

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
Case No. 5:19-cv-00488-D

GEMINI INSURANCE COMPANY,

Plaintiff,

v.

HARRAH'S NC CASINO COMPANY, LLC,
CAESARS ENTERTAINMENT
CORPORATION, OLD REPUBLIC
INSURANCE COMPANY, and EASTERN
BAND OF CHEROKEE INDIANS,

Defendants.

**BRIEF IN SUPPORT OF OLD REPUBLIC INSURANCE COMPANY'S
MOTION TO DISMISS
Fed. R. Civ. P. 12(b)(6)**

Introduction

Gemini Insurance Company (“Gemini”) sued Harrah’s NC Casino Company, LLC (“Harrah’s NC”), Caesars Entertainment Corporation (“CEC”), Old Republic Insurance Company (“Old Republic”), and the Eastern Band of Cherokee Indians (“Band”), seeking a declaratory judgment that Old Republic is obligated to defend and indemnify the Band in *Campos v. Eastern Band of Cherokee Indians, et al.*, Eastern Band of Cherokee Indians, The Cherokee Court, File No. 17-331 (“Underlying Lawsuit” or “*Campos*”), under a policy of insurance that Old Republic allegedly issued to CEC. In a lengthy, confusing Amended Complaint, Gemini tells a tale that – when liberally construed – seemingly consists of the following, over-simplified theory: (a) Harrah’s NC had a contract with the Band; (b) the contract between Harrah’s NC and the Band required Harrah’s NC to obtain insurance coverage for the

Band; (c) Harrah's NC fulfilled its obligation by obtaining a policy of insurance from Old Republic; (d) Old Republic has refused to defend the Band in the Underlying Lawsuit; and, therefore, (e) Old Republic has breached its duty to the Band. Accordingly, Gemini – which admittedly insures the Band – desperately wants the Court to view this lawsuit as a simple “who's on first” insurance coverage dispute between it and Old Republic.

This is not simply a “who's on first” insurance coverage dispute. Rather, the issue as to Old Republic is whether it even owes defense and indemnity to the Band for the Underlying Lawsuit. The flaw in Gemini's theory-of-the-case is in the second link in its chain of logic -- whether the contract between Harrah's NC and the Band required Harrah's NC to obtain insurance coverage for the Band for the claims in the Underlying Lawsuit. In the Amended Complaint, Gemini did not even identify the actual “insurance” term in the contract between Harrah's NC and the Band. The contract between Harrah's NC and the Band only required Harrah's NC to obtain insurance coverage for the Band *in the circumstances set forth in the contract*. Based on the plain language of the contract, Harrah's NC was not obligated to obtain insurance coverage for the Band for the accident at-issue in the Underlying Lawsuit and, therefore, that contract is not an “insured contract” under the Old Republic insurance policy. That is evident based on the face of the pleadings in the Underlying Lawsuit.

CEC and Harrah's NC separately move for dismissal based upon their improper joinders as parties and this Court's lack of personal jurisdiction over CEC. To a great extent, their arguments in favor of dismissal under Federal Rule of Civil Procedure 12(b)(6) applies equally to Old Republic with the relevant development and argument restated herein.

The facts alleged in the Amended Complaint – regarding the location of the alleged accident at-issue in the Underlying Lawsuit – demonstrate that Gemini's allegations against Old

Republic fail to state a claim that Old Republic owes a duty to defend or indemnify the Band, and therefore, the Court should dismiss Gemini's "claim" against Old Republic under Federal Rule of Civil Procedure 12(b)(6).

Factual Background

I. The Plaintiff's Decedent in the Underlying Lawsuit was Hit by a Vehicle While She was Attempting to Cross a Public Road Between the Casino and Stonebrook Lodge.

