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United States Court of Appeals
Tenth Circuit

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Christopher M. Wolpert
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PUBLISH

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

MONARCH CASINO & RESORT, INC.,

Plaintiff - Appellant,

v.

AFFILIATED FM INSURANCE COMPANY,

Defendant - Appellee.

UNITED POLICYHOLDERS; AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION,

Amicus Curiae.

No. 22-1096

Appeal from the United States District Court
for the District of Colorado
(D.C. No. 1:20-CV-01470-RMR-STV)

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James M. Davis, Perkins Coie LLP; Seattle, Washington; L. Norton Cutler, Perkins Coie LLP, Denver, Colorado; Bradley H. Dlatt, Perkins Coie LLP, Chicago, Illinois, filed an amicus curiae brief in support of Appellant, Monarch Casino & Resort, Inc.

Bryant S. Green, Zelle LLP, Washington, DC, filed an amicus curiae brief in support of Appellee, Affiliated FM Insurance Company.

Before **McHUGH**, **EID**, and **CARSON**, Circuit Judges.

EID, Circuit Judge.

This diversity case concerns whether an insurance policy covers alleged physical loss or damage caused by the presence of COVID-19. Monarch Casino & Resort, Inc. appeals the district court's grant of Affiliated FM Insurance Company's ("AFM") motion for partial judgment on the pleadings, which denied Monarch coverage under AFM's all-risk policy provision, business-interruption provision, and eight other additional-coverage provisions. Monarch also moves the Court to certify a question of state law or issue a stay.

Exercising jurisdiction under 28 U.S.C. § 1291, we deny Monarch's motions to certify a question of state law and issue a stay. And we affirm the district court's judgment. First, we hold that AFM's policy has a Contamination Exclusion provision that excludes all-risk coverage and business-interruption coverage from the COVID-19 virus. Second, recognizing this Court's recent decision in *Sagome, Inc. v. Cincinnati Ins. Co.*, 56 F.4th 931 (10th Cir. 2023), Monarch cannot obtain coverage for physical loss or damage caused by COVID-19 under AFM's all-risk provision, business-interruption provision, or eight additional-coverage provisions. That is because the virus cannot cause physical loss or damage and no other policy

provisions distinguish this case. Accordingly, Monarch cannot obtain the coverage that the district court denied.

I.

Monarch owns and operates the Monarch Casino in Black Hawk, Colorado and the Atlantis Casino Resort in Reno, Nevada. AFM insures Monarch's real property and business operations. Of relevance, AFM's policy contains what we identify as (1) two primary coverages, (2) exclusions to those two primary coverages, and (3) ten additional coverages.

First, the policy's two primary coverages. To start, the policy contains an all-risk provision that protects Monarch "against ALL RISKS OF PHYSICAL LOSS OR DAMAGE, except as hereinafter excluded." App'x at 188. Next, the policy affords Monarch business-interruption coverage. That coverage protects Monarch for "Business Interruption loss . . . as a direct result of physical loss or damage of the type insured." *Id.* at 206. And like the policy's all-risk provision, the business-interruption provision "is subject to all the terms and conditions of this Policy including, but not limited to . . . exclusions." *Id.* Thus, the policy, while providing coverage, explicitly notes that it has some limits.

That brings us to the second relevant part of the policy—its exclusions. Among others, the policy includes a Contamination Exclusion that prohibits coverage for:

> Contamination, and any cost due to contamination including the inability to use or occupy property or any cost of making property safe or suitable for use or occupancy. If contamination due only to the actual not suspected presence of contaminant(s) directly results from other physical damage not excluded by this Policy, then only physical damage caused by such contamination may be insured.

Id. at 192.

The policy then goes on to define "contamination" as:

> [A]ny condition of property due to the actual or suspected presence of any foreign substance, impurity, pollutant, hazardous material, poison, toxin, pathogen or pathogenic organism, bacteria, virus, disease causing or illness causing agent, fungus, mold or mildew.

Id. at 229.

The policy states that its exclusions, including the Contamination Exclusion, "apply unless otherwise stated." *Id.* at 189. And again, the policy specifies that it will provide primary coverages of all risks of physical loss or damage "except as [] excluded" and of business-interruption losses "limited to . . . exclusions." *Id.* at 188, 206.

