

## Minor League Baseball Teams Fight For COVID-19 Coverage

By Jeff Sistrunk

*Law360 (June 23, 2020, 8:39 PM EDT)* -- A slew of Minor League Baseball teams sued their insurance companies in Pennsylvania federal court Tuesday, saying the insurers have wrongfully refused to pay their claims for financial losses caused by the indefinite postponement of their season because of the COVID-19 pandemic.

In a complaint filed in the Eastern District of Pennsylvania, 15 MiLB teams from 11 states sued units of Tokio Marine Holdings Inc., Nationwide and W.R. Berkley Corp., asserting they are owed coverage under their business interruption policies for the mounting losses they have incurred since the pandemic halted their operations.

According to the teams, including the Binghamton Rumble Ponies, Fort Wayne TinCaps and Amarillo Sod Poodles, their respective insurers have already denied or have indicated they will deny coverage for their claims.

"With no players, no games, and no fans, the teams' losses of business income for the 2020 MiLB baseball season have been near total," the teams argued. "With virtually no source of income, and accruing expenses, the teams face catastrophic financial losses."

Although the MiLB has not officially canceled the entire 2020 season — which typically begins in early April and runs into September — federal, state and local government restrictions on large gatherings have precluded any games from being played thus far.

Tuesday's complaint noted that minor league teams' operations are "entirely dependent" on "receiving players, coaches and other team personnel" from the Major League Baseball teams with which they are affiliated. However, according to the suit, MLB teams have signaled they will not provide any players to their minor league affiliates for the 2020 season.

"Because of this business model, which requires variable revenue tied to game attendance but significant fixed operating expenses, and the fact that most MiLB team owners are small business owners or family businesses rooted in the community in which they own a team, the teams have little prospect for economic survival if the operation of their businesses is interrupted for any significant period of time within a season," the teams contended.

To defray the lost revenues, the MiLB teams turned to their insurance companies. But according to the

suit, 13 of them have already had their claims rejected, while the other two said they expect their claims to soon be denied as well.

The minor league teams said their insurers have argued the pandemic did not cause any "direct physical loss or damage" to their property, as required for business interruption coverage to apply, and have also cited a policy exclusion for losses attributable to a "virus, bacterium or other microorganism."

The MiLB teams, however, asserted that they have indeed sustained direct physical loss or damage in the form of losing the ability to use their ballparks. Moreover, the teams argued that the virus exclusion is "void, unenforceable, and inapplicable."

Robin Cohen of McKool Smith PC, who represents the MiLB teams, explained she believes the exclusion is inapplicable under these circumstances because COVID-19 was only one of three causes of the losses at issue, the others being various government shutdown orders and the teams' inability to obtain players from the MLB.

"These are three independent factors, all causing physical loss," she said in a phone interview. "We would argue that, in this situation, you have two covered losses and therefore coverage should apply."

Cohen added that she expects her clients' case "will address a lot of the critical issues that will extend well beyond these small businesses, to many other small businesses."

In an emailed statement, Nationwide spokesman Ryan Ankrom said the company "understands the extremely difficult circumstances that businesses are finding themselves in during this unprecedented global crisis" and intends to "evaluate any reported claim based on the relevant facts and individual merits of the claim." However, he noted that business interruption coverage tied to a virus outbreak "has been excluded from standard policies issued to business owners across the insurance industry for quite some time."

"The risk for such an event is so vast, including it in standard coverage would make such coverage unaffordable or even unavailable," he said.

A W.R. Berkley spokeswoman declined comment, citing company policy of not commenting on pending litigation.

A Tokyo Marine representative did not immediately respond to a request for comment.

The teams are represented by Robin Cohen, John Briody and Patrick Pijls of McKool Smith PC, and Andrew L. Sandler, Stephen M. LeBlanc and Rebecca Guiterman of Mitchell Sandler LLC.

Counsel information for the insurers was not immediately available.

The case is Chattanooga Professional Baseball LLC et al. v. Philadelphia Indemnity Insurance Co. et al., case number 2:20-cv-03032, in the U.S. District Court for the Eastern District of Pennsylvania.

--Editing by Adam LoBelia.

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