On July 10, 2016, Sheila Diane Campos allegedly sustained injuries after being struck by a motor vehicle. Am. Compl. ¶¶ 33-34. Following the alleged accident, Louis Campos instituted a lawsuit seeking damages allegedly caused by the accident, captioned *Campos v. Eastern Band of Cherokee Indians, et al.*, Eastern Band of Cherokee Indians, The Cherokee Court, File No. 17-331. Am. Compl. ¶ 35. According to Gemini, "A true and correct copy of the Second Amended Complaint in the Underlying Lawsuit¹ is attached as **Exhibit C** to this Amended Complaint, and is incorporated herein by reference." *Id.* (internal footnote added).²

The Second Amended Complaint for Damages in the Underlying Lawsuit provided detailed factual allegations regarding the alleged accident. According to the Plaintiff in the Underlying Lawsuit, "Decedent and her sister had reserved a room at Stonebrook Lodge in Cherokee, North Carolina for the night of July 10, 2016 and were walking to the hotel when the events which form the basis of this lawsuit occurred. . . . Stonebrook Lodge is located across the street (Paint Town Road/U.S. Route 19) from Harrah's Cherokee Casino Resort (hereinafter, 'Casino')." Am. Compl. ¶ 35, Exhibit C (quoting Second Amended Complaint for Damages ¶ 6).

¹ Gemini used "Underlying Lawsuit" as a shorthand reference to the *Campos* lawsuit. Am. Compl. ¶ 35. CEC and Harrah's NC use the term in the same manner, herein.

² "When evaluating a motion to dismiss, a court considers the pleadings and any materials 'attached or incorporated in the complaint.'" *Aquestive Therapeutics, Inc. v. BioDelivery Scis. Int'l, Inc.*, No. 5:18-CV-514-D, 2019 WL 3729807, at *2 (E.D.N.C. Aug. 6, 2019) (Dever III, J.).

The Plaintiff in the Underlying Lawsuit alleged that the accident involving Plaintiff's decedent occurred when Plaintiff's decedent was *crossing the public road* that ran between the Casino and Stonebrook Lodge. Am. Compl. ¶ 35, Exhibit C (Second Amended Complaint for Damages ¶¶ 14, 15). As the Plaintiff in the Underlying Lawsuit alleged:

15. Sheila Diane Campos then utilized a marked crosswalk located on or adjacent to Casino property *to cross Paint Town Road/U.S. Route 19* to reach Stonebrook Lodge.

16. As Sheila Diane Campos was legally *traversing the crosswalk from the lower parking lot of the Casino to reach Stonebrook Lodge* located on Paint Town Road/U.S. Route 19 in Cherokee, North Carolina, she was violently struck by a vehicle with such force that her body was thrown and came to rest approximately fifty-seven feet to sixty-four feet from the subject cross walk.

Am. Compl. ¶ 35, Exhibit C (quoting Second Amended Complaint for Damages ¶¶ 15-16) (italics added).³ Gemini did not identify either of these paragraphs in the Amended Complaint.

Am. Compl. ¶¶ 36-39 (only citing paragraphs 14, 19-20, 24, 29, 34-35, and 40-59 from the Second Amended Complaint for Damages in the Underlying Lawsuit). Gemini, however, summarized Ms. Campos' location in the Second Amended Complaint concluding: "Campos left the casino property in order to walk to the Stonebrook Lodge, which is located near the casino."

Am. Compl. ¶ 33.

II. Notwithstanding its Actual Knowledge that the Alleged Accident Occurred On the Public Road, Gemini – By Failing to Even Acknowledge Section 4.26 in the Amended and Restated Management Agreement – Has Erroneously Alleged that Harrah's NC Had an Obligation to Procure Insurance For the Band for the Accident at-Issue in the Underlying Lawsuit.

³ In the Underlying Lawsuit, several of the Plaintiff's allegations indirectly identified the location of the alleged accident being the roadway. Am. Compl. ¶ 35 (incorporating the Second Amended Complaint for Damages by reference, ¶ 27 ("across Paint Town Road/U.S. Route 19"), ¶ 28 ("across a busy, poorly lit road"), ¶ 34 ("traversing the crosswalk"); ¶ 42 ("crossing Paint Town Road/U.S. Route 19 – particularly for those traversing the crosswalk"), ¶¶ 51-53 ("the subject crosswalk")).

