

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 21 2022

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

BA LAX, LLC; et al.,

No. 21-55109

Plaintiffs-Appellants,

D.C. No.

v.

2:20-cv-06344-SVW-JPR

HARTFORD FIRE INSURANCE
COMPANY, a Connecticut corporation,

MEMORANDUM*

Defendant-Appellee.

Appeal from the United States District Court
for the Central District of California
Stephen V. Wilson, District Judge, Presiding

Submitted October 19, 2022**
Pasadena, California

Before: KLEINFELD, CHRISTEN, and BUMATAY, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Plaintiffs BA LAX, LLC, et al. timely appeal the district court’s order granting summary judgment in this insurance coverage dispute with defendant Hartford Fire Insurance Co. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Bark v. U.S. Forest Serv.*, 958 F.3d 865, 869 (9th Cir. 2020). Plaintiffs also appeal the district court’s decision to deny a continuance to allow for further discovery under Rule 56(d). We review such a denial for abuse of discretion. *Michelman v. Lincoln Nat. Life Ins. Co.*, 685 F.3d 887, 892 (9th Cir. 2012).

We assume the parties’ familiarity with the facts and do not recite them here. Plaintiffs seek coverage under their insurance policies for economic losses incurred during the COVID-19 pandemic. Plaintiffs argue that their insurers breached their insurance contracts by refusing to cover their loss of business income and extra expenses resulting from “direct physical loss of or damage to property.”¹

¹ Plaintiffs’ opening brief refers to three other possible sources of coverage—the Civil Authority, Ingress or Egress, and Ordinance or Law provisions—but plaintiffs do not contend that these provisions provide coverage in the absence of “direct physical loss.” To the extent plaintiffs rely on these provisions for coverage, their arguments fail. The Civil Authority and Ingress or Egress provisions do not provide coverage because plaintiffs have not raised a genuine dispute of fact that “access” or “ingress or egress” to the insured premises was prohibited as a direct result of loss to property “in the immediate area of” or “contiguous to” the insured premises. *See Inns-by-the-Sea v. Cal. Mut. Ins. Co.*, 286 Cal. Rptr. 3d 576, 595–96 (Ct. App. 2021). The Ordinance or Law provision is a coverage extension and does not provide an independent basis for coverage.

1. **Direct Physical Loss.** While this appeal was pending, our court decided *Mudpie, Inc. v. Travelers Cas. Ins. Co. of Am.*, 15 F.4th 885 (9th Cir. 2021). There, we concluded that under California Law, the phrase “physical loss of or damage to” requires an insured to allege physical alteration of its property. *Id.* at 892. The California Court of Appeal reached the same conclusion. *See, e.g., Inns-by-the-Sea v. Cal. Mut. Ins. Co.*, 286 Cal. Rptr. 3d 576, 592 (Ct. App. 2021); *Musso & Frank Grill Co. v. Mitsui Sumitomo Ins. USA Inc.*, 293 Cal. Rptr. 3d 1, 4–5 (Ct. App. 2022); *United Talent Agency v. Vigilant Ins. Co.*, 293 Cal. Rptr. 3d 65, 73–74 (Ct. App. 2022). Because plaintiffs have not alleged physical alteration to their property, the district court did not err in ruling that plaintiffs were not entitled to coverage for business losses resulting from “direct physical loss.”

2. **Discovery.** “The denial of a request for a continuance of summary judgment pending further discovery is reviewed for an abuse of discretion. A district court abuses its discretion only if the party requesting a continuance can show that allowing additional discovery would have precluded summary judgment.” *Michelman*, 685 F.3d at 892 (internal citations omitted). Here, the district court did not abuse its discretion because it correctly observed that plaintiffs failed to articulate how the requested documents could “alter the Court’s interpretation of the Policy.”

AFFIRMED.