Third, the policy contains ten additional coverages that are relevant to this case. Eight of them only afford coverage if, among other things, there is "physical loss or damage of the type insured." Of the eight, five contain business-interruption coverage extensions named: Attraction Property; Civil or Military Authority; Ingress/Egress; Protection and Preservation of Property; and Soft Costs. The other three provisions—namely, the Emergency Vacating Expense; Expediting Expenses; and Decontamination Costs—also provide miscellaneous coverage.

Beyond the eight provisions that require "physical loss or damage of the type insured," two other additional-coverage provisions remain relevant to this case. To

begin, the policy has a Professional Fees provision granting Monarch reasonable and necessary expenses incurred by using specified professionals.

Next, the policy provides additional coverage for a "Communicable Disease" in two different places, one following the all-risk section and another following the business-interruption section. *Id.* at 194, 212. The policy terms this Communicable Disease coverage as "Additional Coverage[]" and a "Coverage Extension," and the coverage has "sub-limits of liability" specified in the policy's declarations. *Id.* at 175, 192, 212, 312. The provision covers an annual aggregate of up to $100,000 for "the reasonable and necessary costs incurred by the Insured at such described location" as a result of "[p]roperty [d]amage"—damage that includes, among other things, the "[c]leanup, removal and disposal of such presence of communicable disease from [an] insured property." *Id.* at 175, 194.

We now turn to the facts of this case. Monarch presented AFM with claims incurred through business interruption losses from COVID-19 and government orders directing Monarch to close its casinos. AFM denied certain coverage on the ground that COVID-19 does not cause physical loss of or damage to property. Monarch sued for breach of contract, bad faith breach of insurance contract, and violations of state law. And Monarch requested coverage for property damage stemming from the "presence of a 'communicable disease' at a described location, coupled with access to the location being limited, restricted, or prohibited by an order of a government agency." *Id.* at 583. AFM moved for partial judgment on the pleadings, urging that the policy's Contamination Exclusion precludes coverage and that COVID-19's presence at an insured location does

not constitute physical loss or damage for many of the coverage provisions. Monarch responded by moving for partial summary judgment and for certification of a question to the Colorado Supreme Court.

The district court denied Monarch's motions and partially granted AFM's motion, holding that Monarch may be entitled to coverage under the Communicable Disease and Professional Fees provisions, but reasoning that the Contamination Exclusion barred coverage otherwise. The district court held that even if Monarch "could establish that COVID-19 constitutes physical damage, that physical damage would still simply be a condition of the property, due to the presence of a virus, and would therefore be excluded from coverage." *Id.* at 559. The parties settled the remaining claims. The district court entered final judgment.

Monarch appealed the district court's grant of AFM's motion for partial judgment on the pleadings and denial of Monarch's motions. Specifically, Monarch seeks coverage under AFM's all-risk provision, business-interruption provision, and the eight additional-coverage provisions that required a showing of "physical loss or damage of the type insured."

II.

While on appeal, Monarch also submitted a motion to certify a question of state law to the Colorado Supreme Court or, in the alternative, a motion to stay. Certifying a question of law to a state supreme court falls within "the sound discretion of the federal court." *Lehman Bros. v. Schein*, 416 U.S. 386, 391 (1974); *see* 10th Cir. R. 27.4(A). And the Colorado Supreme Court has the discretion to

answer certified questions of law that "may be determinative of the cause then pending in the certifying [federal] court and as to which it appears to the certifying court that there is no controlling precedent in the decisions of the [state] supreme court." Colo. App. R. 21.1(a).

That said, the process "is not to be routinely invoked whenever a federal court is presented with an unsettled question of state law." *Armijo v. Ex Cam, Inc.*, 843 F.2d 406, 407 (10th Cir. 1988). That is because, under diversity statutes, "federal courts have the duty to decide questions of state law even if difficult or uncertain." *Enfield ex rel. Enfield v. A.B. Chance Co.*, 228 F.3d 1245, 1255 (10th Cir. 2000).

Keeping those general principles in mind, we deny Monarch's motion for certification. Precedent provides us "a reasonably clear and principled course" for interpreting the policy at issue. *Pino v. United States*, 507 F.3d 1233, 1236 (10th Cir. 2007).

In the alternative, Monarch moves to stay this appeal on the chance that a state case, which "will soon head to trial," will appeal to Colorado's appellate courts. Aplt. Mot. to Certify & Mot. to Stay, at 8. But because we already have sufficient guidance, we need not wait for a state case to possibly appeal and possibly address an issue relevant to this case. Thus, we also deny Monarch's motion to stay.

