’s Washington Amendatory Endorsement also “excludes loss or
44
45 damage arising out of . . . 6. Loss of market; loss of use; damage or deterioration arising from

1 any delay, whether such delay is caused by a peril insured against or otherwise; loss caused by
2
3 any legal proceeding.”
4

5 31. The Lodge and the Casino sought coverage from AFM for the business
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7 interruption losses they sustained as a result of the closure orders and resolutions issued by
8
9 Governor Inslee and the Tribe.
10

11 32. AFM denied coverage to the Lodge and Casino under the Policy’s \$150 million
12
13 Business Interruption coverage for the losses that the Casino and Lodge sustained as a result of
14
15 the closure orders and resolutions.
16

17 33. AFM based its denial on the assertion that Snoqualmie’s properties had not
18
19 sustained “any physical loss or damage” required to trigger coverage.
20

21 34. Snoqualmie also denied coverage based on the Policy’s “contamination”
22
23 exclusion.
24

25 35. AFM’s coverage denials did not reference the exclusion for “Loss of market; loss
26
27 of use; damage or deterioration arising from any delay, whether such delay is caused by a peril
28
29 insured against or otherwise; loss caused by any legal proceeding.”
30

31 36. Despite AFM’s contention that “no physical loss or damage” had occurred at
32
33 Snoqualmie’s properties as a result of the COVID-19 State and Tribal closure orders, AFM
34
35 agreed to provide coverage under the Policy’s Communicable Disease Extension—which has a
36
37 sublimit of only \$100,000—for instances during the pandemic where the Casino and Lodge
38
39 temporarily closed due to their employees testing positive for COVID-19.
40

41 37. Based on the above undisputed facts, Plaintiff’s Motion for Partial Summary
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43 Judgment RE: Coverage Grant seeks a ruling as a matter of law that the Casino and Lodge
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45

1 suffered "physical loss" because of the COVID-19 State and Tribal closure orders that triggers
2
3 coverage under the Policy's general grant of coverage for Business Interruption.
4

5 38. In contrast, Defendant's Motion for Partial Summary Judgment seeks a ruling a as
6
7 a matter of law that the Casino and Lodge did not suffer "physical loss or damage" because of
8
9 the COVID-19 State and Tribal closure orders, and further asks the Court to make the following
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11 determinations:

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13 (1) The Policy's contamination exclusion applies and precludes coverage under
14
15 the Policy;

16
17 (2) The loss of use exclusion applies and precludes coverage under the Policy;
18
19 and

20
21 (3) The sole source of coverage for Plaintiff's alleged COVID-19 related losses is
22
23 found in the Policy's distinct "communicable disease" coverages.
24

25 39. Washington's appellate courts have not yet interpreted the policy language at
26
27 issue in the unique context of the COVID-19 closure orders. In the absence of binding
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29 precedent, the Court accordingly must apply Washington principles of policy interpretation to
30
31 the undefined phrase "all risks of physical loss or damage" to determine whether the COVID-19
32
33 closure orders trigger coverage for Snoqualmie's claimed losses.
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35 40. Determining insurance coverage is a two-step process. First, the insured must
36
37 show that the loss falls within the scope of the policy's insured losses. Second, to avoid coverage
38
39 the insurer has the burden of proving that specific policy language excludes the loss. *McDonald*
40
41 *v. State Farm Fire & Cas. Co.*, 119 Wn.2d 724, 731, 837 P.2d 1000 (1992).
42

43 * Two Superior Court orders favoring plaintiffs' position in
44 cases involving similar policy language are persuasive; this
45 Court is not persuaded by defendant's "objection" that one
of these was "overruled" by a fellow judge in one of
these matters.

[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION
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1 41. As set forth below, the Court finds that Snoqualmie has established as a matter of
2 law that Snoqualmie's claimed losses because of the State and Tribal closure orders fall within
3 the grant of coverage for "all risks of physical loss or damage."
4
5

6
7 42. Washington courts "view an insurance contract in its entirety and cannot interpret
8 a phrase in isolation." *Moeller v. Farmers Ins. Co. of Washington*, 173 Wn.2d 264, 271, 267
9 P.3d 998 (2011).
10
11

12
13 43. In Washington, insuring provisions must be interpreted liberally to provide
14 coverage whenever possible. *Bordeaux, Inc. v. Am. Safety Ins. Co.*, 145 Wn. App. 687, 694, 186
15 P.3d 1188 (2008). In contrast, "[e]xclusionary clauses are to be construed strictly against the
16 insurer." *Mercer Place Condo. Ass'n v. State Farm Fire & Cas. Co.*, 104 Wn. App. 597, 602, 17
17 P.3d 626 (2000).
18
19
20
21

