IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

GERLEMAN MANAGEMENT, INC., d/b/a SPLASH SEAFOOD BAR AND GRILL, et al., Plaintiffs, vs. ATLANTIC STATES INSURANCE COMPANY, Defendant.	No. 4:20-cv-183-JAJ **ORDER**

This matter comes before the Court pursuant to Defendant's Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted filed on November 2, 2020 [Dkt. No. 25]. Plaintiffs filed a resistance [Dkt. No. 30], on November 18, 2020, and Defendant replied [Dkt. No. 31] to Plaintiffs' resistance on November 25, 2020. For the reasons stated below, Defendant's Motion to Dismiss Motion is **GRANTED**.

I. Introduction

A. Background

Plaintiffs are businesses operating and managing various restaurants in Polk County, Iowa. Pls.' Second Am. Compl. [Dkt. No. 24], ¶ 3. Plaintiffs' Second Amended Complaint alleges they purchased Business Income and Civil Authority insurance from Defendant. *Id.* ¶ 11. Plaintiffs did not attach the insurance policy to any of their complaints, but Defendant attached the policy to its answer to Plaintiffs' original complaint. [Dkt. Nos. 3-1, 3-2, 3-3]. Because the insurance policy and Governor Reynolds's proclamation are integral to and embraced by Plaintiffs' claims, the Court may consider the policy and the proclamation without converting Defendant's Motion to Dismiss into a motion for summary judgment. *See Zean v. Fairview Health Servs.*, 858 F.3d 520, 526 (8th Cir. 2017) (citations omitted).

On March 17, 2020, Iowa Governor Kim Reynolds issued a proclamation related to the COVID-19 pandemic. In relevant part, the proclamation stated:

> All Restaurants and Bars are hereby closed to the general public except that . . . food and beverages may be sold if such food or beverages are promptly taken from the premises, such as on a carry-out or drive-

> through basis, or if the food or beverage is delivered to customers off the premises.

Office of the Governor of Iowa Kim Reynolds, *Gov. Reynolds Issues a State of Public Health Disaster Emergency*, iowa.gov, https://governor.iowa.gov/press-release/gov-reynolds-issues-a-state-of-public-health-disaster-emergency (Mar. 17, 2020).

Plaintiffs' claim they are entitled to coverage under the insurance policy. Pls.' Second Am. Compl. [Dkt. No. 24], ¶ 67. Specifically, they allege they are entitled to coverage under the Business Income, Extra Expense, and Civil Authority provisions of their policy. *Id.* Additionally, Plaintiffs contend Defendant should be estopped from invoking the Virus Exclusion provision of the policy. *Id.* ¶ 69.

In relevant part, the Business Income provision states:

> We will pay for the actual loss of Business Income you sustain due to the necessary suspension of your "operations" during the "period of restoration". The suspension must be caused by direct physical loss of or damage to the property at the described premises. The loss of or damage must be caused by or result from a Covered Cause of Loss.

Def.'s App. Supp. Mot. Dismiss, App. Part 2 [Dkt. No. 25-3 at 24].

The Extra Expense provision states, in relevant part:

> (1) We will pay the necessary Extra Expense you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss.

Id. at 25.

The Civil Authority provision provides:

> 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 due to direct physical loss of or damage to property, other than at the described premises, caused by or resulting from any Covered Cause of Loss.

Def.'s App. Supp. Mot. Dismiss, App. Part 1 [Dkt. No. 25-2 at 36]. The Virus Exclusion states: "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." Def.'s App. Supp. Mot. Dismiss, App. Part 3 [Dkt. No. 25-4 at 27].

B. Plaintiffs' Claims

In relevant part, Plaintiffs' Second Amended Complaint alleges the following:

11. To protect its businesses in the event they suddenly had to suspend operations for reasons outside of their control, Plaintiffs purchased Businessesowners' Coverage that included both Business Income and Civil authority insurance coverage from Defendant[.]

. . .

22. The policies do not define the phrase "direct physical loss of or damage to….", nor do they define "direct", "physical", "loss", or "damage" individually.