This lawsuit arises from Gemini's belief that Old Republic – which allegedly wrote a policy of insurance to CEC – has wrongfully refused to defend the Band in the Underlying Lawsuit. Am. Compl. ¶¶ 29, 56-61. Gemini did not allege any facts that suggest it is attempting to pursue the Band's rights, but it did attempt to allege that Harrah's NC was obligated to obtain insurance for the Band for the accident at-issue in the Underlying Lawsuit. Gemini alleged that:

25. In addition to managing, maintaining, and/or operating the casino, Harrah's NC agreed to secure the following insurance on behalf of [EBCI] pursuant to Exhibit 'F' Section 1.01.1(e) of the agreement, entitled 'Tribe's Insurance Requirements':

Commercial general liability insurance naming [Harrah's NC], [EBCI], and the TCGE as insureds, covering bodily injury, personal injury (including humiliation), broad form property damage (including completed operations), automobile liability (including owned, non-owned and leased automobiles), innkeeper's liability in applicable statutory amounts, products liability, and contractual liability in an amount equal to not less than \$50,000,000 single limit per occurrence.

26. Exhibit 'F' Section 1.02.2 of the agreement provides that the insurance required under Section 1.01.1(e) above 'shall be primary, not excess and not contributory to any similar insurance carried by [Harrah's NC].'

27. Additionally, Exhibit 'F' Section 1.02.3 of the agreement provides that all policies of insurance required under Section 1.01.1 above shall be carried in the name of [EBCI].

28. Accordingly, Harrah's NC was obligated under the agreement to secure a primary commercial general liability policy with limits not less than \$50 million on behalf EBCI's behalf.

Am. Compl. ¶¶ 25-28.

Ironically, though alleging that Harrah's NC was obligated to obtain insurance for the Band for the accident at-issue, Gemini did not explicitly identify Section 4.26 of the Amended and Restated Management Agreement, aptly titled "Insurance," even though it allegedly attached a "true and correct copy" of that document to the Amended Complaint. Am. Compl. ¶ 18.

III. Under Section 4.26, Harrah’s NC Was Not Required to Obtain Insurance for the Band for the Accident At-Issue in the Underlying Lawsuit.

Gemini alleged that a “true and correct copy of the [Amended and Restated Management Agreement] is attached as **Exhibit A** to [its] Amended Complaint, and it is incorporated herein by reference.” Am. Compl. ¶ 18 (alterations in brackets). The Amended and Restated Management Agreement includes the following provisions:

4. Business and Affairs In Connection with Enterprise.

4.2 Duties of the Manager. In managing, operating, maintaining and repairing the Enterprise and the Facilities, the Manager’s duties shall include, without limitation, the following:

4.26 Insurance. The Manager, on behalf of the Tribe, shall obtain and maintain, or cause its agents to maintain, with responsible insurance carriers licensed to do business in the state of North Carolina, insurance satisfactory to Manager and the Bank *covering the Facility and the operations of the Enterprise*, naming the Tribe, the TCGE, the Manager, its parent and other affiliates as insured parties, *as set forth in Exhibit ‘F’ attached hereto and incorporated herein by reference*,⁴ provided in any event such insurance shall meet the requirements under the Loan Agreement or any Authorized Debt.

Am. Compl. ¶ 18, Exhibit A (quoting the Amended and Restated Management Agreement Between the Eastern Band of Cherokee Indians and Harrah’s NC Casino Company, L.L.C.) (italics added) (internal footnote added). The terms “Enterprise,” “Facility,” and “Property”

⁴ Exhibit ‘F’ contains two notable sections:

1.01 Coverage.

1.01.1. Required Insurance. The following insurance will be secured by the Manager on behalf of the Tribe and maintained *with respect to the Casino . . .* (italics added).

