UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
(NEWARK VICINAGE)

MANHATTAN PARTNERS, LLC, ET AL.	:	
Plaintiffs	:	Civil Action No. 2:20-cv-14342-SDW
v.	:	
AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY,	:	
Defendant.	:	

DEFENDANT AMERICAN GUARANTY AND LIABILITY INSURANCE COMPANY'S OPPOSITION TO PLAINTIFFS' MOTION TO VACATE THE COURT'S PRIOR ORDER DISMISSING COMPLAINT

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Defendant American Guarantee and Liability Insurance Company ("AGLIC") submits this Memorandum of Law in Opposition to Plaintiffs'[1] Motion to Vacate this Court's March 17, 2021 Dismissal of the Complaint with prejudice, pursuant to Federal Rule of Civil Procedure 59(e).

I. INTRODUCTION

Plaintiffs seek to overturn this Court's March 17, 2021 Order and Opinion dismissing the Complaint for failure to state a claim. Plaintiffs assert that this Court committed a clear error of law or fact, which needs to be corrected to prevent a manifest injustice. *See* ECF 19-4 (Plaintiffs' Memorandum of Law), p. 5.

As an initial matter, Plaintiffs' motion seeking this extraordinary remedy is improper because a Rule 59(e) Motion "may not be used to raise new arguments that could have or should have been raised … prior to judgment", which is exactly what plaintiffs seek to do here in Section II of their motion. *See Schlafly v. Eagle Forum*, No. 17-2522-ES-SCM, 2020 WL 2790519, at *2 (D.N.J. May 30, 2020) (quoting *Rhines v. United States*, 677 F. App'x 34, 36 n. 5 (3d. Cir. 2017)).

Further, the assertion that this Court committed any error of law or fact is absurd. This Court's legal opinion -- that Plaintiffs have failed to plausibly plead any claim of physical loss or damage to insured property because general allegations that the SARS-CoV-2 virus (which causes COVID-19) was present at Plaintiffs' premises are simply insufficient under the Policy -- is well-supported by the express terms of the Policy and controlling precedent of the Third Circuit (which Plaintiffs simply ignore in their Motion to Vacate) and is further in accord with

[1] Plaintiffs include thirty-four limited liability companies which operate under the umbrella of the Briad Group. *See* Op. at 1, n.1.

every District Court opinion in the Third Circuit addressing similar business interruption insurance claims arising from the COVID-19 pandemic and the related "stay-at-home" orders.

Similarly, Plaintiffs' assertion that the Court somehow committed a manifest injustice when deciding, as an alternative ground for dismissal, that the Contamination Exclusion would also preclude any coverage for Plaintiffs' claim is also without merit. Notably, subsequent to this Court's ruling, another court, independently looking at the identical issue under the identical policy form, reached the identical holding as this Court because the exclusion is clear and unambiguous. *See Firebirds Int'l v. Zurich Am. Ins. Co*., No. 2020-CH-05360 (Ill. Cir. Ct. Apr. 19, 2021) (slip op) (Exhibit A hereto) (dismissing complaint on basis of Contamination Exclusion and rejecting the argument that the Louisiana Endorsement applied outside Louisiana).

As part of their attempt to override this Court's well-supported judgment, Plaintiffs seek to rely on certain additional documents, attached as an exhibit to their Motion, that were never part of any policy issued to Plaintiffs or part of the Complaint or briefing before this Court. These documents are not only irrelevant and not properly before the Court, but they do not support any claim that the Court's ruling was clear error, let alone manifestly unjust. Tellingly, the same documents and arguments Plaintiffs attempt to submit here were, in fact, submitted to the *Firebirds* Court and did not serve to alter that Court's analysis that the Louisiana Endorsement was not applicable to any locations outside Louisiana.[2]

Accordingly, Plaintiffs' motion to vacate should be summarily denied.

[2] See Declaration of Susan M. Kennedy, "Kennedy Dec.", at 2-5

II. STANDARD OF REVIEW

Vacating a judgment under Rule 59(e) is an extraordinary remedy, which should be used only "sparingly." *Shafly*, 2020 WL 2790519, at *2. In seeking to vacate the Court's judgment under Rule 59(e), Plaintiffs have the burden to show that the Court committed a clear error of law or fact that needs to be corrected to avoid manifest injustice.[3] *See The Estate of Suzanne Bardell v. Gomperts*, No. 20-4555-KM-ESK, 2021 WL 1573844, at *1 (D.N.J. Apr. 22, 2021); *Lazaridis v. Wehmer*, 591 F.3d 666, 669 (3d Cir. 2010).