23. The use of the disjunctive "or" in the phrase "direct physical loss of or damage to" means that coverage is triggered if either a physical loss of property or damage to property occurs.

24. The Policies' use of the disjunctive "or" between the terms "physical loss" and "damage" necessarily means that either a "loss" or "damage" is required, and that "loss" is distinct from "damage."

. . .

42. The action of this Civil Authority resulted in the necessary suspension of Plaintiffs' operations as they economically could not operate their businesses solely on a take-out or delivery basis.

43. The proclamation caused "direct physical loss of or damage to" Plaintiffs' covered property under the Policy by precluding Plaintiffs from conducting their operations, precluding customers from patronizing the business, and otherwise frustrating the intended purposed of Plaintiffs' businesses, all thereby causing the necessary suspension of operations during a period of restoration.

44. Governor Reynolds' March 17, 2020 Order prohibited access to Plaintiff's Covered Property, and the area immediately surrounding the Covered Property, in response to dangerous physical conditions resulting in and from a Covered Cause of Loss.

45. Losses caused by COVID-19 and/or the Governor Reynolds' proclamation triggered the Business Income, Extra Expense, and Civil Authority provisions of the Policy.

. . .

48. Plaintiffs, in an effort to mitigate their income losses, have attempted to provide takeout services at six of the insured facilities, which has not proven to be financially sustainable or worthwhile.

. . .

51. Plaintiffs have fully complied with their obligations under the policy.

52. On April 9, 2020 Gerleman Management, Inc. received a letter from Donegal Insurance Group stating that Donegal had "completed our

investigation and have determined that there is no coverage for your claim." The denial-of-coverage letter is attached hereto and made a part of the allegations of the Petition.

. . .

64. Based on information and belief, Defendant directly or indirectly participated in the insurance industry's efforts to effect state Insurance Commissioners, including the State of Iowa's Insurance Commissioner, to approve the suggested virus exclusion. 65. Defendant incorporated suggested provisions of the Insurance Services Office, Inc. into the policy issued to Plaintiffs, including the definition of covered losses, Civil Authority, and virus exclusions.

. . .

67. Plaintiffs claim damages that are covered under the business interruption and loss of income policy issued by the Defendants, including claims under the Business Income, Extra Expense, and Civil Authority provisions. 68. Donegal Insurance Group has denied coverage under policy BSR-8995377.

. . .

71. Plaintiffs' Policy is a contract under which Defendants were paid premiums in exchange for its promise to pay Plaintiffs' losses for claims covered by the Policy.

. . .

78. At all times material hereto, Plaintiffs maintained reasonable expectations that the loss of business income and additional expenses would be covered under the Policies under the circumstances described herein.

79. The losses described herein are covered losses under the policy.

80. Plaintiffs have complied with the applicable provisions of the Policy.

81. No valid policy exclusion exists to preclude coverage.

82. To the extent the Virus Exclusion would potentially apply, Defendants should be estopped from claiming the virus exclusion excludes coverage under these circumstances.

83. By denying coverage for the claims and losses set forth herein, Defendants have breached its coverage obligations under the Policies.

. . .

85. Defendants have a contractual obligation to fully and completely investigate a claim of an insured for policies which they have written and for which they have received commissions.

. . .

> 87. Defendants denied coverage for Plaintiffs' claim based on a virus exclusion contained in the policy.
>
> 88. Defendants failed to make any investigation of the claim and did not inquire if any facility that was insured had any evidence of infestation of the coronavirus or any other virus at any time, or if any employee or customer had become infected with the corona virus or other virus at any time.
>
> 89. That there was a complete failure in any manner in good faith to investigate the Plaintiffs' claim and the claim was summarily denied.
>
> 90. That the Defendants have acted in bad faith in denying the Plaintiffs' claim, and failing in good faith to investigate Plaintiffs' claim pursuant to Iowa Administrative Code section 191-15.41 (507A) and Iowa Code section 507A(4)(b).

Pls.' Second Am. Compl. [Dkt. No. 24], ¶¶ 11, 22–24,42–45, 48, 51–52, 64, 67, 71, 78–83, 85, 87–90.