1.01.2. Responsibility to Maintain. The obligation to maintain the insurance policies required by this Agreement *shall lie solely with the Tribe through the Board of Advisors of the TCGE.* During the budgeting process, Manager shall recommend to the Management Committee for its approval a schedule setting forth the kinds and amounts of such insurance to be maintained during the ensuing policy year. (italics added).

(which is used in the definition of “Facility”) are specifically defined in the Amended and Restated Management Agreement:

2. **Definitions.** As they are used in this Agreement, the terms listed below shall have the meaning assigned to them in this Section:

2.13 **Enterprise.** The ‘Enterprise’ is the commercial enterprise of the Tribe authorized by IGRA and/or the Compact and operated and managed by Manager in accordance with the terms and conditions of this Agreement *to engage in (a) gaming, defined as Class II and Class III Gaming under IGRA conducted at the Facility; and (b) any other lawful commercial activity allowed at the Facility with the approval of the TCGE Board of Advisors. The Enterprise shall not include any commercial enterprise conducted by the Tribe or any other instrumentality of the Tribe other than the Class II and Class III gaming operations at the Facility and any other lawful commercial activity approved by the TCGE Board of Advisors to be operated at the Facility in connection therewith.* The Tribe shall have the sole proprietary interest in and responsibility for the conduct of all Gaming conducted by the Enterprise, subject to the rights and responsibilities of the Manager under this Agreement. The scope of the Enterprise as of the date of this Agreement is set forth on Exhibit ‘B’⁵ incorporated herein by reference and the parties agree that Exhibit ‘B’ shall be modified to reflect any other Class II or Class III *gaming operations* at the Facility or any other lawful commercial activity approved by the TCGE Board of Advisors to be operated at the Facility in connection with the *gaming operations* at the Facility in the future.

2.16 **Facility.** ‘Facility’ shall mean the buildings, improvements, and fixtures, now or hereafter located therein or thereon and associated and adjacent real property owned by the Tribe, *within which the Enterprise will be housed*, all as located on the Property. Title to the Property and the Facility shall merge and continue to be held by the United States of America in trust for the Tribe.

2.37 **Property.** ‘Property’ shall mean the parcels of land described in Exhibit ‘A’ hereto held by the United States of America in trust for the Tribe.

⁵ Exhibit ‘B’ provides: “The Facility currently consists of the following: Casino, Hotel and convention facilities, as well as other amenities which the Tribe and/or Harrah’s, from time to time, believe might enhance the economic viability of the Enterprise. The Enterprise does not include any current or future operations of the Tribal Bingo Enterprise.”

Am. Compl. ¶ 18, Exhibit A (quoting the Amended and Restated Management Agreement Between the Eastern Band of Cherokee Indians and Harrah’s NC Casino Company, L.L.C.) (italics added) (internal footnote added). Based on these contractual provisions, Harrah’s NC had no obligation to provide insurance coverage to the Band for an accident outside the Facility or outside the operation of the Enterprise.

IV. The Old Republic Insurance Policy, Additional Insured Endorsement (CG 20 26 04 13), Provides Coverage No Greater than Harrah NC’s Contractual Obligation.

Gemini alleged that a “true and correct copy of the Old Republic Policy is attached as **Exhibit B** to [its] Amended Complaint, and is incorporated herein by reference.” Am. Compl. ¶ 29. Gemini further alleged that “[t]he Old Republic Policy contains an Additional Insured Endorsement (CG 20 26 04 13) which provides that those entities required to be named as an additional insured under a written contract or agreement constitute additional insureds under the Old Republic Policy.” Am. Compl. ¶ 30. Endorsement CG 20 26 04 13 includes the following provisions:

A. Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) *shown in the Schedule*, but only with respect to liability for “bodily injury”, “property damage” or “personal and advertising injury” caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations; or
2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and

2. If coverage provided to the additional insured is required by a contract or agreement, *the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.*

