

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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District Court Case No.
A-20-816628-B

**PETITIONER'S EIGHTH NOTICE
OF SUPPLEMENTAL AUTHORITIES**

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Petitioner Starr provides the following supplemental authorities. These decisions have issued since Starr's Seventh Notice of Supplemental Authority.

STARR'S EIGHTH NOTICE OF SUPPLEMENTAL AUTHORITY

This Court is already deep into its consideration of the legal issues at play. These supplemental authorities do not offer anything surprising or new. They are just four more decisions following the same "herd" that respondents urge this Court to ignore. Ans. to Pet. at 25. Each recognizes the tide of authority surging in Starr's direction.

A. Call it a "Herd," an "Avalanche," a "Plethora," or Just Plain "Ample" and "Overwhelming": The Great Weight of Authority Supports Starr's Position on Appeal.

- **"The avalanche of authority holds that COVID-19 does not qualify as 'physical loss or damage' as a matter of law." Pet. at 18 (internal quotations omitted).**
- **"[G]iven the text of the Policy and the ample authority already discussed, the solitary academic article cited by [real parties in interest] in support of their attack on Couch [which says 'direct physical injury or loss' requires physical alteration] only injects an illusion of disagreement where none actually exists." Reply at 17-20.**

In *Oregon Clinic, PC v. Fireman's Fund Insurance Company* the Ninth Circuit determined that "that the Oregon Supreme Court would construe the phrase 'direct physical loss or damage' as requiring an insured to allege

physical alteration of its property.” *Oregon Clinic, PC v. Fireman’s Fund Ins. Co.*, No. 22-35047, 2023 WL 4854808, at *5 (9th Cir. July 31, 2023). The Ninth Circuit recognized that its decision was “consistent with the conclusion reached in more than 800 cases nationwide, including decisions from the federal courts of appeal and state supreme courts.” *Id.* (emphasis added).

In *Varanese Fusion, LLC v. Erie Insurance Exchange*, the Kentucky appellate court likewise recognized “a plethora of cases within [Kentucky], as well as across many others, that are directly opposed to” an interpretation of direct physical loss or damage that would include economic losses from COVID-19 closures. No. 2022-CA-0822-MR, 2023 WL 4982587, at *2 (Ky. Ct. App. Aug. 4, 2023) (emphasis added). “These courts,” the Kentucky Court of Appeals acknowledged, “have held that COVID-19 did not cause a direct physical loss to the insureds’ property necessary for coverage.” *Id.*

And the Georgia Court of Appeals similarly stated, “As demonstrated by the numerous cases cited in the insurers’ brief, the overwhelming majority of courts (federal and state) have rejected similar claims for insurance coverage due to the COVID-19 pandemic. *H.J. Russell & Co. v. Landmark American Ins. Co.*, 2023 WL 5110268, at *2 (Ga. Ct. App. Aug. 9, 2023) (emphasis added).

Sullivan Management, LLC v. Fireman’s Fund Insurance Co. (Sullivan II), 2023 WL 4934065, at *2 (D.S.C. Aug. 2, 2023) followed the South Carolina Supreme Court’s decision that COVID-19 does not physically alter property as “direct physical loss or damage” requires. *Sullivan Mgmt., LLC v. Fireman’s Fund Ins. Co.*, 879 S.E.2d 742, 745 (S.C. 2022), *reh’g denied* (Nov. 17, 2022). The federal district court dismissed a corollary bad-faith action, recognizing that the

question had already been conclusively decided. *Sullivan II*,
2023 WL 4934065, at *2.

Respectfully submitted.

August 10, 2023.

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CERTIFICATE OF SERVICE

I certify that on August 10, 2023, I submitted the foregoing “Eighth Notice of Supplemental Authority” for filing *via* the Court’s eFlex electronic filing system. Electronic notification will be sent to the following:

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I further certify that I served a copy of this document by United States mail, postage prepaid, at Las Vegas, Nevada, a true and correct copy thereof, as follows:

The Honorable Mark Denton
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Respondent

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