

Nevada's highest court hears insurance dispute from COVID-19 lockdowns

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The Nevada Supreme Court heard oral arguments Monday from an insurance company claiming it should not have to provide coverage to a Strip open-air mall that lost business due to the COVID-19 lockdowns in 2020.

JGB Vegas Retail Lessee, which owns the Grand Bazaar Shops outside what is now known as the Horseshoe Las Vegas, first filed a lawsuit in June 2020 against Starr Surplus Lines Insurance. The shops' owner argued that the insurance company denied a claim filed under a "business interruption policy," which JGB Vegas stated should cover the effects of the COVID-19 pandemic.

The state's high court heard oral arguments after the insurance company appealed a decision from a lower court judge, who declined to dismiss the lawsuit. The case echoes similar lawsuits over business insurance disputes in the wake of the pandemic.

"This has been, for the last couple of years, a very active subject of litigation in the vast majority of states," said attorney John Ellison, who represents the insurance consumers nonprofit United Policyholders.

The nonprofit filed an amicus brief in support of JGB Vegas, arguing that the policyholder should be entitled to insurance coverage because COVID-19 made the business unsafe for its intended use.

Daniel Polsenberg, an attorney representing the insurance company, said during oral arguments Monday that the pandemic didn't physically alter the business and therefore didn't cause property damage that was covered by the insurance policy.

“It infects people, it doesn’t infect property,” Polsenberg said about the virus. “Damage to people is not enough to be property damage.”

John Wilson, an attorney representing the Grand Bazaar Shops owners, argued that the virus permeates a building, similar to how smoke or pollutants are spread.

“The virus is a physical peril, an outside physical presence, that infiltrates property and renders it unusable or uninhabitable or unfit for its intended purpose,” he said.

Ellison said that following the SARS outbreak in the early 2000s, insurance companies created an attachment to policies that excluded viruses from coverage, but JGB Vegas did not have such an exclusion.

In the amicus brief from United Policyholders, attorneys wrote that judges appear to be ruling in favor of insurance companies in recent cases out of a fear of bankrupting the insurance industry.

But Ellison said that the majority of businesses would not be granted a claim because of the virus exclusion in the policies. In recent lawsuits, the insurance companies have been “winning more than they have been losing,” he said.

The Supreme Court justices on Monday did not indicate when they would issue a ruling on the case. If the Supreme Court decides not to send the case back to trial, Ellison said he’s not expecting a unanimous decision.

“If the court goes forward and decides this on the merits then they will be giving guidance, not just to JGB in the case with Starr, but for all these other cases that are out there under Nevada law,” he said.