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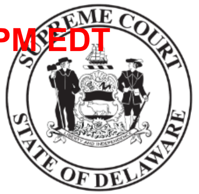

IN THE SUPREME COURT FOR THE STATE OF DELAWARE

APX OPERATING COMPANY, LLC, Plaintiff-Below/Appellant, v. HDI GLOBAL INSURANCE COMPANY, Defendant-Below/Appellee.	No. 393, 2021 On Appeal from the Superior Court of the State of Delaware C.A. No. N21C-03-058 AML CCLD

REPLY BRIEF OF PLAINTIFF-BELOW, APPELLANT APX OPERATING COMPANY, LLC

Dated: May 13, 2022

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INTRODUCTION

The issue on appeal is whether the trial court properly interpreted the Pollution and Contamination Exclusion in wAPX Operating Company, LLC's ("APX") Policy. Under the trial court's broad interpretation, which HDI Global Insurance Company ("HDI") supports, the exclusion precludes coverage for APX's pandemic-related business interruption losses. The trial court's interpretation is, for a number of reasons, wrong and contrary to Delaware law, and HDI's answering brief fails to refute APX's arguments that this Court should reverse.

First, contrary to the trial court's holding, the Pollution and Contamination Exclusion does not apply to all viruses, but rather only to viruses (or other substances) when they cause traditional environmental pollution or contamination. This reading is demonstrated by the express language of the Policy, wherein the terms "bacteria, virus, or hazardous substances" are immediately followed by modifying clauses connecting each of those terms to environmental statutes or agencies. This language is a clear indication that the exclusion was intended to preclude only traditional environmental pollution or contamination, and not losses like those caused by COVID-19. Indeed, SARS-CoV-2 is not a virus specifically listed in environmental statutes or designated as a contaminant or pollutant by environmental agencies, nor does it cause traditional environmental pollution. HDI also chose *not* to use the term "all" to modify "virus," or to otherwise include

language demonstrating an intent to exclude all loss or damage from all viruses. To read the Policy as having done so would render the other language in the exclusion identifying statutes and agencies superfluous.

Under Delaware's well-established rules of insurance policy construction, exclusions must be interpreted strictly and narrowly, and words within exclusions must be read in the context of the provision as a whole. The trial court thus erred by interpreting the Pollution and Contamination Exclusion broadly and without giving effect to the contextual limitation in the language HDI itself chose.

The trial court's error is also apparent in the absurd results which flow directly from its interpretation of the Pollution and Contamination Exclusion, *i.e.*, damage caused by many substances that a reasonable person would not consider to be "contaminants" (and that, in several instances, are expressly covered by the Policy) must be excluded. HDI has failed to present a reasonable limitation to avoid this absurd outcome. This is because the only reasonable limitation is the one posited by APX: the exclusion only applies to viruses that cause traditional environmental pollution or contamination.

Second, HDI's arguments that APX's interpretation of the exclusion somehow ignores or re-writes the Policy language are meritless. APX has posited a reasonable, narrow, and strict interpretation of the exclusion as required by Delaware law, which construes the Policy language in a manner that is natural and logical and

which gives effect to the entirety of the language. That reading is mandated by well-settled Delaware law on insurance policy construction.

Third, HDI fails to present any argument that negates the reasonableness of APX's interpretation. HDI's attempts to discredit certain cases relied upon by APX are unpersuasive, and HDI's reliance on other pro-insurer COVID-19 cases does not render APX's interpretation unreasonable.

For these reasons and the other reasons set forth in APX's opening brief, this Court should reverse the trial court's ruling and remand this case for further proceedings.

ARGUMENT

A. The Pollution and Contamination Exclusion Does Not Apply to All Viruses, but Rather Applies Only to Viruses (or Other Substances) That Cause Traditional Environmental Pollution or Contamination.

Initially, it is critical to start the analysis from the fact that HDI sold an "all risk" policy that provides coverage for losses suffered at APX's properties unless the cause of the loss is otherwise specifically excluded.[1] It is the burden of the insurance company, here HDI, to demonstrate unambiguously that the exclusion precludes coverage for the cause of APX's losses.[2] In doing so, the Court needs to narrowly confine the scope of the exclusion based on its express language and the context in which it appears in the overall Policy.[3] Against these bedrock principles of Delaware insurance law, HDI's arguments fail.

