

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

RESTAURANT GROUP  
MANAGEMENT, LLC, et al.,

Plaintiffs,

v.

ZURICH AMERICAN INSURANCE  
COMPANY,

Defendant.

CIVIL ACTION FILE  
NO. 1:20-CV-4782-TWT

**OPINION AND ORDER**

This is a breach of contract action. It is before the Court on the Plaintiffs' Motion for Reconsideration of Order Dismissing the Case and Declining to Certify Questions of Law to the Supreme Court of Georgia [Doc. 20]. For the reasons set forth below, the Plaintiffs' Motion for Reconsideration [Doc. 20] is DENIED.

The Plaintiffs raise several concerns in their motion and supporting brief. First, the Plaintiffs argue this Court misapplied the *Twombly* and *Iqbal* standard. (Pls.' Br. in Supp. of Pls.' Mot. for Reconsideration, at 4–6.) The Plaintiffs characterize the Court's finding that the virus did not cause "direct physical loss of or damage to" the covered premises as "a finding that the facts alleged cannot be proven." (*Id.* at 4–5.) Second, the Plaintiffs argue that the Court's reliance on *AFLAC v. Chubb & Sons, Inc.*, 260 Ga. App. 306 (2003) is

misplaced and allows the Court to make an incorrect *Erie* guess. (*Id.* at 8.) Third, the Plaintiffs again allege that the Policy’s microorganism exclusion is illusory and any pleading failure “is a product of illusory coverage.” (*Id.* at 11.) Fourth, the Plaintiffs claim the Court should certify questions regarding these issues to the Georgia Supreme Court to avoid making an *Erie* guess. (*Id.* at 11–12.) Finally, the Plaintiffs argue that the Court’s Order dismissing their case should either be amended to dismiss the claims without prejudice or stay the order pending a decision from Georgia appellate courts on this topic. (*Id.* at 17.)

The Plaintiffs identify no new evidence or intervening change in the law. Instead, the Plaintiffs contest this Court’s legal reasoning in dismissing their claims. This Court’s Local Rules make clear that “[m]otions for reconsideration shall not be filed as a matter of routine practice” and should only be filed when “it is absolutely necessary.” N.D. Ga. Local R. 7.2(E). Further, the Plaintiffs appear to use their Motion for Reconsideration to address the shortcomings of their earlier request to certify questions to the Supreme Court of Georgia by providing supporting authorities and proposed questions. (Pls.’ Br. in Supp. of Pls.’ Mot. for Reconsideration, at 11–14.) As the Court noted in its Order, the Plaintiffs’ earlier request failed to comply with this Court’s Local Rules. (March 16 Order, at 14 n.3.) A motion for reconsideration is not a vehicle for repairing deficient motions. Finally, this Court rejects the Plaintiffs’ proposition to stay its dismissal order or amend it to dismiss their claims without prejudice. *See also Karmel Davis & Assocs., Attorneys-at-Law, LLC v. Hartford Fin. Svcs.*

*Grp., Inc.*, Civ. A. No. 1:20-cv-02181, 2021 WL 420372, at \*6 (N.D. Ga. 2021) (dismissing similar claims with prejudice); *Johnson v. Hartford Fin. Svcs. Grp., Inc.*, Civ. A. No. 1:20-cv-02000, 2021 WL 37573, at \*8 (N.D. Ga. Jan. 4, 2021) (same).

Throughout their motion, the Plaintiffs point to the challenging economic environment for restaurants in Georgia and across the country as a result of the COVID-19 pandemic. The Plaintiffs argue the Court should act now in certifying questions or staying its dismissal order to reduce the economic impact on these restaurants. (*Id.* at 16–17.) As the Court has noted before, these challenges are real, and the Court has immense sympathy for those who have been so deeply affected by the pandemic. *See Henry’s La. Grill, Inc. v. Allied Ins. Co.*, Civ. A. NO. 1:20-cv-02939, 2020 WL 5938755, at \*7 (N.D. Ga. Oct. 6, 2020); *Johnson*, 2021 WL 37573, at \*7. However, that sympathy does not change the law or the outcome of the case here. The Plaintiffs’ Motion for Reconsideration [Doc. 20] is DENIED.

SO ORDERED, this 26 day of May, 2021.

/s/Thomas W. Thrash  
THOMAS W. THRASH, JR.  
United States District Judge