Am. Compl. ¶ 29, Exhibit B (quoting Old Republic Insurance Policy, Additional Insured - Designated Person or Organization (Endorsement CG 20 26 04 13)) (italics added). Endorsement CG 20 26 04 13 identifies in its Schedule, in relevant part, the parameters of an Additional Insured thereunder:

Name of Additional Insured Person(s) Or Organization(s):

1. Any person or organization, trustee or estate to whom or to which you are obligated by virtue of a written contract to provide insurance such as is afforded by this policy, *but not for greater coverage or limits than is required by such contract.*

Am. Compl. ¶ 29, Exhibit B (quoting Old Republic Insurance Policy, Additional Insured - Designated Person or Organization (Endorsement CG 20 26 04 13)) (italics added). Because the contractual provisions of the Amended and Restated Management Agreement do not obligate Harrah's NC to procure insurance coverage for the Band for an accident outside the Facility or outside the operation of the Enterprise, and Old Republic limits its coverage to contractual obligations, Old Republic now requests dismissal under Federal Rule of Civil Procedure 12(b)(6).

Argument

I. Gemini Fails to State a Claim Against Old Republic Insurance Company Because It Fails to Establish an Underlying Obligation Constituting a Justiciable Issue Between It and Old Republic.

“A pleading that states a claim for relief must contain: . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). As the Supreme Court has explained: “[t]o survive a motion to dismiss, a complaint must contain

sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). This standard “does not require ‘detailed factual allegations,’” but “[a] pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do.’ Nor does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Id.* at 678 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 557 (2007)) (internal citation omitted).

A North Carolina state court has the “power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed.” N.C. Gen. Stat. § 1-253. A “person interested under a . . . written contract . . . may have determined any question of construction . . . under the . . . contract . . . and obtain a declaration of rights, status, or other legal relations thereunder.” *Id.* at § 1-254. For example, “a controversy between insurance companies, arising . . . by direct action . . . with respect to which two or more of the insurers is liable under its particular policy and the insurers’ respective liabilities and obligations, constitutes a justiciable issue and the court should, upon petition by one or more of the parties to the action, render a declaratory judgment as to the liabilities and obligations of the insurers.” *Id.* at § 1-257.

II. The Amended and Restated Management Agreement Between Harrah’s NC and the Band did not Obligate Harrah’s NC to Obtain Insurance Coverage for the Band for Accidents Occurring Outside the Facility or Outside the Operation of the Enterprise.

Gemini seeks “a declaration that EBCI is an insured and/or additional insured under the Old Republic Policy and that Old Republic has a duty to defend and indemnify EBCI in the Underlying Lawsuit.” Am. Compl. ¶ 57. *See also* Am. Compl. ¶¶ 58, 61, Prayer for Relief). Gemini erroneously alleges Old Republic has a duty to defend and indemnify the Band based upon the terms of the Amended and Restated Management Agreement entered into between

Harrah's NC and the Band. Am. Compl. ¶¶ 25-32, Exhibit A. The factual allegations of the Underlying Lawsuit applied to the terms of the Amended and Restated Management Agreement are outside the obligations of the Agreement.

The plaintiff in the Underlying Lawsuit repeatedly alleged, directly and indirectly, that the accident – a car versus person situation – occurred on the public roadway separating the Casino from the Stonebrook Lodge. Am. Compl. ¶ 36 (incorporating the Second Amended Complaint in the Underlying Lawsuit, ¶¶ 15-16, 27-28, 34, 42, 51-53). The public roadway – where the alleged accident at-issue in the Underlying Lawsuit occurred – is not part of the “Facility” or the “Enterprise.” Gemini summarized plaintiff’s allegations in the Underlying Lawsuit that plaintiff’s decedent “*left* the casino property in order to walk to the Stonebrook Lodge, which is located near the casino” and “[a]s she walked from the casino to the lodge, she was struck by a passing vehicle.” Am Compl. ¶¶ 33-34 (italics added).