Contrary to HDI's contention, the Policy does not "unambiguously define[] contaminants to include virus," full stop.[4] In actuality, the Policy's definition of "Pollutants and/or Contaminants" sets out the terms "bacteria, virus, or hazardous substances" then immediately adds clauses modifying those three terms: (i) "as listed in the federal Water Pollution Control Act, Clean Air Act, Resource Conservation

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[1] *See* A57 ("INSURING CLAUSE").

[2] *Gallup, Inc. v. Greenwich Ins. Co.*, 2015 Del. Super. LEXIS 129, at *26 (Del. Super. Ct. Feb. 25, 2015).

[3] *See RSUI Indem. Co. v. Murdock*, 248 A.3d 887, 906 (Del. 2021); *New Castle County v. Hartford Accident & Indem. Co.*, 970 F.2d 1267, 1271 (3d Cir. 1992) (applying Delaware law).

[4] *See* HDI's Answering Br. at 16.

and Recovery Act of 1976, and/or Toxic Substances Control Act," or (ii) "as designated by the US Environmental Protection Agency or, local equivalent environmental agency."[5] The inclusion of these modifying clauses demonstrates the Pollution and Contamination Exclusion was not intended to broadly exclude all loss or damage from all viruses. Rather, the language makes clear that HDI intended to exclude only viruses (and other substances) that are either listed in environmental statutes or designated as pollutants or contaminants by environmental agencies, and that cause traditional environmental pollution or contamination.

While the trial court determined that "[n]o such limitation appears in the Policy,"[6] that conclusion overlooks and reads out of the exclusion the above modifying clauses, and Delaware law requires courts to consider the entirety of the policy language.[7] It also construes the exclusion broadly, despite the requirement that exclusions be read strictly and narrowly.[8] Further, had HDI intended the exclusion to apply to "all" viruses, there would have been no need to connect the

[5] A62.

[6] *See* A486.

[7] *See Alstrin v. St. Paul Mercury Ins. Co.*, 179 F. Supp. 2d 376, 388-89 (D. Del. 2002) (applying Delaware and Illinois law). As set forth in APX's opening brief, the Policy's use of the environmental terms of art "release" and "discharge" further evidences the Policy's intent to limit the exclusion to typical environmental pollution or contamination. HDI's assertion that broad dictionary definitions of "release" and "discharge" should be applied contravenes Delaware law, which requires that terms of art be given their technical meaning. *See* APX's Opening Br. at 16-17.

[8] *See Murdock*, 248 A.3d at 906.

word "virus" to environmental law terms. By reading out those key modifying clauses, the trial court impermissibly rendered superfluous that Policy language,[9] and ignored the limitation created by the words HDI chose when drafting the Policy. This interpretation runs afoul of the foregoing rules of insurance policy construction.

HDI's attempt to restrict the environmental modifying clauses to "hazardous substances" alone is also unavailing. The natural and logical reading of the subject language is that the clauses modify each of the three terms that precede them: bacteria, virus, and hazardous substances. This reasonable reading is further bolstered by the fact that HDI—in its brief—had to add "all" before "bacteria and viruses" to make its argument that the clauses purportedly modify only hazardous substances.[10] But, had HDI intended to bar coverage for "*all bacteria and viruses, as well as those hazardous substances* listed in various environmental statutes"[11]—as it now claims—then it should and could have used that new language or expressly modified bacteria and viruses by the word "all." HDI did not do so, and such intent is not demonstrated by the language HDI actually chose, which is not sufficiently "'specific,' 'clear,' 'plain,' [or] 'conspicuous,'" for the Court to give effect to the Pollution and Contamination Exclusion to bar APX's claim.[12]

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[9] *See Alstrin*, 179 F. Supp. 2d at 388-89.
[10] *See* HDI's Answering Br. at 19.
[11] *See id*.
[12] *Murdock*, 248 A.3d at 906.