Plaintiffs' Second Amended Complaint raises the following claims: Count I requests a declaratory judgment, Count II is a breach of contract claim, and Count III is a bad faith claim. Plaintiffs seek a declaratory judgment stating that their claims are covered by the Business Income, Extra Expense, and Civil Authority provisions. They also seek loss of income, costs and attorneys fees, punitive damages, and all other relief the court deems proper. Plaintiffs seek a jury trial on all claims.

II. Legal Analysis

A. Applicable Standards

1. Motion to Dismiss

Defendant moves for dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted. [Dkt. No. 20] Rule 12(b)(6) allows a party to argue, by motion, that the initial pleading does not "state a claim upon which relief can be granted[.]" Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss predicated on Rule 12(b)(6), a "complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 594 (8th Cir. 2009) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). "[A] pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Iqbal*, 556 U.S. at 678 (quoting *Bell Atlantic Corp. v. Twombly*, 440 U.S. 544, 555 (2007)). A complaint

must include "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. (quoting *Twombly*, 444 U.S. at 556).

"In considering a motion to dismiss under Rule 12(b)(6), the court must assume that all facts alleged by the complaining party . . . are true, and must liberally construe those allegations." *McLeodUSA Telecommunications Servs., Inc. v. Qwest Corp.*, 469 F. Supp. 2d 677, 687–88 (N.D. Iowa 2007) (citations omitted). However, the Court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Twombly*, 550 U.S. at 570. "[A] court should grant the motion and dismiss the action only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Handeen v. Lemaire*, 112 F.3d 1339, 1347 (8th Cir.1997) (quoting *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984)). In deciding a 12(b)(6) motion, courts may consider documents incorporated by reference or integral to the claim, items subject to judicial notice, and matters of public records. *Zean v. Fairview Health Servs.*, 858 F.3d 520, 526 (8th Cir. 2017) (citations omitted). Courts may consider these items without converting a 12(b)(6) motion to a motion for summary judgment. *Id.* (citing Fed. R. Civ. P. 12(d)).

2. Declaratory Judgments

Parties may seek relief from a district court in the form of a declaratory judgment pursuant to the Declaratory Judgment Act. The Declaratory Judgment Act provides in relevant part:

> In a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C. § 2201(a). Declaratory relief is proper: "1) when the judgment will serve a useful purpose in clarifying and settling the legal relations in issue; and 2) when it will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceedings." *Alsager v. Dist. Ct. of Polk Cty.*, 518 F.2d 1160, 1163 (8th Cir. 1975).

3. Construction of Insurance Policies

This case was removed to federal court on the basis of diversity jurisdiction. When sitting in diversity jurisdiction, courts apply federal procedural law and state substantive law. *See Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). The intent of the parties is controlling in the construction of insurance policies. *Farm Bureau Life Ins. Co. v. Holmes Murphy & Assocs., Inc.*,

831 N.W.2d 129, 133 (Iowa 2013) (citing *Thomas v. Progressive Cas. Ins. Co.*, 749 N.W.2d 678, 681 (Iowa 2008)). Courts examine the language of the policy itself to ascertain the intent of the parties, except when the language is ambiguous. *Id.* at 133–34 (citing *A.Y. McDonald Indus., Inc. v. Ins. Co. of N.A.*, 475 N.W.2d 607, 618 (Iowa 1991)). Contract terms are ambiguous when the terms are "capable of more than one meaning when viewed objectively by a reasonably intelligent person . . . ." *Phoenix Ins. Co. v. Infogroup, Inc.*, 147 F. Supp. 3d 815, 822 (S.D. Iowa 2015) (citations omitted). A disagreement about the meaning of terms does not establish ambiguity. *Id.* (quoting *Farm Bureau Life Ins.*, 831 N.W.2d at 133). Additionally, "[a]n undefined policy term does not automatically equate to an ambiguous term . . . ." *Milligan v. Grinnell Mut. Reinsurance Co.*, No. 00-1452, 2001 WL 427642, at *2 (Iowa Ct. App. Apr. 27, 2001). When terms in a policy are undefined, courts interpret the terms to have their ordinary meaning. *Amera–Seiki Corp. v. Cincinnati Ins. Co.*, 721 F.3d 582, 585 (8th Cir. 2013).