III.

We review contract disputes and grants of summary judgment to a defendant de novo. *Johnson v. Heath*, 56 F.4th 851, 863 (10th Cir. 2022) (contract interpretation); *Timmons v. White*, 314 F.3d 1229, 1232 (10th Cir. 2003) (summary

judgment grant). In doing so, we accept all well-pleaded allegations in a complaint as true and construe them in the light most favorable to the plaintiff. *Waller v. City & Cnty. of Denver*, 932 F.3d 1277, 1282 (10th Cir. 2019). Generally, we will not affirm the dismissal of a complaint "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Ramirez v. Dep't of Corr., Colo.*, 222 F.3d 1238, 1240 (10th Cir. 2000).

In exercising diversity jurisdiction over this dispute, we "must apply the choice of law provisions of the forum state in which it is sitting." *Shearson Lehman Bros., Inc. v. M & L Invs.*, 10 F.3d 1510, 1514 (10th Cir. 1993). We therefore look to Colorado's choice-of-law rules because Colorado "is where the district court sat." *Mem'l Hosp. of Laramie Cnty. v. Healthcare Realty Tr. Inc.*, 509 F.3d 1225, 1229 (10th Cir. 2007). Colorado courts have long followed the Restatement (Second) of Conflict of Laws § 187 (1971), which provides that a court "should apply the law chosen by the parties unless there is no reasonable basis for their choice or unless applying the law of the state so chosen would be contrary to the fundamental policy of a state whose law would otherwise govern." *Hansen v. GAB Bus. Servs., Inc.*, 876 P.2d 112, 113 (Colo. App. 1994); *see, e.g.*, *Target Corp. v. Prestige Maint. USA, Ltd.*, 351 P.3d 493, 497 (Colo. App. 2013).

Here, both parties agree to use Colorado law because no conflict of laws exists between the two potential forums: Colorado and Nevada. Because the parties have chosen to use Colorado law and the two states here do not have laws "contrary to the fundamental policy" of each other, we apply Colorado law. *Hansen*, 876 P.2d at 113.

Under Colorado law, "[w]e construe an insurance policy according to principles of contract interpretation." *Hoang v. Assurance Co. of Am.*, 149 P.3d 798, 801 (Colo. 2007). We "give effect to the intent and reasonable expectations of the parties" and "enforce the plain language of the policy unless it is ambiguous." *Id.*

We hold that: (1) the policy's Contamination Exclusion excludes all-risk and business-interruption coverage from the COVID-19 virus; and (2) in recognition of this Court's recent decision in *Sagome*, Monarch cannot obtain coverage under the policy's all-risk provision, business-interruption provision, or the eight additional-coverage provisions because COVID-19 cannot cause physical loss or damage.

A.

We first explain how the policy's Contamination Exclusion plainly precludes Monarch from all-risk and business-interruption coverage for a virus like COVID-19.

Monarch requested coverage for property damage caused by the "presence of a 'communicable disease' at a described location, coupled with access to the location being limited, restricted, or prohibited by an order of a government agency." App'x at 583. Although the policy provides all-risk and business-interruption coverage, the policy lists exclusions.

True, the policy protects Monarch "against ALL RISKS OF PHYSICAL LOSS OR DAMAGE" as well as against "Business Interruption loss . . . as a direct result of physical loss or damage of the type insured." App'x at 188, 206. But the policy continues. *See Fed. Deposit Ins. Corp. v. Fisher*, 292 P.3d 934, 937 (Colo. 2013) ("[T]he

meaning of a contract is found by examination of the entire instrument and not by viewing clauses or phrases in isolation." (citation omitted)).

The policy lists exclusions which "apply unless otherwise stated," and that list includes the Contamination Exclusion. App'x at 189. Neither the all-risk nor business-interruption provisions "otherwise state[]" that the Contamination Exclusion does not apply to them. *Id.* In fact, the two provisions each reiterate that the exclusions do apply. The all-risk provision specifies that it provides coverage for all risks of physical loss or damage "except as hereinafter excluded."[1] *Id.* at 188. The business-interruption provision also specifies that its coverage is "limited to . . . exclusions." *Id.* at 206. Thus, the Contamination Exclusion applies to both the all-risk and business-interruption provisions.

