



Nevada District Court Denies Insurer's Motion to Dismiss Claim Alleging Covid-Tied Losses
Commercial Real Estate Direct
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A Nevada District Court has denied a property and casualty insurer's motion to dismiss a lawsuit against it by a retail property owner who tried to file a claim for losses suffered as a result of the coronavirus pandemic.

The ruling is among the first court decisions that closely looked into the pollution exclusions built into most property and casualty policies. The case now goes into the discovery phase, where both the plaintiff - the property owner - and defendant - the insurer - will look into how the coronavirus infected the property that got contaminated, what sort of actual damages might have taken place and whether those losses were directly tied to coronavirus. The case then could go to a jury, which is what the plaintiff had sought. Or it could be settled.

It could have implications for other similar property policies whose carriers have cited their pollution and contamination exclusions in denying claims. Interestingly, most policies could include an exclusion for pandemics, but they are infrequently included. It wasn't include in this policy.

While every commercial property owner generally carries a casualty insurance policy that would provide coverage in the event of losses resulting from most unforeseen events, those who have sought to collect on claims typically have faced rejections by carriers claiming such losses were excluded from their policies.

The case, JGB Vegas Retail Lessee LLC vs Starr Surplus Lines Insurance Co., initially was filed in June in Clark County District Court in Las Vegas.

JGB, which owns Grand Bazaar Shops at the entrance to Bally's Hotel & Casino Las Vegas, is being represented by Wolf, Rifkin, Shapiro, Schulman & Rabkin of Las Vegas and McKool Smith of New York. It is charging Starr Surplus with breach of contract - its policy. According to the court's ruling, the complaint alleges that Starr Surplus denied the claim "unreasonably and did so with knowledge that denial was unreasonable."

The property has more than 35 tenants, including Sin City Brewing Co., Wahlburgers, John Rich's Redneck Riviera, Blue Ribbon Fried Chicken and Havaianas.

In its suit, JGB had argued that the pandemic resulted in Nevada Governor Steve Sisolak signing a statewide "stay-at-home" order on March 20 that "devastated" its business. "Overnight, the Grand Bazaar Shops went from a busy, bustling destination for shopping and entertainment to a

virtual ghost town," JGB's attorneys argued in the suit. It noted that nearly all its tenants have remained shuttered as "their spaces became unusable."

The complaint charged that the losses that JGB had suffered, as tenants couldn't muster rent payments, "fall within the policy's coverage as the presence of the coronavirus and resulting Covid-19 disease have caused direct physical loss and/or damage to JGB's property covered by the policy. Most tenants had sought abatements

JGB then filed its claim, but Starr Specialty, through its adjuster, Sedgewick Claims Management Services Inc., rejected it, arguing that the insurer had "serious concerns as to whether there is any coverage under the policy." It claimed that there was "no actual physical loss or damage" to the property, rather that JGB had argued that its losses were "based on the loss of the ability to use the premises" because of the governor's stay-at-home orders. And those orders, it argued, weren't necessarily made because of "physical loss or damage."

JGB argued that the policy covered losses caused by the restriction of access to the property and by the "untenantability" of the property, as well as any expenses incurred to continue operating the property.

The policy, last renewed on Dec. 19, 2019, carried a \$75,900 annual premium and covered up to \$33.6 million of losses after deductibles were met.

JGB's suit argued that Starr Specialty had to prove that any clause in its policy excluded coverage. It further argued, "Starr has not shown that it is unreasonable to interpret the pollution and contamination exclusion to apply only to instances of traditional environmental and industrial pollution and contamination that is not an issue here." It further argued, "JGB's losses are alleged to be the result of naturally occurring, communicable disease."

Losses in June had amounted to \$3 million, according to JGB, but were increasing by \$30,000/daily, according to its suit.