To succeed on a bad faith claim under Iowa law, the insured must demonstrate: "(1) that the insurer had no reasonable basis for denying benefits under the policy and, (2) the insurer knew, or had reason to know, that its denial was without basis." *United Fire & Cas. Co. v. Shelly Funeral Home, Inc.*, 642 N.W.2d 648, 657 (Iowa 2002). A reasonable basis exists for denying coverage when "the insured's claim is fairly debatable either on a matter of fact or law." *Bellville v. Farm Bureau Mt. Ins. Co.*, 702 N.W.2d 468, 473 (Iowa 2005). A court may determine whether a denial of coverage was fairly debatable as a matter of law. *Id.*

B. Analysis

1. Declaratory Judgment

a. Business Income and Extra Expense Coverage

For there to be coverage under the Business Income provision, there must be "direct physical loss of or damage" to the insured property. Def.'s App. Supp. Mot. Dismiss, App. Part 2 [Dkt. No. 25-3 at 24]. The Court finds the language of the Business Income provision is unambiguous. Reading the policy language as a whole, the policy is unambiguous in its requirement that an insured suffer "direct physical loss of or damage" to the insured property. Further, the Court concludes the phrase "direct physical loss of or damage" requires tangible alteration of property to trigger coverage.

Iowa courts have interpreted similar language in insurance policies and concluded similar language is unambiguous and requires tangible alteration to property. *See, e.g., Dean Snyder*

Constr. Co. v. Travelers Prop. Casualty Co. of Am., 173 F. Supp. 3d 837, 842–43 (S.D. Iowa 2016) (concluding an arbitration award was not "direct physical loss" within the meaning of an insurance policy); *Phoenix Ins. Co.*, 147 F. Supp. 3d at 823–24 (holding the phrase "direct physical loss of or damage" is unambiguous and requires tangible alteration to property); *Milligan*, 2001 WL at *2 (concluding the phrase "direct physical loss or damage" unambiguously refers to physical destruction or injury to property). It is a settled matter in Iowa law that direct physical loss or damage requires tangible alteration of property and that loss of use alone is insufficient. *See Milligan*, 2001 WL at *2. The Court finds no reason to diverge from these cases.

Even if the Court were to assume loss and damage are distinct concepts, the physicality requirement of the loss or damage remains, and Plaintiffs have failed to allege a tangible loss or alteration to property that is sufficient to trigger coverage under the Business Income provision. *See Phoenix Ins. Co.*, 147 F. Supp. 3d at 826. Plaintiffs have also failed to allege facts that are sufficient to trigger coverage under the Extra Expense provision because it also requires direct physical loss or damage to the insured property which Plaintiffs have not alleged.

Courts across the country have considered the availability of insurance coverage for business closures mandated as a result of the COVID-19 pandemic. Many of these courts considered policy language and circumstances similar to those before this Court and concluded tangible alteration to property is required to trigger coverage. *See, e.g., Oral Surgeons, P.C. v. Cincinnati Ins. Co.*, No. 4:20-cv-CRW-SBJ, 2020 WL 5820552, at *1 (S.D. Iowa Sept. 29, 2020); *Sandy Point Dental, PC. v. Cincinnati Ins. Co.*, Case No. 20 CV 2160, 2020 WL 5630465, at *2 (N.D. Ill. Sept. 21. 2020); *Pappy's Barber Shops, Inc. et al. v. Farmers Group Inc.*, Case No. 20-CV-907-CAB-BLM, 2020 WL 550221, at *4 (S.D. Cal. Sept. 11, 2020); *10E, LLC v. Travelers Indemnity Company of Connecticut*, 2:20-cv-04418-SVW-AS, 2020 WL 5359653, at *1–2 (C.D. Cal. Sept. 2, 2020); *Malaube, LLC. v. Greenwich Ins. Co.*, Case No. 20-22615-Civ-Williams/Torres, 2020 WL 5051581, at *7 (S.D. Fla. Aug. 26, 2020); *Diesel Barbershop, LLC v. State Farm Lloyds*, No. 5:20-cv-461-DAE, 2020 WL 4724305, at *5 (W.D. Tex. Aug. 13, 2020).