To succeed on such a motion, the moving party must show more than a disagreement with the decision. *Silipena v. American Pulverizer Co.*, No. 16-711, 2021 WL 1214550 (D.N.J. Mar. 31, 2021); *Venkataram v. Off. of Info. Pol'y*, No. 09–6520-JBS-AMD, 2013 WL 5674346, at *1 (D.N.J. Oct. 16, 2013), *aff'd*, 590 F. App'x 138 (3d Cir. 2014) ("[M]ere disagreement with the district court's decision is an inappropriate ground for a motion for reconsideration: such disagreement should be raised through the appellate process."). To prevail under the third prong of Rule 59(e), Plaintiffs must show that dispositive factual matters or controlling decisions of law, that would have changed the Court' decision, were brought to the Court's attention prior to the entry of judgment, but not considered by the Court. *See Mason v. Sebelius*, No. 11–2370 - JBS-KMW, 2012 WL 3133801, at *2 (D.N.J. July 31, 2012); *Silipena*, 2021 WL 1214550, at *1. A motion for reconsideration may not be used to raise new arguments that could have or should have been raised prior to entry of judgment. *Schafly*, 2020 WL 2790519, at *2; *Venkataram*, 2013 WL 5674346, at *2 ("The Court will not consider new arguments upon a motion for reconsideration.")

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[3] Plaintiffs concede in their memorandum of law that the other grounds set forth in Rule 59(e) - an intervening change in the controlling law or new evidence that was not available when the Court issued its order - do not apply. ECF 19-4, at 5.

III. ARGUMENT

A. The Court Properly Held The Complaint Failed To State A Viable Claim

Plaintiffs' initial argument is based on a false premise. The Court did not, as Plaintiffs claim, rest its ruling on any unsupported findings of fact. Instead, as is very clearly stated in the Court's opinion, the Court's ruling was that "Plaintiffs' general statements that the COVID-19 virus was on surfaces and in the air at their properties is insufficient to show property loss or damage." Op. p. 3. This legal determination as to the sufficiency of the factual allegations in the Complaint is exactly what a Court is supposed to do when resolving a motion to dismiss for failure to state a claim. *Fowler v. UPMC Shadyside*, 578 F.3d 203, 211 (3d Cir. 2009) ("a District Court must then determine whether the facts alleged in the complaint are sufficient to show that the plaintiff has a 'plausible claim for relief.'")

Plaintiffs' argument that the Court should have given credence to their conclusory bare-bones assertions that the virus "caused physical loss or damage," *see* ECF 19-4, at 7 and Compl., ¶¶ 61-62, is baseless as a matter of law because, as the Court correctly noted in its opinion, such conclusory statements are not entitled to any presumption of truth. *See* March 17, 2021 Opinion ("Op.") at p. 2; *Kessler Dental Assoc. v. Dentists Ins. Co*., No. 2:20-CV-03376-JDW, 2020 WL 7181057, at *4 (E.D. Pa. Dec. 7, 2020 (conclusory assertion that "Covid-19 caused direct physical loss of or damage to its business" is not entitled to the presumption of truth); *see also Ashcroft v. Iqba*l, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

Furthermore, there is no question that the Court's holding is well-supported by the controlling law. The Third Circuit has held that, under New Jersey law, the mere presence of a potentially toxic substance or the general threat of future damage from its presence does not

equate to "direct physical loss or damage to" property as required under the insuring language of a property insurance policy. *Port Auth. of New York & New Jersey v. Affiliated FM Ins. Co*., 311 F.3d 226, 235 (3d Cir. 2002).

In the COVID-19 context, the District Courts within the Third Circuit, applying this standard, have consistently held that allegations that the virus was allegedly present at the insureds' property do not suffice to state a claim as a matter of law. *See, e.g., 7th Inning Stretch LLC v. Arch Ins. Co.*, No. 20-8161-SDW-LDW, 2021 WL 1153147, at *2 (D.N.J. Mar. 26, 2021) ("Plaintiff's general statements that it was "statistically certain" that the COVID-19 virus was "present" on its property "for some period of time since their closures" … is also insufficient. Even if true, the presence of a virus that harms humans but does not physically alter structures does not constitute coverable property loss or damage."); *ATCM Optical, Inc. v. Twin City Fire Ins. Co.*, No. CV 20-4238, 2021 WL 131282, at *5–6 (E.D. Pa. Jan. 14, 2021) (dismissing complaint where plaintiff alleged its properties had been "physically impacted because they have been contaminated by COVID-19 and remain at imminent risk of COVID-19 contamination" since plaintiff has "failed to plead plausible facts that COVID-19 caused damage or loss in any physical way to the property"); *Moody v. Hartford Fin. Grp., Inc.*, No. CV 20-2856, 2021 WL 135897, at *6 (E.D. Pa. Jan. 14, 2021) ("Neither the presence of the virus nor an imminent threat thereof … has 'nearly eliminated or destroyed' the property's functionality or rendered it 'useless or uninhabitable.'"); *Kessler*, 2020 WL 7181057, at *4 (E.D. Pa. Dec. 7, 2020) (claim that enclosed buildings were susceptible to contamination and that Plaintiffs were forced to close their business were dismissed as there was no plausible claim of any actual damage); *J.B.'s Variety Inc. v. Axis Ins. Co*., No. CV 20-4571, 2021 WL 1174917, at *4 (E.D. Pa. Mar. 29, 2021) (there is no physical loss or damage where the presence or threatened presence of the virus on

the property can be largely remediated by mask wearing, social distancing, and disinfecting surfaces).

The overwhelming majority of Courts across the country have similarly held that allegations of the mere presence of the virus coupled with conclusory assertions of physical loss or damage are insufficient to state a claim. *See, e.g., Selane Prod., Inc. v. Cont'l Cas. Co.*, No. 220CV07834MCSAFM, 2021 WL 609257, at *5 (C.D. Cal. Feb. 8, 2021) (allegations that the virus "attaches to surfaces and lingers in the air" do not state a claim for "physical loss of or damage" to insured property); *Mena Catering, Inc. v. Scottsdale Ins Co.*, No. 1:20-CV-23661, 2021 WL 86777, at *7 (S.D. Fla. Jan. 11. 2021) ("There is no "direct physical loss" where the alleged harm consists of the mere presence of the virus on the physical structures of the building"); Appendix A hereto (listing additional cases dismissed since Plaintiffs' reply brief was submitted for lack of any showing of physical loss or damage); ECF 12-1, pp.12-21 and ECF 16, pp. 2-3.

Plaintiffs' reliance on their own previous unpersuasive arguments about the applicable law in their opposition brief to the motion to dismiss, ECF 19-4 at 7, is misplaced. *Tischio v. Bontex, Inc.*, 16 F. Supp. 2d 511, 532 (D.N.J. 1998) ("recapitulation of the cases and arguments considered by the court before rendering its original decision fails to carry the moving party's burden.") Moreover, as noted in Defendants' reply brief, Plaintiffs' misapprehend and misstate the relevant law. ECF 12-1 and ECF 16. Furthermore, any mere disagreement that Plaintiffs have with this Court's opinion should be addressed through the appellate process, not through a motion to vacate. Because Plaintiffs have not identified any error by the Court (and, indeed, instead simply ignore the actual controlling Third Circuit precedent), there are no grounds to vacate the Court's order. *Egloff v. New Jersey Air Nat'l Guard*, 684 F.Supp. 1275, 1279

(D.N.J.1988) (motion for reconsideration denied when plaintiff failed to cite any pertinent case law or fact court may have overlooked).

Further, since Plaintiffs' failure to plead the requisite physical loss or damage alone mandated dismissal of Plaintiffs' Complaint in its entirety with prejudice, the Motion to Vacate must be denied.

B. Plaintiffs' Claims As To The Louisiana Endorsement Are Without Merit

This Court correctly concluded that the Contamination Exclusion in the Policy "clearly and explicitly excludes coverage for damage, loss or expense arising from a virus." Op. at 3, n. 3; *see also Firebirds,* Slip. Op. at 7 (Ex. A) (agreeing with this Court that "the Contamination Exclusion [in the Zurich Edge Policy] is clear and unambiguous" and applies to preclude any claimed loss due to the virus).