Further, HDI's reliance on *Jenkinson's South, Inc. v. Westchester Surplus Lines Insurance Co.*, a non-binding New Jersey state court decision, does nothing to advance its position.[13] The *Jenkinson's South* decision is entirely unpersuasive. In reaching its holding, the court improperly relied on a case interpreting a standard virus exclusion barring "loss or damage caused directly or indirectly by . . . Any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease."[14] That virus exclusion had far broader language and application than the subject pollutant and contaminant exclusion. The court also failed to strictly and narrowly construe the exclusionary language.[15]

The *Jenkinson's South* court also ignored the reasonable construction presented by the policyholder without any cogent explanation. The court stated only that it interpreted the language in a "disjunctive manner."[16] However, the court failed to recognize a critical flaw in its rationale: reading the environmental clauses as modifying each of the three terms (instead of just modifying hazardous substances) also results in an interpretation that is disjunctive. Indeed, under this reading, pollutants or contaminants include: (1) bacteria as listed in environmental laws or as

[13] 2021 WL 2934875, at *9 (N.J. Super. Ct. Law Div. July 2, 2021); *see* HDI's Answering Br. at 19.
[14] *See Mac Prop. Group LLC v. Selective Fire & Cas. Ins. Co.*, No. L-2629-20, 2020 NJ Super. Unpub. LEXIS 2244, at *11, 17-20 (N.J. Super. Ct. Law Div. Nov. 5, 2020); *Jenkinson's South*, 2021 WL 2934875, at *9 (*citing Mac Prop. Group*).
[15] *See Jenkinson's South*, 2021 WL 2934875, at *9.
[16] *Id*.

designated by environmental agencies; (2) viruses as listed in environmental laws or as designated by environmental agencies; **or** (3) hazardous substances as listed in environmental laws or as designated by environmental agencies. The exclusion would thus apply (with potential limitations) when any of the three materials are present; it does not require the presence of all three materials (and thus remains disjunctive). Therefore, at the very least, the court should have found an ambiguity in the policy language and adopted the reasonable construction advanced by the policyholder.

Moreover, the United States Environmental Protection Agency (EPA) and environmental laws designate or reference certain viruses and bacteria as contaminants or pollutants, evidencing that the Policy's environmental clauses can and do modify "virus" and "bacteria" in addition to "hazardous substances." For instance, the EPA maintains lists of designated contaminants for implementing the Safe Drinking Water Act.[17] "Viruses (enteric)" and specific types of bacteria are listed as contaminants.[18] In addition, the EPA regularly designates "contaminant candidate lists," identifying contaminants known or anticipated to occur in public

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[17] *National Primary Drinking Water Regulations*, U.S. ENV'T. PROT. AGENCY, https://www.epa.gov/ground-water-and-drinking-water/national-primary-drinking-water-regulations (last visited May 3, 2022).
[18] *Id.*

water systems.[19] Over the years, the EPA has designated, for instance, the following viruses and bacteria as drinking water contaminants that may require regulation: Adenoviruses, Caliciviruses, Coxsackieviruses, Cyanobacteria, Echoviruses, *Escherichia coli*, and *Legionella pneumophila*.[20]

By way of further example, the Federal Water Pollution Control Act (commonly referred as the Clean Water Act) lists "medical waste" as a substance that is illegal to discharge into the navigable waters.[21] The Clean Water Act defines "medical waste" to include "infectious agents,"[22] which encompasses both viruses and bacteria.[23] The Clean Water Act also lists "agricultural waste" as a "pollutant," which necessarily includes viruses and bacteria that may be present in fecal and other wastes of various agricultural animals (*i.e.*, livestock).[24]

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[19] *Basic Information on the CCL and Regulatory Determination*, U.S. ENV'T PROT. AGENCY, https://www.epa.gov/ccl/basic-information-ccl-and-regulatory-determination (last visited May, 10, 2022).

[20] *See, e.g.*, *Contaminant Candidate List 1 – CCL 1*, U.S. ENV'T PROT. AGENCY, https://www.epa.gov/ccl/contaminant-candidate-list-1-ccl-1 (last visited May 11, 2022); *Contaminant Candidate List 3 – CCL 3*, U.S. ENV'T PROT. AGENCY, https://www.epa.gov/ccl/contaminant-candidate-list-3-ccl-3 (last visited May 11, 2022).

[21] *See* 33 U.S.C. § 1311(f).

[22] *See id.* § 1362(20).

[23] *See Types of Infectious Agents*, MAYO CLINIC, https://www.mayoclinic.org/diseases-conditions/infectious-diseases/multimedia/types-of-infectious-agents/img-20008643 (last visited May 6, 2022) (listing virus and bacteria as types of infectious agents).