Under Section 4.26 of the Amended and Restated Management Agreement Between the Eastern Band of Cherokee Indians and Harrah's NC Casino Company, L.L.C., Harrah's NC was only obligated to obtain insurance “covering the Facility and the operations of the Enterprise” Am. Compl. ¶ 18, Exhibit A (quoting the Amended and Restated Management Agreement Between the Eastern Band of Cherokee Indians and Harrah's NC Casino Company, L.L.C. § 4.26). Each of these terms has a specific meaning in the context of the contract between Harrah's NC and the Band. “‘Facility’ shall mean the buildings, improvements, and fixtures, now or hereafter located therein or thereon and associated and adjacent real property owned by the Tribe, *within which the Enterprise will be housed*” Am. Compl. ¶ 18, Exhibit A (quoting the Amended and Restated Management Agreement Between the Eastern Band of Cherokee Indians and Harrah's NC Casino Company, L.L.C. § 2.16) (italics added). In turn, “[t]he ‘Enterprise’ is

the commercial enterprise of the Tribe authorized by IGRA and/or the Compact and operated and managed by Manager in accordance with the terms and conditions of this Agreement *to engage in (a) gaming, defined as Class II and Class III Gaming under IGRA conducted at the Facility; and (b) any other lawful commercial activity allowed at the Facility with the approval of the TCGE Board of Advisors.*” Am. Compl. ¶ 18, Exhibit A (quoting the Amended and Restated Management Agreement Between the Eastern Band of Cherokee Indians and Harrah’s NC Casino Company, L.L.C. § 2.13) (alteration in brackets) (italics added). *See also* Am. Compl. ¶ 18, Exhibit A (quoting the Amended and Restated Management Agreement Between the Eastern Band of Cherokee Indians and Harrah’s NC Casino Company, L.L.C., Exhibit F § 1.01.1) (“Required Insurance. The following insurance will be secured by the Manager on behalf of the Tribe and maintained *with respect to the Casino . . .*” (italics added)).

Gemini did not, and could not, allege that the public roadway between the Casino and Stonebrook Lodge was part of the “buildings, improvements, and fixtures” that was part of the Casino. That public road – described as Paint Town Road/U.S. Route 19 – was a publicly available roadway between the Casino and Stonbrook Lodge (Am. Compl. ¶ 35, Exhibit C (incorporating Second Amended Complaint for Damages ¶¶ 15-16)). Harrah’s NC was not obligated to obtain insurance to cover the Band for accidents occurring on the public roadway.

III. Old Republic Insurance Company Provided Coverage No Broader Than That Required by the Amended and Restated Management Agreement.

Gemini claims entitlement to “a declaration that EBCI is an insured and/or additional insured under the Old Republic Policy and that Old Republic has a duty to defend and indemnify EBCI in the Underlying Lawsuit.” Am. Compl. ¶ 57. Notably, there are no factual allegations in the Amended Complaint that the Band is “an insured” under the Old Republic policy. Gemini’s

factual recitations are that Harrah’s NC was obligated under the Amended and Restated Management Agreement to secure a commercial general liability policy, and that it did so by obtaining the insurance policy through Old Republic as attached to the Amended Complaint as Exhibit B. Am. Compl. ¶¶ 25-29. Gemini further alleges “EBCI is an additional insured under the Old Republic Policy” “because of its agreement with Harrah’s NC.” Am Compl. ¶ 32.