Further, contrary to the Plaintiffs' claims, this Court did not ignore the state-specific Amendatory Endorsement- Louisiana ("Louisiana Endorsement"). Instead, it specifically held that the Endorsement did not apply as its application was limited to Louisiana.[4] Op. at 3, n. 3; *see also Firebirds,* Slip. Op. at 9 (Ex. A) (holding, in accord with this Court, that the endorsement applies only to losses in Louisiana and was otherwise not applicable).

Plaintiffs' claim that this holding was an error is without merit. Moreover, their argument is based (improperly) on arguments that they could have, but failed to make, prior to entry of judgment, and, thus, they cannot be used in any motion for reconsideration. *Schafly*, 2020 WL 2790519, *2.

[4] It is undisputed that Plaintiffs' claims did not involve any insured property in Louisiana.

1. *Plaintiffs' Claim as to the "Title Provision" of the Policy Does Not Demonstrate any Clear Error of Law.*

Plaintiffs assert that this Court committed clear error in holding that the state-specific Louisiana Endorsement was not applicable to this claim. Specifically, Plaintiffs argue that the Court did not consider Section 6.20 of the Policy. ECF 19-4, p. 7

As an initial matter, this is an argument that Plaintiffs could have, but failed to assert, in opposition to the Motion to Dismiss. Plaintiffs assert in their motion that they did not have the opportunity to do so because issues about the Louisiana Endorsement were allegedly first raised in AGLIC's reply brief. This is blatantly false. AGLIC set forth that the state-specific Louisiana Endorsement was not applicable in its opening brief in support of its Motion to Dismiss. ECF 12-1, n. 3.[5] Plaintiffs included extensive argument about the Louisiana Endorsement in their opposition brief and AGLIC's reply brief merely responded to those arguments. ECF 15, p. 28-35. Moreover, to the extent that Plaintiffs ever actually believed the reply brief raised any new issues, they had ample opportunity to seek leave to file a sur-reply brief prior to the Court's entry of judgment.[6]

Further, the policy provision Plaintiffs now want the Court to consider does not change the fact that the Louisiana Endorsement does not apply to Plaintiffs' claim, which identifies no Louisiana property, and certainly does not demonstrate that the Court's opinion was a clear error of law. Section 6.20 of the Policy states, "the titles for various paragraphs and endorsements are solely for reference and shall not in any way affect the provisions to which they relate." Recognizing the "Louisiana" state-identifier as a reference here does not alter any terms within

[5] AGLIC also submitted a complete copy of the Policy to the Court as part of its Motion to Dismiss, ECF 12-2, to ensure the Court had the complete contractual agreement before it because Plaintiffs had neglected to include the Policy as an attachment to their complaint.

[6] The reply brief was filed 18 days (i.e. well over two weeks) before the Court issued its ruling.

the endorsement itself and is fully in accord with Section 6.20. The Court is not required to completely ignore, as Plaintiffs urge, either the "Louisiana" (or the other state identifiers) in the state-specific endorsement or the clear structure of the Policy. *See also* 2 Couch on Ins. § 18:20 (3d Ed. 2020) ("the policy must be considered as a whole and the caption read in connection with the remainder of the contents"). Further, adopting Plaintiffs' theory would violate New Jersey law that the Court is to give effect to all the wording in the Policy. *See* ECF 16, p. 9-10; *Stone v. Royal Ins. Co.*, 211 N.J. Super. 246, 248 (App. Div. 1986) (in interpreting insurance contracts, courts are to give "effect to all of its parts so as to accord a reasonable meaning to its terms').

The Court's opinion as to the limited applicability of the Louisiana Endorsement is also well-supported by the clear structure of the Policy as a whole, which as the Court noted in its opinion includes endorsements of general application and separate state-specific endorsements, and is further supported by the substantive case law on how such state-specific endorsements operate. *See* ECF 16, p. 6-11; *see also Menard v. Gibson Applied Tech. & Eng'g, Inc*., No. CV 16-498, 2017 WL 6610466, at *3 (E.D. La. Dec. 27, 2017) (refusing to expand the scope of a Louisiana state amendatory endorsement "to the benefit of individuals like [the claimant] who are injured outside the state"); *American Int'l. Spec. Lines v. Continental Casualty Co*., 142 Cal. App. 4th 1342, 1362 (2006) (holding the only reasonable interpretation of the policy was to read each state specific endorsement as applying only to that particular state); *Tomars v. United Fin. Cas. Co.*, No. 12–cv–2162, 2015 WL 3772024, at *3 (D. Minn. June 17, 2015) (noting that policy may "include a series of state-specific endorsements conforming its coverages to the requirements imposed by the insurance laws of the states" which are only applicable to the specific designated state); *Kamp v. Empire Fire & Marine Ins. Co*., No. 3:12-CV-904-JFA, 2013 WL 310357, at *6 (D.S.C. Jan. 25, 2013) (holding state-specific endorsement would only apply

to the specifically designated state), *aff'd*, 570 F. App'x 350 (4th Cir. 2014).