[24] *See id.* § 1362(6); *see also, e.g.*, NAT'L RISK MGMT. RESEARCH LAB'Y, U.S. ENVT'L PROT. AGENCY, RISK MANAGEMENT EVALUATION FOR CONCENTRATED ANIMAL FEEDING OPERATIONS 28-29, 30 (2004) (available at

SARS-CoV-2 is not specifically designated as a contaminant or pollutant by the EPA or under environmental statutes. Nor could it have been so designated prior to the inception of the Policy, given that it is a novel strain of coronavirus that was not identified until late 2019, well after the May 2019 policy period incepted.[25] Further, and most significantly, SARS-CoV-2 does not cause traditional environmental pollution. Therefore, the parties could not have contemplated that claims relating to loss or damage caused by SARS-CoV-2 would be excluded under the limiting environmental language chosen by HDI.

In addition, APX's claim has nothing to do with the presence of SARS-CoV-2 in medical or agricultural waste, the pollution of navigable waters or air, or the contamination of drinking water. Thus, the presence of SARS-CoV-2 does not

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https://nepis.epa.gov/Exe/ZyNET.exe/901V0100.TXT?ZyActionD=ZyDocument&Client=EPA&Index=2000+Thru+2005&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5Czyfiles%5CIndex+Data%5C00thru05%5CTxt%5C00000011%5C901V0100.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8%2Fr75g8%2Fx150y150g16%2Fi425&Display=p%7Cf&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results+page&MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL=).

[25] *Basics of COVID-19*, CTR. FOR DISEASE CONTROL & PREVENTION (Nov. 2, 2021), https://www.cdc.gov/coronavirus/2019-ncov/your-health/about-covid-19/basics-covid-19.html (stating the first case of COVID-19 was discovered in December 2019). An exclusion must lock in coverage at the time the policy was sold. *See Hallowell v. State Farm Mut. Auto. Ins. Co.*, 443 A.2d 925, 927 (Del. 1982) ("[T]he Court will look to the reasonable expectations of the insured at the time when he entered into the contract. . . .").

qualify as a pollutant or contaminant under the Policy on that basis either. Accordingly, the trial court erred in ruling that APX's SARS-CoV-2-related losses are barred by the Pollution and Contamination Exclusion.

APX also rejects HDI's contention that the "Complaint recognizes that COVID-19 is a form of contaminant" for purposes of application of the Pollution and Contamination Exclusion.[26] As set out in APX's opening brief, virtually any substance or object in the world could be considered a "contaminant" if that term is considered in the broad (and improper) manner adopted by the trial court.[27] Such an interpretation is not permissible under Delaware law, however, as it would lead to absurd results.[28] There must be a limiting principle applied to this language and only APX has supplied one, which is grounded in Delaware law.

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[26] *See* HDI's Answering Br. at 21.

[27] APX's Opening Br. at 20-22.

[28] The trial court's ruling also leads to absurd results by rendering superfluous other Policy exclusions. *See* APX's Opening Br. at 20-23. Contrary to HDI's contention, APX's argument on this point is a fair extension of the arguments APX presented to the trial court regarding the unreasonableness of HDI's proffered interpretation, and is therefore not waived. *Robino-Bay Court Plaza, LLC v. West Willow-Bay Court, LLC*, 2009 Del. LEXIS 655, 985 A.2d 391, at *5 (Del. 2009) ("[W]here the argument is merely an additional reason in support of a proposition that was urged below, we find no reason why, in the interest of a speedy end to litigation, the argument should not be considered."). Further, even assuming *arguendo* that the argument was not fairly presented to the trial court, this Court can still rule on the merits because it would be "in the interest of justice" to fully consider all arguments relating to the interpretation of the subject exclusion, which may have an impact on the resolution of other COVID-19 claims as well as APX's claim here. *See Scion Breckenridge Managing Member, LLC v. ASB Allegiant Real Estate Fund*, 68 A.3d 665, 679 (Del. 2013). Moreover, because APX's interpretation of the Pollution and Contamination

Here, APX posited a reasonable limitation informed by the express Policy language tying offending materials to environmental terms, laws, and agencies. That express Policy language reasonably demonstrates an intent to restrict the exclusion to substances that cause traditional environmental pollution or contamination. On the other hand, HDI has failed to proffer any reasonable limitation that would constrain the Policy language so as not to lead to absurd results. HDI focuses only on the inclusion of the term "virus" in isolation. HDI does not explain, however, how interpreting the exclusion broadly with a focus on whether a substance can "cause or threaten damage to human health" or property, with no other limitation, would not swallow up coverage reasonably expected by a policyholder.