Gemini specially alleges “[t]he Old Republic Policy contains an Additional Insured Endorsement (CG 20 26 04 13) which provides that those entities required to be named as an additional insured under a written contract or agreement constitute additional insureds under the Old Republic Policy.” Am Compl. ¶ 30. A close examination of Endorsement CG 20 26 04 13 shows that any coverage provided to an additional insured through obligation from a written contract, is limited to only that coverage required by such contract:

Name of Additional Insured Person(s) Or Organization(s):

1. Any person or organization, trustee or estate to whom or to which you are obligated by virtue of a written contract to provide insurance such as is afforded by this policy, *but not for greater coverage or limits than is required by such contract.*

Am. Compl. ¶ 29, Exhibit B (quoting Old Republic Insurance Policy, Additional Insured - Designated Person or Organization (Endorsement CG 20 26 04 13)) (italics added). The Endorsement further limits coverage to the provisions of the contract:

A. Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) *shown in the Schedule, ...*

* * *

However:

* * *

2. If coverage provided to the additional insured is required by a contract or agreement, *the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.*

Am. Compl. ¶ 29, Exhibit B (quoting Old Republic Insurance Policy, Additional Insured - Designated Person or Organization (Endorsement CG 20 26 04 13)) (italics added).

As discussed above, Harrah's NC and the Band never contracted to require insurance coverage for an accident on a public road outside the Facility or outside the operation of the Enterprise. The allegations in the Amended Complaint herein and the Second Amended Complaint in the Underlying Lawsuit clearly place the accident at-issue outside the Facility in the public roadway separating the Casino from the Stonebrook Lodge. Am. Compl. ¶¶ 33-34, 36 (incorporating the Second Amended Complaint in the Underlying Lawsuit, ¶¶ 15-16, 27-28, 34, 42, 51-53). The allegations further place the accident at-issue outside the operation of the Enterprise because not only did the accident occur outside the Facility, but it occurred after Ms. Campos left the Casino property. Am. Compl. ¶ 33.

Gemini is unable to state a claim for coverage by Old Republic because Gemini's factual development through its Amended Complaint and attachments thereto shows the Amended and Restated Management Agreement between the Band and Harrah's NC did not require coverage for accidents occurring outside the Facility or outside the operation of the Enterprise. Ms. Campos' accident, as stated in the Complaints, was outside of the Casino in a publicly available roadway between the Casino and Stonebrook Lodge, and was after she left the Casino and the operations of the Enterprise. Old Republic's insurance policy provided coverage only as obligated by the Amended and Restated Management Agreement. Since there was no obligation to obtain coverage for the accident at-issue in the Underlying Lawsuit, and Old Republic did not

extend coverage beyond that required by contract, Gemini fails to state a claim for relief against Old Republic.

Conclusion

The Court should dismiss the claim Gemini asserts against Old Republic because Gemini's factual allegations, including attached documents, fails to state a claim that there was an obligation to provide coverage to the Band for the accident in the Underlying Lawsuit. As a result, there is no justiciable issue between Gemini and Old Republic.

Respectfully submitted this 4th day of December, 2019.

WOMBLE BOND DICKINSON (US) LLP

/s/ M. Elizabeth O'Neill

M. Elizabeth O'Neill (N.C. State Bar No. 50338)
One Wells Fargo Center
Suite 3500
301 South College Street
Charlotte, NC 28202-6037
Elizabeth.oneill@wbd-us.com
Phone: 704-350-6353

VON BRIESEN & ROPER, S.C.

/s/ Laurie J. McLeRoy

Laurie J. McLeRoy; SBN 1018964
411 East Wisconsin Avenue, Suite 1000
Milwaukee, WI 53202
Phone: 414-287-1480
lmcleroy@vonbriesen.com

***Attorneys for Defendants Harrah's NC Casino Company,
LLC, Caesars Entertainment Corporation, and Old
Republic Insurance Company***

CERTIFICATE OF COMPLAINT

Pursuant to Local Rule 7.2(f)(3), Defendant certifies that this Memorandum complies with the applicable word limit. The number of words in this memorandum is 4,501.

/s/ M. Elizabeth O'Neill
M. Elizabeth O'Neill

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was electronically filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record that have made an appearance in this case.

This 4th day of December, 2019.

WOMBLE BOND DICKINSON (US) LLP

/s/ M. Elizabeth O'Neill

M. Elizabeth O'Neill