None of the cases cited by Plaintiffs in their brief in support of the Motion to Vacate support their claim that this Court committed clear error by ignoring any controlling case law. **None** of the cases cited by Plaintiffs are controlling law. Indeed, none of their cited cases were even decided under New Jersey law. Moreover, none of the cases cited by Plaintiffs deal with the type of state-specific endorsements at issue here.

For example, *MDL Capital Mgmt., Inc. v. Fed Ins. Co*., 274 F. App'x 169, 171 (3d. Cir. 2008), which was decided under Pennsylvania law, dealt not with state-specific endorsements, but with a policy binder that merely listed an endorsement titled "Broad Private Fund" endorsement, but which did not include any of the terms of the endorsement itself. The Court there decided that the title alone could not provide the missing substance of the endorsement since the parties had not agreed to any specific terms. *Id*. The other cases cited by Plaintiffs, which are all from outside the Third Circuit, are equally irrelevant. *See Welch Foods, Inc. v. Nat'l Union Fire Ins. Co*., 659 F.3d. 191, 193 (1st Cir. 2011) (dealing with "Antitrust Exclusion" and holding the word "antitrust" couldn't be used to negate the substantive terms of the exclusion itself, which included broader exclusionary language); *Pine Bluff School Dist. v. Ace Am. Ins. Co*,, 984 F.3d 583, 593 (8th Cir. 2020) (dealing with the "single claim provision" in the Limits of Liability section of a policy and applying well-settled law as to the meaning of that provision); *Beaufort Rentals LLC v. Westchester Fire Ins. Co*. 2018 WL 6248770, at *4 (D. S.C. Nov. 29, 2018) (involving a "property manager and real estate" endorsement which the court read in conjunction with the Policy as a whole); *Miami-Luken, Inc. v. Navigators Ins. Co*., 2018 WL 3424448, at *7 (involving a "specific litigation exclusion" and determining that the policy exclusion made no distinction between administrative and litigation proceedings relying on Ohio

law).[7]

2. The Regulatory Documents Are Irrelevant, Improperly Submitted by Plaintiffs and Do Not Support Vacating this Court's Order

a. The Documents Are Not Properly Before the Court

Plaintiffs have further tried to support their Motion to Vacate through the mischaracterization of certain regulatory documents that Plaintiffs have submitted for the first time to this Court as part of this motion to vacate. As an initial matter, these regulatory documents are publicly available documents, which are dated from August 31, 2020 to October 1, 2020. Thus, if Plaintiffs thought that these documents were in any way germane to the issues before this Court, they should have been included in the Complaint, filed on October 20, 2020, or in an amended complaint. They were not. These documents also were never referenced in Plaintiffs' briefing on the motion to dismiss.[8] Accordingly, these documents are not properly before this Court and cannot be relied upon for a Rule 59(e) motion to dismiss. *See Schafly*, 2020 WL 2790519, at *2 ; *Rhines*, 677 F. App'x 34, 36 n. 5 (holding a motion for reconsideration may not be used to raise new arguments that could have or should have been raised prior to entry of judgment); *Tischio*, 16 F. Supp. 2d at 532 (noting a motion for reconsideration is not to be used to give parties "a second bite at the apple" and "is not a vehicle to present evidence which should have been raised in connection with an earlier motion.")

It should also be noted that Plaintiffs could not have even relied on these documents,

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[7] Plaintiffs' attacks against AGLIC's counsel in their brief are totally false and improper and should be stricken from the record. Plaintiffs have not identified a single failure by AGLIC's counsel to inform the Court of any adverse controlling case law or any relevant document. There was simply no obligation by counsel to inform the Court of the non-controlling irrelevant case law cited by Plaintiffs in their motion to vacate or any documents that are not part of the Policy at issue. Plaintiffs' attacks are especially ironic given Plaintiffs' blatant disregard of the *Port Authority* case, which is actual controlling case law.