As APX previously noted, there are a myriad of substances that could damage human health or property, including substances that are expressly covered as risks under the Policy (water, hail, falling objects, a toy drone, etc).[29] In order to avoid the absurd result of precluding coverage for the presence of substances that a reasonable person would not consider to be "contaminants" (and that are, in several circumstances, expressly covered by the Policy), there needs to be some limitation. Given the Policy language, the only reasonable limitation is the one posited by APX:

Exclusion is reasonable and would not contravene the parties' intent, the redundancy created by the trial court's broad interpretation of the exclusion is improper.

[29] APX's Opening Br. at 20-22.

that the exclusion is restricted to traditional environmental pollution or contamination.

Finally, despite its attempts to do so, HDI cannot now expand the exclusionary language it chose. In drafting the Policy, HDI had the means to clearly and specifically exclude from coverage all loss or damage from all viruses had that been its intent. While HDI is correct that it did not need to use the standard ISO virus exclusion[30] to preclude all viruses, it did need to use specific and unambiguous language to demonstrate such an intent.[31] The ambiguity doctrine prompts insurance carriers to use their pen to add clarity to policy language, so as to reduce litigation. HDI did not do so, and instead drafted language that ties the exclusion to environmental terms, laws, and agencies, reasonably demonstrating an intent to limit the exclusion to viruses in the context of environmental pollution or contamination only.

In sum, because SARS-CoV-2 is not specifically identified as an environmental pollutant or contaminant and does not cause traditional environmental pollution or contamination, HDI did not meet its burden to

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[30] As noted in APX's opening brief, this standard-form exclusion broadly excludes loss or damage caused by "any virus," without the limitations used in the Policy here. APX's Opening Br. at 19.

[31] *See Murdock*, 248 A.3d at 906.

demonstrate the exclusion's application to APX's claim and the trial court's ruling should be reversed.

B. Limiting the Exclusion to Pollution and Contamination-Causing Viruses Does Not Read Out the Term "Virus" from the Definition of "Pollutants and/or Contaminants," Nor Does It Add Language to the Policy.

HDI's arguments that APX's reasonable interpretation somehow ignores or re-writes the Policy language are also red herrings and without merit.

HDI claims that, by limiting the exclusion in the manner set forth in the Policy's express language, APX would remove "virus" from the definition of "Pollutants and/or Contaminants."[32] This is clearly not true. The limitation of a term is not equivalent to the elimination of that term. Further, and significantly, a narrow and strict interpretation of exclusionary language is required under Delaware law.[33] As set forth here and in APX's opening brief, APX's interpretation of the Policy provides a reasonable, narrow, and strict interpretation of the exclusionary language, pursuant to the mandates of Delaware law.

APX's interpretation also does not add language to the Policy. Instead, it construes the language that is already in the Policy in a manner that is natural and logical and that gives effect to that language, rather than ignoring portions of the language as HDI asks this Court to do.[34] As HDI acknowledges, policy language

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[32] HDI's Answering Br. at 17.
[33] *Murdock*, 248 A.3d at 906.
[34] *See* HDI's Answering Br. at 32.

cannot be read in isolation.[35] Thus, the trial court's reading of "virus" in isolation and without adequately considering the implication of the meaning of the words that surround it was error.

C. HDI's Other Attempts To Challenge the Reasonableness of APX's Interpretation of the Pollution and Contamination Exclusion Are Unavailing.

HDI's attempt to discredit the reasonableness of APX's interpretation through discussion of other COVID-19 cases is also meritless.

First, HDI attacks two of the cases relied upon by APX. Neither attack alters the reasonableness of APX's construction of the Pollution and Contamination Exclusion here. Initially, HDI tries to discredit the decision in *JGB Vegas Retail Lessee, LLC v. Starr Surplus Lines Insurance Co.*, 2020 Nev. Dist. LEXIS 1512 (Nev. Dist. Ct. Clark County Nov. 30, 2020) by pointing out the lenient pleading standard followed by that court and the fact that other courts declined to follow the decision on that basis.[36] Nevertheless, HDI fails to explain how the notice pleading standard relevant in *JGB* is somehow less lenient than Delaware's own liberal notice pleading standard. In short, HDI makes no reasonable argument why *JGB* should not be instructive in this case.