22
23 44. Washington courts adhere to the "Hornbook law that where a clause in an
24 insurance policy is ambiguous, the meaning and construction most favorable to the insured must
25 be applied, even though the insurer may have intended another meaning." *Queen Anne Park*
26 *Homeowners Ass'n v. State Farm Fire & Cas. Co.*, 183 Wn.2d 485, 491, 352 P.3d 790 (2015).
27
28
29
30

31 45. To establish that a term in an insurance policy is ambiguous, "[the insured] does
32 not need to show that his list of possible interpretations, or any one of them, is more reasonable
33 than that espoused by [the insurer], but only that there is more than one reasonable
34 interpretation." *Kaplan v. Nw. Mut. Life Ins. Co.*, 115 Wn. App. 791, 808, 65 P.3d 16 (2003).
35
36
37
38

39 46. The Policy issued by AFM does not define the phrase or any of the words
40 contained in that phrase "all risks of physical loss or damage."
41
42

43 47. When insurance policy terms are undefined, they must be interpreted "as [they]
44 would be understood by the average lay person," according to their "plain, ordinary, and popular
45

1 meaning” and may turn to definitions from a standard English language dictionary. *Boeing Co.*
2
3 *v. Aetna Cas. & Sur. Co.*, 113 Wn.2d 869, 876-77, 784 P.2d 507 (1990).

4
5 48. The standard dictionary definition of “Physical” includes “Of or relating to
6
7 material things.” *Physical*, THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH
8
9 LANGUAGE, <https://www.ahdictionary.com/word/search.html?q=physical> (last visited July 27,
10
11 2021); *Physical*, BLACK’S LAW DICTIONARY (11th ed. 2019) (defining “physical” to
12
13 include “[o]f, relating to, or involving material things; pertaining to real, tangible objects”).

14
15 49. In turn, the definition of “loss” includes “[t]he condition of being deprived . . . of
16
17 something or someone,” as well as “destruction.” *Loss*, THE AMERICAN HERITAGE
18
19 DICTIONARY OF THE ENGLISH LANGUAGE,
20
21 <https://www.ahdictionary.com/word/search.html?q=loss> (last visited July 27, 2021).

22
23 50. Although the Court is mindful that the dictionary also defines “loss” to include
24
25 “destruction,” the Court declines to interpret the undefined phrase “all risks of physical loss or
26
27 damage” as strictly requiring physical alteration, damage or destruction of the insured property.
28
29 Because the phrase “all risks of physical loss or damage” is stated in the disjunctive, the term
30
31 “physical loss” must mean something other than “damage.” See *Queen City Farms, Inc. v. Cent.*
32
33 *Nat. Ins. Co. of Omaha*, 126 Wn.2d 50, 94, 882 P.2d 703 (1994) (rejecting interpretation that
34
35 would render “sudden” superfluous to “unexpected”); *Nautilus Grp., Inc. v. Allianz Glob. Risks*
36
37 *US*, C11-5281BHS, 2012 WL 760940, at *7 (W.D. Wash. Mar. 8, 2012) (reasoning that “if
38
39 ‘physical loss’ was interpreted to mean ‘damage,’ then or the other would be superfluous. The
40
41 fact they are both included in the grant of coverage evidences an understanding that physical loss
42
43 means something other than damage.”).

1 51. Accordingly, the Court finds that one reasonable interpretation of the disjunctive
2
3 phrase “all risks of physical loss” is that it includes the risk that Snoqualmie be deprived of the
4
5 ability to physically use, operate, or manipulate its properties because of the COVID-19 closure
6
7 orders and Tribal resolutions. Snoqualmie’s interpretation of this undefined phrase is further
8
9 reasonable when the Policy is viewed in its entirety. *See Moeller*, 173 Wn.2d at 271.
10

11 52. The Court is not persuaded by AFM’s arguments that the undefined phrase
12
13 “physical loss” unambiguously does not include Snoqualmie’s inability to physically use,
14
15 operate, or control its property as a result of the closure orders and Tribal resolutions.
16

