Preschool's COVID-19 suit against Markel to proceed

A federal district court in California has refused to dismiss COVID-19-related coverage litigation filed by a preschool against a Markel Corp. unit, based on a communicable disease endorsement in its coverage.

On Saturday, March 14, a parent of one of the students at Baldwin Academy in San Diego notified the staff that she and the student's grandparent had tested positive for COVID-19, according to Monday's ruling by the U.S. District Court in Los Angeles in *Baldwin Academy, Inc. et al v. Markel Insurance Co. et al.*

The parent had repeatedly visited Baldwin's campus during the preceding week to drop off and pick up a student, the school said, according to the ruling. After receiving the parent's email, Baldwin's staff notified parents on Sunday, March 15 that the school was closing for the week of March 16.

On March 16, San Diego's mayor issued an executive order in response to COVID-19 followed by California Gov. Gavin Newsom's March 19 executive order directing all Californians to stay at home.

Baldwin filed a business income loss claim with Markel Inc. unit Markel Insurance, which the insurer denied. The school filed suit against the insurer for breach of contract, and breach of the implied covenant of good faith and fair dealing, and sought declaratory reli

Screenshot

The ruling said this case is unique compared to other COVID-19-related litigation, which courts have "uniformly rejected" because Baldwin is not seeking coverage for losses under a "traditional" business income or civil authority provision.

Rather, the school based its complaint on a "California Business Income Changes – Communicable Disease and Food Contamination" endorsement in its coverage.

"There appears to be no dispute among the parties that COVID-19 counts as a 'communicable disease' under the policy's definition," the ruling said.

It said Markel's denial of the claim is based on three conditions that allegedly must be satisfied for the claim to be eligible for coverage: an outbreak of the disease; a shutdown or suspension of operations based on a governmental authority's order; and the government-ordered shutdown being the result of an outbreak.

Markel asserted there was not an outbreak at Baldwin; the school's closure was voluntary, occurring before the government-issued orders and was therefore not the result of a government order; and the government-ordered closure was not the result of anything that happened at Baldwin.

The court disagreed. The parent's report, "gives rise to a plausible inference that an outbreak of COVID-19 occurred at Baldwin," it said.

Plaintiffs have also "plausibly allege[d] [the] shutdown was the result of orders

voluntary, occurring before the government-issued orders and was therefore not the result of a government order; and the government-ordered closure was not the result of anything that happened at Baldwin.

The court disagreed. The parent's report, "gives rise to a plausible inference that an outbreak of COVID-19 occurred at Baldwin," it said.

Plaintiffs have also "plausibly alleged" the shutdown was the result of orders from the San Diego mayor and governor, it said, adding the school's closure took effect the same day the San Diego order was issued.

Furthermore, while Markel argues the endorsement requires the government-ordered shutdown must be caused by an outbreak at the premises, the "court does not agree that the Endorsement necessarily requires this causal relationship," the ruling said in refusing Markel's motion to dismiss the case.

Markel's attorney had no comment, while Baldwin's attorney did not respond to a request for comment.

Last week, a federal appeals court upheld a lower court's ruling in favor of a Markel Corp. unit, stating restaurant owners were not entitled to coverage for a fire at their Seattle restaurant because of false statements they had made in their policy application.

More insurance and risk management news on the coronavirus crisis here.