

In the Supreme Court of Nevada

STARR SURPLUS LINES INSURANCE CO.,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT
of the State of Nevada, in and for the
County of Clark; and THE HONORABLE
MARK DENTON, District Judge,

Respondents,

and

JGB VEGAS RETAIL LESSEE, LLC,
Real Party in Interest.

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Elizabeth A. Brown
Clerk of Supreme Court

**REPLY IN SUPPORT OF MOTION TO EXTEND DISTRICT COURT'S
STAY PENDING WRIT PETITION**

**1. Hearing this Petition and Granting a Stay Will Result in Judicial
Economy for All the Cases Presenting COVID Coverage Questions**

This case is truly the extraordinary situation that calls for this court's intervention, just as in *Williams v. Eighth Jud. Dist. Court*, 127 Nev. 518, 262 P.3d 360 (2011). The same threshold COVID coverage question is raised in various cases in the state-court system, and this court's determination of this petition could serve judicial economy by giving direction to all those cases. While JGB attempts to distract from the precedent-setting nature of this petition, their arguments really

reinforce the benefit that would be served by this court hearing the petition and staying the district court proceedings in the meantime.

First, for example, JGB argues that the district court did not hold that insurance coverage in this case is a question for the jury. But it admits that “the District Court held that ‘whether COVID-19, or the virus that causes it, does or does not physically alter property in order to trigger one or more coverages under the Policy is a matter of fact to be determined at trial.’” Opp. at 3. But whether COVID constitutes physical loss or damage is exactly the legal coverage question here, one for the courts. This is just like the coverage question in *Federal*, which was whether the damages bags being produced by the defective machinery constituted property damage or business interruption for coverage. *Federal Insurance Co. v. Coast Converters, Inc.*, 130 Nev. 960, 339 P.3d 1281 (2014). In *Federal*, moreover, the court had to determine the legal effect of facts for the coverage question. Just as here. This is the threshold (and probably full extent of the) coverage issue before the courts.

And it is the same threshold question in all these coverage cases. The conclusions from courts across the country is overwhelming that COVID does not constitute physical loss or damage. The petition sets out those cases. Here, however, JGB would like a jury to decide the coverage predicate in *each and every* case, perhaps hoping for an outlier of a jury in its case to buck the mainstay of

judicial determinations. Their hope to inconsistent results is anathema to the concept of judicial economy, however. This court should hear this petition and stay proceedings to give direction in this and every other COVID coverage case in Nevada.

Second, JGB claims that other judges—among the various Nevada state cases—have ruled the same way as Judge Denton. But the cases upon which it relies simply denied motions to dismiss.¹ That Rule 12 standard assumes the truth of allegations in the complaint and is far different from a Rule 56 ruling that there are genuine issues of material fact requiring a jury to decide a coverage question. In all these cases, coverage should be determined by the courts construing the legal (coverage) significance of the facts of COVID, not by separate juries in each case.

This case appears to be the first to reach the summary judgment stage. As such, it is the obvious candidate to be the test case to establish the correct legal and procedural standards as the template to decide all the other cases. This court should take that opportunity.

¹Citing *Caesars Entm't, Inc. v. ACE Am. Ins. Co.*, Case No. A-21-831477-B (Clark Cty., Nev. May 3, 2022) (denying motion to dismiss); *Boyd Gaming v. Ace Am. Ins. Co.*, Case No. A-21-834849-B (Clark Cty., Oct. 26, 2021) (denying motions to sever claims and dismiss and/or strike amended complaint); *Nevada Prop. 1 LLC vs. Factory Mut. Ins. Co.*, Case No. A-21-831049-B (Clark Cty., Nev. Sept. 1, 2021) (refusing to dismiss for failure to state a claim).

Third, JGB contends that petitioner enjoys an adequate remedy, rather than this petition, to allow the case to go to trial on the legal coverage question and then take an appeal from the judgment. But here is where this situation is different from the usual petition. JGB’s argument effectively is to compel *all* the pending COVID coverage cases to go to trial, then take multiple appeals from what petitioners contend are unnecessary trial. That multiple cases could be handled all in the same wrong way—or even in different, inconsistent ways—is what compels a stay here, just as in *Williams*.²

2. The Rule 8 Factors Call for a Stay

Denying a stay would defeat the purpose of the writ. The purpose of the petition is to have this court set out the correct legal standards to prevent the waste of judicial resources by having unnecessary trials in all these various cases, as discussed above, in the motion and in the petition. This factor supports a stay.