The Contamination Exclusion expressly prohibits coverage for "[c]ontamination," which the policy defines as "any condition of property due to the actual or suspected presence of any . . . *virus*." *Id.* at 192, 229 (emphasis added). This exclusion precludes coverage for "the inability to use or occupy property or any cost of making property safe or suitable for use or occupancy" because of the presence of a virus. *Id.* at 192. And that is not all. The exclusion also denies coverage for "any cost due to contamination including the inability to use or occupy property." *Id.*

[1] For this reason, Monarch's argument that the policy should protect it against all risks, including COVID-19, fails. The policy is subject to limitations as specified by the policy's language. Here, the policy happens to have a section with a big header titled, "EXCLUSIONS." App'x at 189. And among the several listed lies the Contamination Exclusion. *Id.* at 192. As a result, the all-risk policy does not actually cover Monarch for all risks.

With that in mind, the Contamination Exclusion's plain language precludes all-risk and business-interruption coverage on exactly what Monarch asks for: physical loss or damage associated with the presence of the virus, COVID-19. *See Goodwill Indus. of Cent. Okla., Inc. v. Philadelphia Indem. Ins. Co.*, 21 F.4th 704, 713 (10th Cir. 2021) (holding that a similar virus-exclusion provision "unambiguously precluded coverage" of loss or damage stemming from the "virus," COVID-19), *cert. denied*, 142 S. Ct. 2779 (2022). We therefore affirm the district court's judgment on this ground.

In response, Monarch points to the Communicable Disease provision—which provides $100,000 for, among other things, the "[c]leanup, removal and disposal of such presence of communicable disease." App'x at 175, 194. Monarch then argues that the provision renders the Contamination Exclusion ambiguous or in conflict with other provisions. But Monarch provides the Court with a flawed method of interpreting the clear step-by-step policy. To address the misunderstanding, we explore how the Communicable Disease provision interacts with the policy's other provisions.

To recap, the policy provides all-risk and business-interruption coverage except as excluded by the policy. And the policy excludes coverage under its Contamination Exclusion. To address Monarch's flawed interpretation of the policy, we must interpret additional provisions.

The policy continues. It clarifies that exclusions "apply unless *otherwise stated*." *Id.* at 189 (emphasis added). Following the exclusions section, the policy

then provides an "ADDITIONAL COVERAGES" section. *Id.* at 192. There and under the business-interruption section, the policy covers up to $100,000 for property damage caused by a Communicable Disease. *Id.* at 175, 194, 212. The policy then names these Communicable Disease provisions as "Additional Coverage" and a "Coverage Extension." *Id.* at 194, 212.

Just because the policy excludes all-risk and business-interruption coverage for viruses like COVID-19 does not mean it cannot also provide additional, limited coverage under separate provisions. Granted, the policy's Contamination Exclusion precludes all-risk coverage for viruses like COVID-19, but that exclusion only "appl[ies] unless *otherwise stated*." *Id.* at 189.[2] And "otherwise stated" in the policy is additional, though limited, coverage for a "Communicable Disease."[3] *Id.* at 189, 194, 212. In that way, the Communicable Disease coverage acts as an exception to the exclusion. And that "exception[] to the exclusion[] do[es] not restore [all-risk or business-interruption] coverage"—it again, is limited. *Cotter Corp. v. Am. Empire*

[2] Monarch argues that the policy contains no language stating that the Communicable Disease provisions act as exceptions to the Contamination Exclusion. Not so. As explained here, the policy clearly provides that the exclusion "appl[ies] unless otherwise stated." App'x at 189. *That* language makes any additional coverage "otherwise stated" in the policy serve as an exception to an exclusion. *Id.* As such, the policy *does* have language that the Communicable Disease provisions operate as exceptions to the Contamination Exclusion.

[3] Although Monarch contests whether the additional coverages act as exceptions to the Contamination Exclusion, Monarch later contradicts itself. Even Monarch recognizes that "an exclusion cannot take away coverage separately and specifically granted in the same Policy." Aplt. Br. at 24. In other words, Monarch requests that the policy treat the additional coverages as exceptions to an exclusion—and the policy does just that.

Surplus Lines Ins. Co., 90 P.3d 814, 829 (Colo. 2004); *see McGowan v. State Farm Fire & Cas. Co.*, 100 P.3d 521, 525 (Colo. App. 2004) (denying that an exception applied to a policy's exclusion).

