

Minor Leaguers Fight Insurers' Bid To Toss Ariz. Virus Suit

By **Mike Curley**

Law360 (October 15, 2020, 6:58 PM EDT) -- A group of Minor League Baseball teams is pushing back against a bid by three units of Nationwide to throw out their suit over losses stemming from their canceled season, saying the insurers' focus on a virus exclusion ignores the other causes of loss they pled in the suit.

The teams, led by Chattanooga Professional Baseball LLC, said in a brief Wednesday that the exclusion for any disease-causing "virus, bacterium or other microorganism" does not apply to its claims that the season was canceled because Major League Baseball announced it was not providing players or the government shutdown orders intended to stem the spread of COVID-19.

The question of which specific occurrence caused the loss in question — be that the presence of COVID-19, the government orders, or MLB's decision not to send players — is one of fact, not something that the court can decide at the motion to dismiss, the teams said. They added that the court cannot just take National Casualty Co., Scottsdale Indemnity Co. and Scottsdale Insurance Co.'s word that the virus caused the closure and the exclusion applies.

The teams also argued that the exclusion is unenforceable because the insurance companies got it approved through misrepresentation to state insurance commissioners. According to the brief, the insurers secured the exclusion by telling the commissioners that the policies already did not cover viruses and bacteria and the exclusion simply clarified matters — and thus they would not have to lower premiums.

This was false, the teams said, as case law at the time had shown that policies like those issued to the teams did cover losses stemming from disease-causing agents, and the insurers have charged inflated premiums in the years since then. While the insurers argued that the 10 states involved in this suit have not recognized this estoppel theory, the teams countered that none have rejected it, while one state did recognize it, and another's attorney general supported the theory.

The baseball teams' suit stems from a case originally filed in Pennsylvania federal court in June, which targeted several insurance companies. The teams later dropped that suit, and refiled in Arizona, Pennsylvania and New Jersey, with each suit focused on individual insurers.

In the Arizona suit, the teams and their concessions companies alleged that the insurers had wrongfully denied coverage for their losses stemming from the cancellation of the season.

The complaints in Arizona and New Jersey came days after Major League Baseball announced it would not be providing players to the Minor League teams — and canceling the 2020 season — citing the "unprecedented" times the country is currently experiencing related to the pandemic. Major League Baseball is playing a shortened, 60-game regular season that will end later this month, according to media reports.

In September, the insurer pushed to have the suit thrown out, saying it was "black letter law" that the court should apply the policies as written, and that an exclusion specifically states that they will not cover losses resulting from bacteria or viruses.

In Wednesday's brief, the teams also took aim at the insurers' argument that an exclusion barred coverage of claims that MLB's refusal to give players caused a loss, saying that exclusion limits recovery for "suspension, lapse and or cancellation" of the contract, while the complaint does not plead any such suspension, lapse or cancellation.

Regarding the civil authority coverage, while the insurers argued that the teams were not prohibited from accessing the insured stadiums or surrounding areas, the teams said they did allege that the orders closed nonessential businesses, and citizens were ordered to stay home. The coverage does not require prohibition of all access, but can be triggered by the closure of the stadiums to the public for the normal operations of baseball, the teams said.

"The key legal issues are now teed up for court resolution," Andrew L. Sandler of Mitchell Sandler LLC, representing the teams, told Law360 on Thursday. "We look forward to that resolution, and being able to move forward in pursuit of these claims."

Representatives for the insurance companies could not immediately be reached for comment Thursday.

The insurance companies are represented by Brian A. Cabianca, Gregory T. Saetrum and Aneca E. Lasley of Squire Patton Boggs (US) LLP; Jay R. Sever and Katie W. Myers of Phelps Dunbar LLP; and Michael H. Carpenter of Carpenter Lipps & Leland LLP.

The teams are represented by J. Michael Hennigan, 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.

The case is Chattanooga Professional Baseball LLC et al. v. National Casualty Co. et al., case number 2:20-cv-01312, in the U.S. District Court for the District of Arizona.

--Additional reporting by Jeff Sistrunk. Editing by Alyssa Miller.