

Nevada Court Rules That Casino's Business Losses Were Not Caused By "Direct Physical Loss" And Are Excluded By Contamination Clause

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A Nevada federal district court dismissed a casino's COVID-19-related coverage claims, finding that the complaint failed to allege "direct physical loss" and that in any event, coverage was barred by a contamination exclusion. *Circus Circus LV, LP v. AIG Specialty Ins. Co.*, 2021 WL 769660 (D. Nev. Feb. 26, 2021).

Circus Circus filed suit after its insurer denied coverage for business losses incurred in the wake of a state-mandated shutdown. The court dismissed the suit, finding that the complaint did not allege "direct physical loss or damage," as required by the policy. The court reasoned that this undefined phrase requires a "distinct, demonstrable, physical alteration of the property" or a "physical change in the condition of the property" and does not encompass a temporary loss of use. The court noted that to the extent the complaint implied that objects and surfaces were contaminated by the COVID-19 virus, it would still fail to allege a physical alteration because such "surface-contamination is ephemeral."

In addition, the court ruled that coverage was barred by a contamination exclusion that applied to several enumerated pollutants and contaminants, including "bacteria, virus, or hazardous substances." In so ruling, the court distinguished Nevada Supreme Court precedent holding that a pollution exclusion was ambiguous as to whether it applied to carbon monoxide claims or was limited to traditional environmental contamination, explaining that the precedent involved a third-party policy and different exclusionary language.

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