Thus, under a plain reading of the policy, the additional coverage acts as an exception and provides Monarch some coverage even though the policy also contains an "exclusion" that, at first glance, precludes coverage altogether.[4] Indeed, as settled upon below, the parties have already agreed that Monarch could collect the $100,000 annual aggregate sub-limit for the policy's additional coverage of a Communicable Disease. What Monarch now seeks is coverage *beyond* the $100,000 limit set by the policy. And it does so by trying to create ambiguity in interpreting the very provision that limits Monarch's additional coverage.

But we cannot rewrite the Policy's unambiguous Communicable Disease term to make it conflict with the Contamination Exclusion, thereby making the exclusion somehow unenforceable or ambiguous. *See Chacon v. Am. Fam. Mut. Ins.*, 788 P.2d 748, 750 (Colo. 1990) ("Where a contractual provision is clear and unambiguous the court should not rewrite it to arrive at a strained construction."). And "[t]he mere fact that the parties may have different opinions regarding the interpretation of the contract does not itself create an ambiguity in the contract." *Ad Two, Inc. v. City & Cnty. of Denver ex rel. Manager of Aviation*, 9 P.3d 373, 377 (Colo. 2000). The

[4] Because the policy's language clearly treats the Communicable Disease provision as an exception to the Contamination Exclusion, Monarch's other arguments based on a misunderstanding of the policy fail.

policy here is unambiguous. It provides limited coverage, and that limited grant does not somehow erase the Contamination Exclusion from the policy. As such, the Communicable Disease provision cannot afford all-risk coverage or business-interruption coverage that the Contamination Exclusion excludes.

Relatedly, Monarch argues that the Contamination Exclusion cannot take away coverage separately and specifically granted in the same policy. But as just explained, the policy provides exceptions to the exclusions in the form of limited, additional coverage. Nothing takes those away. And those exceptions (which provide limited coverage) do not render any exclusions (which exclude all-risk and business-interruption coverage) inapplicable.

B.

Next, we determine that Monarch cannot claim coverage for physical loss or damage caused by COVID-19 because the virus cannot cause physical loss or damage. *See Sagome, Inc.*, 56 F.4th at 934. As a result, just as with the all-risk and business-interruption provisions, Monarch cannot obtain coverage under the eight other additional-coverage provisions.

Importantly, Monarch seeks coverage under the all-risk and business-interruption provisions, which each only provide coverage stemming from "*physical* loss or damage." App'x at 188, 206, 550 (emphasis added). In addition, Monarch tries to assert coverage under the eight other stand-alone coverage extensions that also require a showing of "*physical* loss or damage" to apply. *Id.* at 195, 211–12, 214, 217, 316–17, 335 (emphasis added).

The district court denied Monarch coverage based on the policy's Contamination Exclusion, which excludes all-risk and business-interruption coverage caused by a virus like COVID-19. And despite briefing on the issue, the district court did not fully address whether the harm caused by COVID-19 could qualify as "physical loss or damage."

But this Court has recently answered that question. In *Sagome*, this Court held, under Colorado law, COVID-19 cannot cause direct physical loss or damage under a property-insurance policy. 56 F.4th at 934. That is because to obtain coverage for physical loss or damage, "the loss or damage itself must be physical, not simply stem from something physical." *Id.* at 935. And a virus like "COVID-19 does not physically injure or harm property." *Id.*

Since *Sagome*, the Colorado Supreme Court has recognized that COVID-19 cannot infect property itself. In a case dealing with whether taxpayers could obtain relief from how COVID-19 affected their property values, the Colorado Supreme Court noted that the virus "does not directly affect the use or availability of real property." *MJB Motels LLC v. Cnty. of Jefferson Bd. of Equalization*, 531 P.3d 1000, 1008 (Colo. 2023). The court reasoned that although COVID-19 "may have infected people who were on the property," the virus "did not infect the property itself." *Id.* This reasoning and this Court's holding in *Sagome* lead us to the same conclusion: COVID-19 cannot cause physical loss or damage. Thus, Monarch cannot attain the policy's all-risk coverage, business-interruption coverage, or the eight other

additional-coverage provisions that each require a showing of physical loss or damage.[5]

In response, Monarch attempts to explain why COVID-19 can cause physical loss or damage, even though the policy does not define the phrase "physical loss or damage," even in the face of *Sagome*. But Monarch's arguments fail because *Sagome* controls. *See Barnes v. United States*, 776 F.3d 1134, 1147 (10th Cir. 2015) ("We are bound by the precedent of prior panels absent en banc reconsideration or a superseding contrary decision by the Supreme Court." (cleaned up)).

