

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 21-2326**

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FOUNTAIN ENTERPRISES, LLC, d/b/a Anytime Fitness - West Point, individually and on behalf of all others similarly situated; VITA GRATA LLC, d/b/a Anytime Fitness - Spokane Valley, individually and on behalf of all others similarly situated; KZONE SPORTS, FITNESS, AND WELLNESS LLC, d/b/a Anytime Fitness - Schuylkill Haven, individually and on behalf of all others similarly situated; NORTHWEST WELLNESS & FITNESS LLC, d/b/a Anytime Fitness - Redmond, individually and on behalf of all others similarly situated; EWT ENTERPRISES INC., d/b/a Anytime Fitness - Irwin, individually and on behalf of all others similarly situated; GMT FITNESS ENTERPRISES LLC, d/b/a Anytime Fitness - Glenshaw, individually and on behalf of all others similarly situated; B FIT B YOU LLC, d/b/a Anytime Fitness - Danville, individually and on behalf of all others similarly situated,

Plaintiffs - Appellants,

v.

MARKEL INSURANCE COMPANY,

Defendant - Appellee.

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Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Arenda L. Wright Allen, District Judge. (2:21-cv-00027-AWA-LRL)

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Submitted: August 11, 2022

Decided: November 2, 2022

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Before THACKER, RICHARDSON, and QUATTLEBAUM, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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**ON BRIEF:** Adam J. Gomez, GRANT & EISENHOFER PA, Wilmington, Delaware, Elizabeth Graham, GRANT & EISENHOFER PA, San Francisco, California, for Appellants. John B. Mumford, Jr., HANCOCK, DANIEL & JOHNSON, P.C., Glen Allen, Virginia, Bennett Evan Cooper, DICKINSON WRIGHT PLLC, Phoenix, Arizona, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Fountain Enterprises, LLC; Vita Grata LLC; KZone Sports, Fitness, And Wellness LLC; B Fit B You LLC; EWT Enterprises Inc.; GMT Fitness Enterprise LLC; and Northwest Wellness & Fitness LLC (“Plaintiffs”), appeal the district court’s order granting Markel Insurance Company’s (“Markel”) Fed. R. Civ. P. 12(b)(6) motion to dismiss Plaintiffs’ complaint alleging claims for declaratory judgment and breach of contract, as well as claims for bad faith breach of contract and of the duty of good faith and fair dealing. Plaintiffs’ claims stemmed from Markel’s denial of insurance benefits Plaintiffs asserts Markel owed them to cover business loss they sustained during the COVID-19 pandemic. We have reviewed the record and find no reversible error. Accordingly, we affirm the district court’s order. *See Fountain Enters., LLC v. Markel Ins. Co.*, No. 2:21-cv-00027-AWA-LRL (E.D. Va. Oct. 26, 2021); *see also Uncork & Create LLC v. Cincinnati Ins. Co.*, 27 F.4th 926, 933-34 (4th Cir. 2022) (holding that insurance “policy’s coverage for business income loss and other expenses d[id] not apply to [plaintiff’s] claim for financial losses [caused by the COVID-19 pandemic] in the absence of any material destruction or material harm to its covered premises” and further “observ[ing] that our holding is consistent with the unanimous decisions by our sister circuits, which have applied various states’ laws to similar insurance claims and policy provisions”).

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED*