



**COMPB**

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CASE NO: A-21-829284-B  
Department 13

**EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA**

9 NAKASH SHOWCASE II, LLC; SG VEGAS  
10 OWNER, LLC; and GC VEGAS RETAIL,  
11 LLC,

Plaintiffs,

vs.

12 FEDERAL INSURANCE COMPANY.

Defendant.

Case No.:  
Dept. No.:

**COMPLAINT**

**[Exempt from Arbitration, Amount in  
Excess of \$50,000]**

**Business Court Requested:**  
EDCR 1.61(a)(2)(ii) – Business Tort  
Claim/Enhanced Case Management

15 COMES NOW, PLAINTIFFS NAKASH SHOWCASE II, LLC, SG VEGAS  
16 OWNER, LLC, and GC VEGAS RETAIL, LLC (collectively “Plaintiffs”), by and  
17 through their attorney, Shan Davis, Esq. of the law firm Davis|Stibor, and file their  
18 Complaint as follows:

**PARTIES**

20 1. Plaintiff NAKASH SHOWCASE II, LLC (“SG Island”) is a Delaware  
21 limited liability company duly licensed and registered with the Nevada Secretary of State  
22 to conduct business in the State of Nevada and owns/rents/is a tenant in common/has an  
23 insurable interest in the properties known as and located at 3791 LAS VEGAS BLVD S,  
24 Las Vegas, NV 89109.<sup>1</sup>

25 2. Plaintiff SG VEGAS OWNER, LLC (“SG Vegas”) is a Delaware limited  
26 liability company duly licensed and registered with the Nevada Secretary of State to

27 <sup>1</sup> The properties identified in this complaint as 3791 LAS VEGAS BLVD S, 3743 LAS VEGAS BLVD S,  
28 3755 LAS VEGAS BLVD S, 3759 LAS VEGAS BLVD S, and 3767 LAS VEGAS BLVD S, Las Vegas,  
NV 89109 are herein referred to as the “Subject Properties”.

1 conduct business in the State of Nevada and owns/rents/is a tenant in common/has an  
2 insurable interest in the property known as and located at 3743 LAS VEGAS BLVD S,  
3 3755 LAS VEGAS BLVD S, and 3759-3765 LAS VEGAS BLVD S.

4 3. Plaintiff GC VEGAS RETAIL, LLC, (“GC Retail”) is a Delaware limited  
5 liability company duly licensed and registered with the Nevada Secretary of State to  
6 conduct business in the State of Nevada and owns/rents/is a tenant in common/has an  
7 insurable interest in the property known as and located at 3767 LAS VEGAS BLVD S,  
8 Las Vegas, NV 89109.

9 4. Defendant FEDERAL INSURANCE COMPANY (hereinafter  
10 “Defendant” or “Federal”) is a corporation organized and existing under and by virtue of  
11 the laws of the State of Indiana, having its principal place of business at 202 N. Illinois  
12 St., Ste. 2600, Indianapolis, IN, 46204. Upon information and belief Defendant is  
13 authorized to do business in, and is doing business in, the State of Nevada.

#### 14 **JURISDICTION AND VENUE**

15 5. This Court has jurisdiction because this matter arises out of events that  
16 occurred in and that relate to properties located in Clark County, Nevada.

17 6. Venue is proper in this Court pursuant to NRS 13.040 because, among  
18 other reasons, the acts and omissions giving rise to this Complaint took place in Clark  
19 County, Nevada.

#### 20 **GENERAL ALLEGATIONS**

21 7. Plaintiffs bring this action against Defendant for breach of contract.

22 8. This action arises from the failure of Defendant to indemnify Plaintiffs  
23 pursuant to an all risk policy of Insurance, issued by Defendant to Plaintiffs with policy  
24 number 3602-87-89 EUC (“Subject Policy”).

25 9. On or about March 2020, while the Subject Policy was in full force and  
26 effect, Plaintiffs suffered losses due to the Covid-19 outbreak and its effects, which  
27 subsequently resulted in various government orders effectively shutting down Plaintiffs’  
28 rental income.

1           10. Plaintiffs, on or about April 23, 2020, timely provided notice and  
2 subsequently submitted an insurance claim to the Defendant in connection with the  
3 damages suffered.

4           11. Notwithstanding the terms of the all-risk Subject Policy, Defendant has  
5 failed to indemnify Plaintiffs for their losses.

6           12. As a result of Defendant's failure to pay Plaintiffs the damages they have  
7 suffered, Plaintiffs have commenced this action for breach of contract.

8                           **THE NOVEL CORONAVIRUS AND ITS EFFECTS**

9           13. It is beyond cavil that the world is currently experiencing a global  
10 pandemic from a disease caused by a novel coronavirus (specifically, SARS-COV-2) and  
11 commonly referred to as Covid-19.

12           14. From at least as early as December 2019, Covid-19 began spreading, first  
13 in China and then, because the disease is highly contagious, rapidly around the globe.

14           15. On January 30, 2020, the World Health Organization (WHO) declared the  
15 Covid-19 outbreak constituted a public health emergency of international concern.

16           16. Not only is SARS-COV-2 transmitted via human-to-human, but the WHO  
17 and scientific studies have confirmed that the virus can remain infectious on objects or  
18 surfaces.

19           17. By February 25, 2020, the Center for Disease Control ("CDC") warned  
20 Americans that the world was on the brink of a global pandemic, effectively dismantling  
21 any notion that SARS-COV-2 would not affect the population of the United States.

22           18. From that point forward, COVID-19 and its damaging consequences  
23 received widespread media attention.

24           19. As a result of this outbreak the Center for Disease Control began  
25 recommending that individuals stay at home and those who are not sick engage in  
26 preventive measures such as constant hand washing and the avoidance of activities that  
27 would bring them into close proximity of people or surfaces where the virus resides.

28           20. Given the commercial nature of the Subject Properties, the spread of the

1 Covid-19 virus led to physical loss and damage both within and within the vicinity of the  
2 insured locations. This physical loss and damage directly led to Plaintiff's subsequent  
3 economic damages.

4 21. The physical loss and damage existed both on surfaces found within the  
5 insureds and surrounding premises as well as in the breathable air circulating within the  
6 insureds and surrounding premises.

7 22. Scientific studies suggest that the virus may remain active on surfaces for  
8 times varying from hours to days. Indeed, following an outbreak on a cruise ship, the  
9 CDC confirmed that the virus was still alive on surfaces within cabins on the ship up to  
10 seventeen days after the passengers departed the ship.<sup>2</sup>

11 23. In addition, human beings spread Covid-19 through the simple act of  
12 breathing in air that contains viral droplets. The New York Times recently reported that  
13 "[a]n infected person talking for five minutes in a poorly ventilated space can also  
14 produce as many viral droplets as one infectious cough."<sup>3</sup>

15 24. Moreover, studies have verified that many individuals remain  
16 asymptomatic despite infection by Covid-19.<sup>4</sup>

17 25. Consequently, while it is possible to identify certain individuals who are  
18 suffering from obvious symptoms of the coronavirus, absent significant medical testing,  
19 it is impossible to distinguish between infected and non-infected members of the general  
20 public.

21 26. In addition to a decrease in revenue as a result of the desire of patrons to  
22 avoid contracting the virus while visiting the Subject Properties, civil authority orders  
23 began to be issued by various states and localities wherein Plaintiff maintained their  
24 commercial establishments, all of which required those properties to either close their

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25 <sup>2</sup> <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm>.

26 <sup>3</sup> <https://www.nytimes.com/interactive/2020/04/14/science/coronavirus-transmission-cough-6-feet-arul.html>.

27 <sup>4</sup> <https://www.usnews.com/news/health-news/articles/2020-05-28/studies-detail-rates-of-asymptomatic-cases-of-coronavirus> (observing that 42% of infected persons in Wuhan,  
28 China were asymptomatic).

1 doors to the public or suspend their normal business operations.

2 27. These orders were all predicated, in part, on the effect of the presence of  
3 Covid-19 within enclosed, highly trafficked locations.

4 28. Of relevance here, on or about March 20, 2020, Nevada Governor Sisolak  
5 signed the Order, in which he directed that all non-essential businesses and operations to  
6 cease. After issuing the Order, Governor Sisolak explained that these drastic shut-down  
7 measures were necessary in light of “the ability of the novel coronavirus that causes  
8 COVID-19 to survive on surfaces for indeterminate periods of time, [which] renders  
9 some property unusable” and contributes to “damage . . . and property loss.”

10 29. Additionally, the following relevant orders were issued by authorities in  
11 Nevada based localities where the Plaintiffs operate their commercial spaces:

12  
13 “WHEREAS, the World Health Organization and United States Centers  
14 for Disease Control and Prevention have advised that there is a correlation  
15 between density of persons gathered and the risk of transmission of  
16 COVID-19; and

17  
18 WHEREAS, close proximity to other persons is currently contraindicated  
19 by public health and medical best practices to combat COVID-19; [ . . . ]

20  
21 WHEREAS, NRS 414.060 outlines powers and duties delegated to the  
22 Governor during the existence of a state of emergency, including without  
23 limitation, directing and controlling the conduct of the general public and  
24 the movement and cessation of movement of pedestrians and vehicular  
25 traffic during, before and after exercises or an emergency or disaster,  
26 public meetings or gatherings; and [ . . . ]

27  
28 WHEREAS, non-essential businesses continue to operate and avail  
themselves to the general public, further exacerbating the public health  
emergency:

NOW, THEREFORE, by the authority vested in me as Governor by the  
Constitution and the laws of the State of Nevada and the United States,  
and pursuant to the March 12, 2020, Emergency Declaration, [ . . . ]

Section 1: Non-Essential Businesses, as further defined in regulations  
promulgated under this Directive, that promote recreational social  
gathering activities including, but not limited to, recreation centers,  
clubhouses, nightclubs, movie theaters, massage parlors, adult  
entertainment establishments, brothels, and live entertainment venues, and

1 any other such Non-Essential Business shall close effective March 20,  
2 2020, at 11:59 p.m., for the duration that this Directive shall be in effect.

3 Section 2: Non-Essential Businesses that promote extended periods of  
4 public interaction where the risk of transmission is high, including fitness  
5 establishments such as gyms and studios; aesthetic services such as beauty  
6 shops, barber shops, nail salons, tanning salons, and wax salons; and any  
7 other such Non-Essential Business shall close effective March 20, 2020, at  
8 11 :59 p.m., for the duration that this Directive shall be in effect. [ . . . ]

9 Section 8: Businesses not delineated above or in regulations promulgated  
10 under this Directive may continue operations, not to include retail sales, if  
11 they are able to implement social distancing safeguards for the protection  
12 of their employees and:

- 13 • Perform operations without contact with the Nevada general  
14 public; or
- 15 • To the extent practicable, provide services without causing  
16 members of the Nevada general public to congregate in a  
17 manner contrary to social distancing goals of a minimum of six  
18 feet of separation for more than incidental contact; or
- 19 • Provide services without causing more than ten members of the  
20 Nevada general public to congregate.”

21 Declaration of Emergency for Covid-19 – Directive 003.<sup>5</sup>

### 22 **THE SUBJECT POLICY AND PLAINTIFFS’ CLAIM**

23 30. The commencement of this lawsuit resulted from a breach of insurance  
24 contract arising from Defendant’s failure to provide any payment to Plaintiffs for their  
25 losses resulting from the global pandemic commonly referred to as the coronavirus or  
26 Covid-19.

27 31. On or about November 30, 2019, for good and valuable consideration,  
28 Plaintiff procured the Subject Policy.

32. The Subject Policy provides coverage for, *inter alia*, physical loss or  
damage, as well as losses of income due to business interruption.

33. The Subject Policy bears effective dates from November 30, 2019 to  
November 30, 2020 (the “Policy Period”).

<sup>5</sup> Nevada Emergency Orders, *available at*  
[http://gov.nv.gov/News/Emergency\\_Orders/Emergency\\_Orders/](http://gov.nv.gov/News/Emergency_Orders/Emergency_Orders/).

1 34. The Subject Policy was in full force and effect during the Policy Period.

2 35. The Subject Policy provided coverage for Business Income and Extra  
3 Expense losses, including but not limited to coverage for loss of rental income.

4 36. The Subject Policy provides in relevant part:  
5 We will pay for the actual **business income** loss you incur due to the actual  
6 impairment of your **operations**; and **extra expense** you incur due to the  
7 actual or potential impairment of your **operations** during the **period of**  
8 **restoration**, not to exceed the applicable Limit of Insurance for Business  
9 Income With Extra Expense shown in the Declarations. (emphasis in  
10 original)

11 37. The Subject Policy defines “business income” in pertinent part as “net profit  
12 or loss, including rental income from tenants and net sales value of production, that would  
13 have been earned or incurred before income taxes...”

14 38. The Subject Policy also insures against **business income** losses resulting  
15 from:

16 (a) Civil Authority: we will pay for the actual:  
17 **business income** loss you incur due to the actual impairment of your  
18 **operations**; and  
19 **extra expense** you incur due to the actual or potential impairment of your  
20 **operations**, directly caused by the prohibition of access to:  
21 your premises; or  
22 a **dependent business premises**, by a civil authority.

23 This prohibition of access by a civil authority must be the direct result of  
24 direct physical loss or damage to property away from such premises or  
25 such **dependent business premises** by a **covered peril**, provided such  
26 property is within:

27 one mile; or  
28 the applicable miles shown in the Declarations,  
29 from such premises or **dependent business premises** whichever is  
30 greater. (emphasis in original)

31 39. No exclusions contained in the Subject Policy are applicable to the dispute  
32 set forth herein.

1           40. Throughout the life of the Subject Policy, Plaintiffs continuously paid  
2 their premiums and as such expected Defendant to investigate and adjust their claims in  
3 good faith.

4           41. The Subject Policy provides coverage for multiple locations, including  
5 3791 LAS VEGAS BLVD S, 3743 LAS VEGAS BLVD S, 3755 LAS VEGAS BLVD S,  
6 3759 LAS VEGAS BLVD S, and 3767 LAS VEGAS BLVD S, Las Vegas, NV 89109.

7           42. The MGM Grand and other large hotel and casinos are located within one  
8 mile of the Subject Premises.

9           43. As a result of the covered losses stemming from Covid-19 and its effects,  
10 Plaintiffs experienced a significant loss in rental income. Specifically, unable to generate  
11 revenue from their businesses, virtually all of Plaintiff's tenants informed Plaintiffs that  
12 they could not pay rent and requested abatements and/or other accommodations.  
13 Plaintiffs have suffered, and will continue to suffer, significant business interruption.

14           44. Plaintiffs, on or about April 23, 2020, timely provided notice and  
15 subsequently submitted an insurance claim to the Defendant in connection with the  
16 damages suffered.

17           45. In contrast to Plaintiffs' expectations and demand for coverage, on or  
18 around May 29, 2020, Defendant issued a denial letter, disclaiming coverage for  
19 Plaintiffs' loss.

20           46. Thereafter, on or about July 21, 2020, Plaintiffs submitted a partial sworn  
21 statement in proof of loss ("Proof of Loss") in the amount of \$3,163,436.00 for the actual  
22 and project damages suffered through August 2020.

23           47. The Subject Properties, are insurable properties under the Subject Policy  
24 and suffered physical loss or damage as a result of the Covid-19 pandemic and its effect,  
25 including, but not limited to the issuance of Nevada's Emergency Orders.

26           48. The Subject Properties, are insurable properties under the Subject Policy  
27 and suffered economic loss as a result of physical loss or damage suffered to hotels and  
28 casinos situated within one mile of the Subject Properties.



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- 2. Reasonable fees and costs of this action; and
- 3. For such other and further relief as to which this Court deems just and proper.

Dated: February 10, 2021.

**DAVIS|STIBOR**

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