Next, Monarch argues that the business-interruption provision and others specify that they cover "a direct result of physical loss or damage *of the type insured*." Aplt Br. at 35; App'x at 206. And because the policy includes Communicable Disease coverage which covers "[p]roperty [d]amage," Monarch reasons that we should consider communicable-disease loss as damage "of the type insured," thereby making other coverages apply. App'x at 194, 206.

But doing so would be inappropriate because the Communicable Disease provision—although requiring *property* damage from the presence of a communicable disease—does not require *physical* loss or damage for its coverage to

[5] Pointing to one sentence in the district court's order, Monarch challenges the district court's reasoning for denying coverage on the eight additional-coverage provisions. Aplt. Br. at 40. But we need not resolve that issue. What the district court did below does not influence our decision because we review AFM's policy de novo—meaning, we "giv[e] no deference to the district court's decision." *Carlile v. Reliance Standard Life Ins. Co.*, 988 F.3d 1217, 1221 (10th Cir. 2021). And here, we hold that the eight additional-coverage provisions do not apply because Monarch cannot show that COVID-19 caused physical loss or damage.

apply. As Monarch acknowledges, the provision only requires "property damage" before coverage applies. But although similar to the phrase "physical loss or damage," the phrase "property damage" can include different things. That is because "property damage" omits the modifier "physical" as in the phrase "physical loss or damage."

The phrase "'property damage' denotes coverage for a broader range of damage." *Cordish Cos., Inc. v. Affiliated FM Ins. Co.*, 573 F. Supp. 3d 977, 1001 (D. Md. 2021), *aff'd*, No. 21-2055, 2022 WL 1114373 (4th Cir. Apr. 14, 2022). And the policy makes those broader implications clear. Under the policy, coverage for "property damage" comes about from a lower threshold: the "presence of communicable disease." App'x at 194, 212. The Communicable Disease provision provides a limited annual aggregate of $100,000 for "reasonable and necessary costs incurred" from the "[c]leanup, removal and disposal of such presence of communicable disease from insured property." *Id.* at 175, 194.

Viewed in that light, "property damage" does not have to include "physical" loss or damage. Getting coverage for cleaning, removing, or disposing of the *presence* of COVID-19 is not the same thing as getting coverage for the "injur[y] or harm [to] property in some physical manner." *Sagome*, 56 F.4th at 935. An insured claiming Communicable Disease loss need not also prove "some form of material or tangible alteration in order to trigger coverage." *Cordish Cos., Inc.*, 573 F. Supp. 3d at 1001; *see Sagome*, 56 F.4th at 935.

In the end, the phrase "property damage" has a different meaning from the phrase "physical loss or damage." They are not synonymous. *See Weitz Co., LLC v. Mid-Century Ins. Co.*, 181 P.3d 309, 313 (Colo. App. 2007) ("The use of different terms in the policy signals that those terms should be afforded different meanings."). As such, the additional coverage in the Communicable Disease provision does not require "physical loss or damage," and thus cannot be "of the type insured" under the business-interruption provision or others requiring *physical* loss or damage.

Lastly, Monarch also claims coverage under another provision—the Decontamination Costs provision. Monarch claims that the district court erred in mentioning that the Decontamination Costs provision is duplicative of the Communicable Disease provision. Putting that challenge aside, we affirm that Monarch is not entitled to Decontamination Costs coverage for another reason. The Decontamination Costs provision is one of the eight additional-coverage provisions that only kick in if "the insured property is contaminated as a direct result of insured *physical damage*." App'x at 195 (emphasis added). Again, COVID-19 cannot "physically injure or harm property." *Sagome, Inc.*, 56 F.4th at 934. That is why Monarch cannot make out a claim for coverage under the Decontamination Costs provision or any other that requires a showing of *physical* loss or damage.

IV.

For these reasons, we DENY Monarch's motions to certify a question of state law and issue a stay. We AFFIRM the district court's grant of AFM's motion for partial judgment on the pleadings and denial of Monarch's motions.