b. Civil Authority Coverage

The Civil Authority provision unambiguously requires an action of a civil authority that prohibits access to the insured property because of direct physical loss or damage to a property other than the insured property. Plaintiffs have failed to plead facts sufficient to qualify for coverage under the Civil Authority provision. They point generally to the physical form COVID-

19 may take; however, Plaintiffs have not alleged damage to another property. Further, Reynolds's proclamation was not issued in response to physical loss or damage that resulted from a Covered Cause of Loss. Rather, the proclamation was issued to limit the spread of COVID-19. Because Plaintiffs have failed to allege facts sufficient to trigger the Civil Authority provision, the Court need not address whether a civil authority order must completely prohibit access. However, the Court is skeptical that the prohibits access prong would be satisfied when the Plaintiffs were able to—and did—conduct delivery and take-out services at the insured properties. *See Phoenix Ins. Co.*, 147 F. Supp. 3d at 824 (concluding the court could not find a loss of use of the insured property when the insured party still stored data and had employees at the property at the time of the alleged loss of use). Regardless, Plaintiffs have failed to allege facts sufficient to state a claim for coverage under the Civil Authority provision.

Courts across the country have reached the same conclusion in similar circumstances and with comparable insurance policy language. *See, e.g.*, *Sandy Point Dental, PC*, 2020 WL at *3 (concluding the civil authority provision was not triggered when the plaintiff failed to allege COVID-19 caused direct physical loss to another property); *Mudpie, Inc. v. Travelers Casualty Insurance Company of America*, Case No. 20-cv-03213-JST, 2020 WL 5525171, at *6–7 (N.D. Cal. Sept. 14, 2020) (finding the civil authority provision was not triggered when the insured failed to demonstrate a connection between other property damaged by COVID-19 and the denial of access to its business); *10E, LLC*, 2020 WL at *5 (concluding the civil authority provision was not triggered when the insured failed to allege direct physical loss or damage to another property).

c. Virus Exclusion

The Virus Exclusion unambiguously states Defendant will not pay for loss or damage that is caused by or results from any virus. Plaintiffs' alleged losses were caused by or resulted from a virus, specifically, COVID-19. Plaintiffs' Second Amended Complaint states their losses were "caused by COVID-19 and/or the Governor Reynolds' proclamation . . . ." Pls.' Second Am. Compl. [Dkt. No. 24], ¶ 45. Plaintiffs thereby recognize their alleged losses were caused by COVID-19, which triggers the Virus Exclusion. Plaintiffs' contention that it was the proclamation that caused their losses rather than the virus because they would have remained open does not save their claims from the Virus Exclusion. Plaintiffs' losses were caused by or resulted from COVID-19. The proclamation was issued in response to the COVID-19 pandemic as referenced in the proclamation itself. Office of the Governor of Iowa Kim Reynolds, *supra*. The Virus Exclusion is

therefore triggered, and coverage is excluded even if Plaintiffs could establish coverage under the Business Income, Extra Expense, or Civil Authority provisions of the insurance policy.

Courts across the country have reached the same conclusion when reviewing similar claims under similar circumstances and insuring language. *See, e.g.*, *Franklin EWC, Inc. v. Hartford Fin. Servs. Grp., Inc.*, Case No. 20-cv-04434 JSC, 2020 WL 5642483, at *2–4 (N.D. Cal. Sept. 22, 2020) (concluding a virus exclusion provision with similar language applied under similar circumstances); *10E, LLC*, 2020 WL at *6 (expressing skepticism that the plaintiff could avoid application of the policy's virus exclusion by suggesting in-person dining restrictions put in place to limit the spread of COVID-19 were not caused by a virus); *Diesel Barbershop, LLC*, 2020 WL at *6–7 (concluding an insurance policy's virus exclusion provision applied when the plaintiffs contended the state shutdown order put in place to limit the spread of COVID-19 caused their losses rather than the virus).