17 53. First, the Court finds that *Seattle Tunnel Partners v. Great Lakes Reinsurance*
18
19 (*UK*) *PLC*, 78691-1-I, --- P.3d ---, 2021 WL 3285156 (Wn. App. Aug. 2, 2021), *Wolstein v. The*
20
21 *Yorkshire Insurance Company*, 97 Wn. App. 201, 985 P.2d 400 (1999), and *Fujii v. State Farm*
22
23 *Fire & Casualty Co.*, 71 Wn. App. 248, 857 P.2d 1051 (1993), are not dispositive of the specific
24
25 issues before this Court, as they did not address the types of losses caused by the COVID-19
26
27 closure orders and Tribal resolutions in the context of the policy language at issue.
28

29 54. Second, the Court respectfully declines to adopt the reasoning from the U.S.
30
31 District Court for the Western District of Washington in *Nguyen v. Travelers Cas. Ins. Co. of*
32
33 *Am.*, 2:20-CV-00597-BJR, 2021 WL 2184878 (W.D. Wash. May 28, 2021). This Court is not
34
35 persuaded by *Nguyen’s* reliance on the opinions of other federal district court opinions across the
36
37 country that applied the laws of other states, nor its holding that the undefined phrase “all-risks
38
39 of physical loss or damage” cannot be reasonably interpreted by the average lay person to
40
41 include the insured’s inability to physically use, control, or manipulate its property as a result of
42
43 the COVID-19 closure orders and Tribal resolutions.
44
45

1 55. Because the Court finds that Snoqualmie's interpretation of the Policy is
2
3 reasonable, the Court concludes as a matter of law that the closure orders and Tribal resolutions
4
5 trigger coverage under the Policy's insuring agreement for "all risks of physical loss or damage."
6

7 56. Having determined that Snoqualmie's losses are covered under the insuring
8
9 agreement, the Court now addresses whether AFM has met its burden of establishing that
10
11 specific policy language excludes the loss. *McDonald*, 119 Wn.2d at 731

12 57. ~~The Policy's contamination exclusion does not apply.~~ *Defendant argues that the exclusion applies, but the Court disagrees as a matter of law.* AFM has not provided any
13
14
15 evidence that there was a condition on Snoqualmie's property "due to the actual or suspected
16
17 presence of any . . . virus" or that the governmental closure orders or Tribal resolutions at issue
18
19 were implemented as a result of "any condition of [Snoqualmie's] property due to the actual or
20
21 suspected presence of any . . . virus." Washington's governmental closure orders were imposed
22
23 on businesses across the State regardless of whether the properties were actually, or suspected to
24
25 be, contaminated with the COVID-19 virus. There is accordingly no claim before the Court for
26
27 "contamination" of Snoqualmie's properties as that term is defined under the Policy.
28

29 ~~58. Snoqualmie has requested, based on the lack of any evidence to support the~~
30
31 ~~application of the contamination exclusion, that the Court not only deny AFM's motion related~~
32
33 ~~to this exclusion, but enter judgment in Snoqualmie's favor finding that this exclusion does not~~
34
35 ~~apply as a matter of law. See *Patriot Gen. Ins. Co. v. Gutierrez*, 186 Wn. App. 103, 110, 344~~
36
37 ~~P.3d 1277 (2015) ("When, as here, the relevant facts are not in dispute, we may order entry of~~
38
39 ~~summary judgment in favor of the nonmoving party.").~~

40
41 59. The Court grants Snoqualmie's request for partial summary judgment on this
42 *denies Defendant's motion to no entry if argues*
43 issue and holds that the contamination exclusion ~~does not apply as a matter of law to~~
44 *applies.*
45

1 Snoqualmie's business interruption losses arising from the governmental closure orders and
2 Tribal resolutions.

Can't abv denies Defendant's motion to re
extrat it argues applicatin of the

3
4
5 60. The exclusion for "loss of use" also does not apply. Although Snoqualmie
6
7 repeatedly informed AFM it was seeking coverage for the losses it suffered as a result of the
8
9 closure orders and corresponding Tribal resolutions, AFM never cited this exclusion in any of its
10
11 communications to the insured. See *Vision One*, 174 Wn.2d at 520 ("A provision must be
12
13 asserted as a basis for denying coverage, and during litigation insurers may be precluded from
14
15 asserting new grounds for denying coverage."). For this reason alone, AFM is precluded from
16
17 raising it for the first time in its motion for partial summary judgment as a basis for denying
18
19 coverage. See *Bosko v. Pitts & Still, Inc.*, 75 Wn.2d 856, 863, 454 P.2d 229 (1969) (insurer
20
21 estopped from denying liability based on a ground not asserted until after the commencement of
22
23 the lawsuit).