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[35] *See id.* at 23-24; *see also New Castle County*, 970 F.2d at 1271 ("[A] word or a term cannot be considered in isolation; it must be read in the semantic and functional context of the policy or clause at issue.").
[36] *See* HDI's Answering Br. at 32-33.

Additionally, HDI cites to cases reaching an alternate conclusion than *Urogynecology Specialist of Florida LLC v. Sentinel Insurance Co. Ltd.*, 2020 WL 5939172, at *4 (M.D. Fla. Sept. 24, 2020).[37] The decision in *Urogynecology* shows that at least some courts have properly looked to the terms surrounding "virus" in order to inform their interpretation of the subject exclusion.[38] That other courts have not properly considered the context of words used in similar exclusions is of no moment. Further, the cases cited by HDI involve distinct "'fungi', wet rot, dry rot, bacteria or virus" exclusions, as opposed to a Pollution and Contamination Exclusion, and thus do not alter the reasonableness of APX's interpretation of the specific exclusion at issue here.

Second, HDI cites to cases where courts addressed contamination or pollution and contamination exclusions and ruled against the policyholders. But these cases are not informative because they: (1) were decided by courts without the presentation and consideration of the reasonable reading of the exclusion APX posits here; and/or

[37] *See id.* at 34, n. 103.

[38] *See Urogynecology*, 2020 WL 5939172, at *4 (M.D. Fla. Sept. 24, 2020) (considering whether denying coverage for COVID-19-related loss logically aligned with the grouping of terms surrounding virus in the subject exclusion).

(2) were simply wrongly decided.[39] Thus, they also do not change the reasonableness of APX's interpretation of the Policy's Pollution and Contamination Exclusion.[40]

Because APX has provided a reasonable interpretation of the exclusionary language, that reading must govern under settled Delaware law.[41] Accordingly, the trial court erred in ruling that the Pollution and Contamination Exclusion barred APX's claim.

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[39] *See Northwell Health, Inc. v. Lexington Ins. Co.*, 550 F. Supp. 3d 108, 113, 121 (S.D.N.Y. 2021) (applying contamination and pollution exclusion after rejecting argument by policyholder that the court should treat the word "virus" as if it were not in the policy); *Ford of Slidell, LLC v. Starr Surplus Lines Ins. Co.*, 2021 U.S. Dist. LEXIS 223671, at *25-28 (E.D. La. Nov. 19, 2021) (addressing distinct contamination exclusion in dicta only, and applying exclusion after rejecting argument by policyholder that the policy's definition of "contaminants" does not apply to the term "contamination"); *Zwillo V Corp. v. Lexington Ins. Co.*, 504 F. Supp. 3d 1034, 1041-43 (W.D. Mo. 2020) (considering contamination and pollution exclusion with different language and without the benefit of being presented with the arguments made by APX here, which set out a reasonable interpretation of the policy language); *Circus Circus LV, LP v. AIG Specialty Ins. Co.*, 525 F. Supp. 3d 1269, 1277-78 (D. Nev. 2021) (considering contamination and pollution exclusion with different language and providing no analysis relating to the term "virus" being modified by environmental law clauses, as raised by APX here, and instead viewing the term "virus" in isolation).

[40] HDI also includes a lengthy string cite to appellate decisions in the COVID-19 context, *see* HDI's Answering Br. at 36-37, n.109, but those cases do not inform whether the Pollution and Contamination Exclusion applies to APX's losses. The cases either: (1) do not address the applicability of exclusions to COVID-19-related insurance claims; or (2) address exclusionary language that is materially different from the language in the Policy. Neither category of cases assist this Court in determining the interpretation of the exclusion at issue in the Policy.

[41] *See Monzo v. Nationwide Prop. & Cas. Ins. Co.*, 249 A.3d 106, 118 (Del. 2021).

CONCLUSION

This Court should reverse the trial court's ruling granting HDI's motion to dismiss, and remand this case for further proceedings.

Dated: May 13, 2022

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