Petitioner (and the judicial system) would suffer irreparable injury if the stay is not extended. JGB disingenuously limits Starr’s argument as one merely against “pay[ing] its lawyers.” Response at 7. The purpose of the petition; however,

² It is bizarre that JGB attempts to distinguish *Williams* as raising only an evidentiary standard, when this case presents *both* the proper legal standard for deciding the coverage question presented in various cases *and* the procedural means to the courts to address the issue. The standards here are even more fundamental than those in *Williams*, and the various district courts’ incorrect or inconsistent application of them is at least as problematic and contrary to effective judicial administration as a simple evidentiary issue.

is to prevent an unnecessary trial. *See, e.g., Schuette v. Beazer*, CITE. This factor supports a stay.

JGB will not suffer irreparable harm if the trial is stayed while this Court addresses the legal issues. Rather than address this factor, JGB attacks unrelated motions filed by trial counsel. This request for appellate review, however, is well presented and appropriate. As JGB fails to address how it would be harmed, the Court should ignore JGB’s obfuscation. This factor supports a stay.

Likelihood of “Success.” The overwhelming authority from across the country indicates that COVID does not constitute physical loss or damage for coverage.³ But this factor is broader than that. It is enough for this factor that petition presents a “substantial case on the merits ***when a serious legal question is involved.***” *Fritz Hansen A/S v. District Court*, 116 Nev. 650, 659, 6 P.3d 982, 987 (2000) (emphasis added). Here, “the resolution of the writ petition will resolve related or future litigation.” *See Torremoro v. Eighth Judicial Dist. Court*, 138 Nev., Adv. Op. 54, ___ P.3d ___, 2022 WL 2542022, at *2 (2022) (quoting *Williams, supra*).

³ JGB outright misrepresents that the *Circus* ruling did not involve allegations of virus on premises. In fact, the policyholder alleged that it “experienced ... a covered loss as a consequence of the physical loss and damage **caused by COVID-19** and the resulting Stay at Home Orders and other civil authority orders,” much like JGB did in this case. *Circus LV, LP v. AIG Specialty Ins. Co.*, No. 21-15367, 2022 WL 1125663, at *1 (9th Cir. Apr. 15, 2022).

Under these circumstances, this Court should hear the petition and stay the proceedings.

Dated this 26th day of July 2022.

LEWIS ROCA ROTHGERGER CHRISTIE LLP CLYDE & CO US LLP

s/ Daniel F. Polsenberg

DANIEL F. POLSENBERG (2376)
JOEL D. HENRIOD (8492)
ABRAHAM G. SMITH (13250)
3773 Howard Hughes Parkway
Suite 590 South
Las Vegas, Nevada 89169

/s/ Lee H. Gorlin

LEE H. GORLIN (13879)
AMY M. SAMBERG (8492)
CLYDE & Co. US LLP
7251 West Lake Mead Boulevard
Suite 430
Las Vegas, Nevada 89128

Attorneys for Petitioner Starr Surplus Lines Insurance Co.

CERTIFICATE OF SERVICE

I certify that on July 26, 2022, I submitted the foregoing “*Reply In Support of Motion to Extend District Court’s Stay Pending Writ Petition*” for filing *via* the Court’s eFlex electronic filing system. Electronic notification will be sent to the following:

Bradley Schrager
WOLF RIFKIN SHAPIRO
SCHULMAN & RABKIN, LLP
3773 Howard Hughes Parkway
Suite 590 South
Las Vegas, Nevada 89169

Marc T. Ladd
COHEN ZIFFER
FRENCHMAN & MCKENNA LLP
1350 Avenue of the Americas
New York, New York 10019

Attorneys for Real Party in Interest JGB Retail Vegas Lessee, LLC

I further certify that I served a copy of this document by emailing a true and correct copy thereof, as follows:

The Honorable Mark Denton
DISTRICT COURT JUDGE – DEPT. 13
200 Lewis Avenue
Las Vegas, Nevada 89155
Dept13LC@ClarkCountyCourts.us

Respondent

/s/ Cynthia Kelley
An Employee of Lewis Roca Rothgerber Christie LLP