[8] Plaintiffs' also could have, but did not, attempt to submit a request for the Court to take judicial notice of these documents prior to the entry of judgment.

which were not part of their Complaint, in their opposition to the motion to dismiss. *In re Burlington Coat Factory Sec. Litig*., 114 F.3d 1410, 1425 (3d Cir. 1997) (in ruling on a motion to dismiss, District Court is not permitted to go beyond the facts alleged in the Complaint and the documents on which the claims made therein were based"). It would be even more improper to consider documents submitted for the first time in a motion to vacate.

b. The Documents Also Do Not Demonstrate Any Clear Error by the Court As the Court Correctly Held the Contamination Exclusion Precluded Any Coverage.

The documents which Plaintiffs seek to improperly present before this Court reflect a post-loss modification of a Louisiana Endorsement that was never part of the Policy at issue and, therefore, these documents have no bearing on the Court's ruling.

The wording of an endorsement issued to subsequent policyholders (that was never issued to this insured) is not relevant where the terms of the Policy at issue are clear and unambiguous on their face. When there is no ambiguity in the relevant contract, after-the-fact extrinsic evidence in the form of documents that were never part of the contractual agreement cannot create ambiguity. Indeed, courts routinely rule that post-loss changes to insurance-contract language cannot be used to undermine the meaning of the original wording of the policy. *See, e.g., Pastor v. State Farm Mut. Auto. Ins. Co*., 487 F. 3d 1042, 1045 (7th Cir. 2007); *Reynolds v. Univ. of Penn.*, 483 F. App'x 726, 731-32 (3d Cir. 2012) (citing approvingly to *Pastor* at length and Federal Rule of Evidence 407, which prohibits the admission of evidence of subsequent remedial measures and is not limited to repair in the literal sense, but rather, also applies to subsequent changes in contract language).[9]

[9] Given that the documents are irrelevant to the Court's consideration and inadmissible under the federal rules of evidence, AGLIC was also certainly under no obligation to submit them to the Court.

Indeed, as one Court just held in the past month in the context of these COVID-19 cases, insurance companies routinely fine tune the language of the policies and such refinements do not create any inference that a prior version provided coverage. *6593 Weighlock Drive, LLC v. Zurich Am. Ins. Co.*, No. 4799/2020, 2021 WL 1419049, at *6 (N.Y. Sup. Ct. Apr. 13, 2021). Accordingly, the documents submitted are not relevant to the Court's ruling on the Motion to Dismiss because the Court here properly focused on the actual language of the Policy before it in holding that the Contamination Exclusion expressly and clearly precluded any claims arising from the virus.

It should also be noted that these very documents belatedly submitted by Plaintiffs here, and the arguments Plaintiffs assert here, were submitted to the *Firebirds* court, Kennedy Dec. at 2-5, but, these documents did not change the ruling of that court, who, like this Court, held that the Louisiana Endorsement was not applicable outside of Louisiana. In sum, because the state-specific nature of the Louisiana and other state-specific endorsements is clear from the structure of the Policy itself, as well as through the state designations in the captions of the Endorsement, which would otherwise serve no purpose, the additional limiting language cited by Plaintiffs, which merely confirms the state specific applicability of these endorsements, does not change this analysis in any way, and certainly doesn't indicate any clear error of law by the Court.[10]

[10] As noted in AGLIC's reply brief, treating the state-specific endorsements as Plaintiffs urge would also create irreconcilable conflicts in the Policy and violate New Jersey laws relating to Policy interpretation. ECF 16, pp. 6-9

CONCLUSION

For the reasons set forth above, Plaintiffs' Motion to Vacate is procedurally improper and without merit. Plaintiffs have not demonstrated that this Court overlooked any controlling law, or has otherwise committed error so as to cause manifest injustice. Thus, the Motion to Vacate should be summarily denied.

Dated: May 3, 2021

Wiggin and Dana, LLP

By: /s/ Susan M. Kennedy

CERTIFICATE OF SERVICE

I, Susan M. Kennedy, hereby certify that on this 3rd day of May 2021, I caused the foregoing and all attachments and exhibits thereto to by served on all counsel of record via the Court's ECF system.

/s/ Susan M. Kennedy

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