24
25 61. Even if AFM had raised it from the outset, the exclusion for "loss of use" plainly
26
27 does not apply. When read in context, the series "[l]oss of market; loss of use; damage or
28
29 deterioration arising from any delay, . . . loss caused by any legal proceeding" refers only to
30
31 types of *consequential* losses *secondary* to the original loss covered under the Policy. See
32
33 *Oregon Shakespeare Festival Ass'n v. Great Am. Ins. Co.*, 1:15-CV-01932-CL, 2016 WL 3267247,
34
35 at *6 (D. Or. June 7, 2016), *vacated at the parties' request*, 1:15-CV-01932-CL, 2017 WL 1034203
36
37 (D. Or. Mar. 6, 2017) ("[t]he exclusion only makes sense in the context of the policy when a delay
38
39 external to the damage causes a loss of use"). The exclusion does not, as AFM suggests, broadly
40
41 exclude coverage for all "loss of use" that results from "physical loss or damage," a result that would
42
43 vitiate the business interruption coverage expressly provided. See *Henderson Rd. Rest. Sys., Inc. v.*
44
45 *Zurich Am. Ins. Co.*, 1:20 CV 1239, 2021 WL 168422, at *16 (N.D. Ohio Jan. 19, 2021) (finding that

as a matter of law,

1 Zurich's similar interpretation of a Loss of Use exclusion would "vitiating the Loss of Business Income
2 coverage"); *Tucker v. Bankers Life & Cas. Co.*, 67 Wn.2d 60, 66, 406 P.2d 628 (1965) ("a writing
3 which gives effect to all of its provisions is to be favored over one which renders some of the
4 language meaningless or ineffective").
5
6

7
8
9 62. Although Snoqualmie did not expressly request partial summary judgment in its
10 favor on this exclusion for "loss of use," the Court nonetheless finds that the relevant facts are
11 not in dispute and that the exclusion does not apply. See *Gutierrez*, 186 Wn. App. at 110. The
12 Court accordingly grants partial summary judgment to Snoqualmie and holds that the exclusion
13 for "loss of use" does not apply as a matter of law to Snoqualmie's claimed losses.
14
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19 63. The Court also rejects AFM's argument that "the sole source of coverage for
20 Plaintiff's alleged COVID-19 related losses is found in the Policy's distinct 'communicable
21 disease' coverages." Snoqualmie's claimed losses are based on its inability to use, operate, or in
22 any way manipulate the Casino and Lodge as a result of the orders from Governor Inslee and the
23 Tribal council. These orders were not based on the "actual" presence of communicable disease
24 at Snoqualmie's properties, as they forced businesses across the State to close regardless of
25 where COVID-19 was present on their property. The Court accordingly finds that Snoqualmie's
26 ~~claim presented in this litigation does not invoke, nor is it limited by, the additional coverages~~
27 ~~claiming under this portion of the policy~~ ^{does not otherwise} ~~under the Policy for Communicable Disease.~~ ^{as Plaintiffs stated they are not}
28 ~~argument.~~ ^{during oral}
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37 64. The Court summarizes the conclusions of law above as follows:
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- 39 (a) Plaintiffs suffered a "physical loss" because of the COVID-19 closure orders
40 and Tribal resolutions that triggers coverage for their business interruption
41 losses under the Policy.
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The Court denies defendant's motion arguing that
applies
(b) The exclusion in the Policy for "contamination" does not apply as a matter of
law to Snoqualmie's claimed losses as a result of the COVID-19 closure
orders and Tribal resolutions

The Court denies defendant's motion arguing that
applies
(c) The exclusion in the Policy for "loss of use" does not apply as a matter of law
to Plaintiffs' claimed losses as a result of the COVID-19 closure orders and
Tribal resolutions

The Court denies defendant's motion arguing that
is
(d) Plaintiffs' coverage claim arising out of the COVID-19 closure orders and
Tribal resolutions presented in this litigation does not invoke, nor is it limited

by, the additional coverages under the Policy for Communicable Disease;
Plaintiffs specifically stated that is not what
they are not claiming under this provision
of the policy.

DATED this 2 day of September, 2021.



The Honorable Catherine Shaffer
Superior Court Judge

Presented by:

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14 Approved for Entry; Notice of Presentation Waived:

15
16 **BULLIVAN HOUSER BAILEY PC**

17 Attorneys for Defendant

18
19 By: s/

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