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Ski Pass Insurance Row Highlights Complex Route for Virus Suits

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- Consolidation of skiers' lawsuits against trip insurers approved
- Grouping seen as viable option for more virus-focused suits

A recent consolidation of skiers' lawsuits against their cancellation protection insurers portends how such complex groupings could remain a viable solution for thousands of other pandemic-related cases.

Earlier this month, the Judicial Panel on Multidistrict Litigation (JPML) grouped proceedings based on defendant insurers — one set for cases against Arch Insurance Co. and another for United Specialty Insurance Co. Plaintiffs allege that they bought optional insurance for short-term ski passes but were denied payouts after resort closures rendered their tickets unusable.

The panel's decision highlights the potential for consolidation of other Covid-19 insurance disputes involving limited, common factual questions. Multidistrict litigation has the potential to keep legal costs down with streamlined proceedings and prevent multiple courts from reaching different decisions in similar cases.

"This was the consolidation that made sense from the beginning," said Marc Ladd, a partner at McKool Smith, referring to the ski insurance cases.

"You're able to consolidate all of the plaintiffs' claims, which are essentially refund claims as opposed to claims needing specific, calculations of damages for each individual policyholder," said Ladd, who represents insurance policyholders.

The seven-judge panel's ski-suit consolidation came as it issued another ruling to consolidate more than 30 actions facing Society Insurance Co. for denying business interruption claims of restaurants and other hard-hit shops.

To be sure, the JPML also has declined to consolidate Covid-related business interruption cases against several insurers. But the fact it has opted for consolidation in other specialized actions indicates the panel is open to multidistrict litigation (MDL) in future disputes, said Alissa Del Riego, an attorney at Podhurst Orseck P.A. and assistant professor at the University of Miami's business

school.

“There’s certainly a good possibility that that’s the case,” she said. “We’re already seeing that in business interruption insurance coverage cases.”

Seeking Reimbursement

Vail, Colo., resident Ann Hoak filed a proposed class action in April against USIC, which provides insurance for Vail Corp.'s Epic Pass program. Hoak paid \$32 to insure her season-long pass, which cost \$939, according to the complaint.

Hoak used the pass only three times before Vail shut its doors March 15. Hoak said USIC owed her more than \$650—the cost of the pass minus the ski rate for each day she used it—and sued the insurer in Colorado federal court for breach of contract.

Nearly identical actions were later filed in Arkansas, Utah, Texas, and New York federal courts.

In May, another skier, Mark Rossi, filed a proposed class action against Kansas City-based Arch, which offered cancellation insurance for Alterra Mountain Co.'s Ikon Pass. The insurance policy covers being “quarantined,” according to Rossi’s complaint, filed in the Western District of Missouri.

Another plaintiff suing USIC asked the JPML in June to centralize similar lawsuits—as well as the ones facing Arch—in either the U.S. District Court for the Eastern District of Arkansas or the U.S. District Court for the Southern District of West Virginia.

All related actions “share common questions of fact and law with little to no variation,” said the plaintiff, James Bradley, in a June 16 brief.

“Overlapping prosecution, defense, and adjudication of pretrial proceedings in seven substantially similar” actions will likely result in inconsistent rulings and higher costs, the brief said.

Since Bradley’s motion was filed, several plaintiffs have differed on how to address consolidation, and on what courts should handle it. Arch and USIC separately backed consolidation only for each of their cases.

The JPML ruled to consolidate cases against each insurer after finding they involved common factual issues. Centralization will “eliminate duplicative discovery; avoid inconsistent pretrial rulings, particularly on class certification; and conserve the resources of the parties, their counsel and the judiciary,” it said.

The panel ordered cases against Arch to be grouped in the Western District of Missouri. Cases against USIC were sent to the Northern District of California.

On Oct. 14, the JPML ordered two tag-along actions against Arch to join the others in the Missouri court. It similarly sent three tag-along cases against USIC to the California court.

Resetting Clock

Transferring cases into one court can slow the proceedings down initially for individual plaintiffs. Party and counsel leadership must be determined, and both “master complaints” and “master answers” to those complaints filed.

Multidistrict litigation “will certainly reset the clock in that regard,” said Chad Bell, an attorney with Korein Tillery.

But in the long run, issues are generally resolved more quickly in consolidated proceedings, D. Theodore Rave, a professor at the University of Houston Law Center, said

For Arch and USIC, case consolidation allows them to avoid producing the same documents to a host of plaintiff attorneys. Depositions and other time-consuming procedures are likely to run more smoothly. “It’s just more efficient to do it all one time,” Bell said.

And for cases with similar facts, consolidation offers a chance to sort out questions regarding policy language and the application of different state’s laws.

“The MDL vehicle is probably one of the most efficient ways to resolve these issues, provided you have one or more defendants that engaged in the same or similar business practice and a group of individuals or entities that suffered the same or similar types of losses as a result of the defendants’ conduct,” Del Riego said.

Consolidation could also prove helpful in sorting out class certification, which will need to be

addressed in the ski pass cases.

“One of the big advantages of multidistrict litigation is the ability to manage competing class actions,” Rave said. If potential classes overlap or there are plaintiffs competing to lead a class, one judge will get to sort that out, he added.

The two similar case groupings are proceedings at the same time. And one’s developments could have some effect on the parties in the other, Rave said.

A judge’s deciphering of a particular policy term, for example, has a certain meaning, and “it’s going to have an impact on strategy” for the parties in the other litigation, Rave said. “They could lean on that in their arguments and in their settlement negotiations.”

Typically, few cases involved in multidistrict actually make it to trial. Many are settled or determined based on pre-trial motions to dismiss. Cases that are tapped for trial head back to their original venues unless they were filed in the court where the transferee judge presides.

This litigation “does seem like it’s going to come down to a common question of fact,” said Ladd, of McKool Smith.

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