Because the allegations in Plaintiffs' Second Amended Complaint do not plausibly state a claim for coverage under the Business Income, Extra Expense, or Civil Authority provisions of the policy, Plaintiffs are not entitled to the declaratory relief requested.

2. Breach of Contract

The Court finds Plaintiffs have not plausibly stated a claim for breach of contract because Plaintiffs failed to plausibly state a claim for coverage under the policy for the reasons outlined above. Plaintiffs have also not plausibly stated a claim to estop Defendant from invoking the Virus Exclusion. Plaintiffs have not alleged Defendant specifically misrepresented the purpose of the Virus Exclusion to them. Likewise, Plaintiffs have not plausibly stated a claim to invoke the reasonable expectations doctrine. The reasonable expectations doctrine only applies to prevent the application of an exclusion in an insurance policy when the exclusion "(1) is bizarre or oppressive, (2) eviscerates terms explicitly agreed to, or (3) eliminates the dominant purpose of the transaction." *Clark-Peterson Co. v. Indep. Ins. Assocs., Ltd.*, 492 N.W.2d 675, 677 (Iowa 1992) (citations omitted). Before a court even considers these elements, the insured party bears the burden of proving either "circumstances attributable to the insurer which would foster coverage expectations" or that the policy is "such that an ordinary lay person would misunderstand its coverage." *Id.* The reasonable expectations doctrine is not intended to expand coverage on a purely equitable basis. *Id.*

Plaintiffs have failed to plead facts that are sufficient to invoke the reasonable expectations doctrine. The language of the virus exclusion is clear; it explicitly states Defendant "will not pay for loss or damage caused by or resulting from any virus . . . ." Def.'s App. Supp. Mot. Dismiss [Dkt. No. 25-4 at 27]. Based on the plain language of the exclusion, Plaintiffs could not have reasonably expected their alleged losses to be covered. *See Boelman v. Grinnell Mut. Reinsurance Co.*, 826 N.W.2d 494, 504 (Iowa 2013). Even if Plaintiffs had pleaded sufficient facts to make out a claim for the prerequisite, the reasonable expectations doctrine remains inapplicable because they have failed to allege sufficient facts to demonstrate that the policy language is bizarre or oppressive, that the exclusion eviscerates terms explicitly agreed to, or sufficient facts that demonstrates applying the exclusion would eliminate the dominant purpose for coverage.

3. Bad Faith Claim

Plaintiffs' bad faith claim fails because Plaintiffs have not pleaded facts that are sufficient to plausibly state a claim for bad faith. The Business Income and Extra Expenses provisions require that there be direct physical damage or loss to the insured property, which Plaintiffs have not plausibly alleged. Plaintiffs have not alleged facts sufficient to qualify for coverage under the Civil Authority provision. The Civil Authority provision requires access to the insured property be prohibited by civil authority because of physical loss or damage to property other than the insured property. Plaintiffs have not alleged physical loss or damage to property other than the insured property. Further, the policy requires access to be prohibited, and Plaintiffs admitted in their Second Amended Complaint that the proclamation only closed all dine-in or in-person service at all bars and restaurants but still permitted take out or delivery services. Further, Plaintiffs acknowledge they provided take-out and delivery services at six of the insured properties. Consequently, Plaintiffs have failed to allege facts that are sufficient to demonstrate Defendant lacked a reasonable basis to deny their claims for coverage under the Business Income, Extra Expense, and Civil Authority provisions. *See Shelly Funeral Home, Inc.*, 642 N.W.2d at 657. Further, Plaintiffs have not pleaded facts that are sufficient to demonstrate Defendant knew or should have known they lacked a reasonable basis to deny Plaintiffs' claims.

III. Conclusion

For the reasons stated above and taking Plaintiffs' alleged facts as true, Plaintiffs have not stated a claim upon which relief can be granted. Defendant is entitled to judgment on the Motion to Dismiss.

Upon the foregoing,

IT **IS ORDERED** that Defendant's Motion to Dismiss is granted. [Dkt. No. 25].

DATED this 11th day of December, 2020.

The Clerk shall enter judgment for the Defendant.

JOHN A. JARVEY, Chief Judge
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA