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Goodwill Beats Insurer's Dismissal Bid In Virus Coverage Suit

By **Hailey Konnath**

Law360 (January 29, 2021, 10:13 PM EST) -- Goodwill Industries has plausibly alleged that COVID-19 caused direct physical loss and damages to its property, a California state judge ruled Thursday, rejecting Philadelphia Indemnity Insurance Co.'s arguments that the coverage suit should be tossed.

According to Goodwill, the insurer should've covered its claims stemming from losses it said it incurred as a result of COVID-19's march through Orange County and the government's subsequent closure orders.

Philadelphia Indemnity Insurance had argued that Goodwill's complaint was legally insufficient, lodging a demurrer in which it took issue with the nonprofit's contention that it suffered a "direct physical loss" under the provisions of its insurance policy.

But Superior Court Judge Peter Wilson on Thursday agreed with Goodwill that "direct physical loss" doesn't require physical, tangible alteration of the property. The judge adopted a tentative order rejecting the insurer's demurrer, finding that Goodwill has expressly alleged that its property has been damaged by the presence of COVID-19 at its properties.

Specifically, Goodwill has alleged that its employees tested positive for the coronavirus when its thrift stores reopened during the pandemic, and it was required to conduct "additional cleaning and sanitization to respond to and remove the coronavirus ... from physical surfaces in its insured premises and properties," according to the order.

"Construing these allegations as true as the court must on a demurrer, the court cannot determine as a matter of law that these allegations do not show a 'direct physical loss' in accordance with [court precedent]," Judge Wilson said.

The judge said he recognizes that California federal cases have interpreted precedent to require a physical change in the property or a loss of the property.

"However, these federal California cases are not binding on this court and were decided under a different standard," he said.

Thursday's decision opens the door for Goodwill to potentially recoup millions of dollars in losses, according to a statement from Covington & Burling LLP, which is representing the nonprofit in the dispute.

Stephen Stewart, a Covington spokesperson, called the judge's order "the most detailed California decision to date ruling in favor of the policyholder on this issue."

Indeed, a slew of companies in a variety of industries have gone after insurers for failing to cover losses stemming from COVID-19. Most have not fared well for businesses.

A London judge in December **rejected a cafe owner's pursuit** of Allianz for losses caused by the forced closure due to the pandemic, instead awarding the insurer's costs.

And earlier this month, a Florida federal judge **tossed a catering company's suit** seeking to force Scottsdale Insurance Co. to pay for COVID-19-related losses, while another Florida judge **rejected a restaurant chain's lawsuit** seeking to compel Aspen Specialty Insurance Co. to cover its losses. A Texas federal judge also **shot down** a dentist's suit seeking coverage from Aspen.

Still, virus insurance suits continue to pour in. In mid-January, ViacomCBS **filed suit** in California federal court, alleging Great Divide Insurance Co. renegeed on its coverage agreement by refusing to protect the media giant from losses when it was forced to delay or cancel production for its television shows and live events due to the pandemic.

Last month, hotel operator Procaccianti sued insurer Zurich American for **failing to cover losses** it incurred during state-mandated COVID-19 shutdown orders, while Zurich **hit back** saying its policy expressly excludes viruses as a covered cause of loss.

That same month, a Pennsylvania hotel said its losses from pandemic measures ordered by Gov. Tom Wolf **should be covered** by Westfield Insurance Co., while movie theater chain Cinemark Holdings Inc. is **seeking more than \$400 million** from Factory Mutual Insurance Co. for unpaid COVID-19 business interruption claims.

Meanwhile, the owners of the Philadelphia Union Major League Soccer team this month sued Chubb unit Federal Insurance Co., alleging the insurer **refused to honor** its \$192 million policy to cover COVID-19-related losses after their athletes caught the virus that affected its properties.

Goodwill is represented by Marty Myers, Rani Gupta and Joan Li of Covington & Burling LLP.

Philadelphia Indemnity Insurance is represented by Ronald D. Kent, Richard Fenton and Justin Martin of Dentons.

The case is Goodwill Industries of Orange County v. Philadelphia Indemnity Insurance Co., case number 30-2020-01169032, in the Superior Court of the State of California, County of Orange.

--Additional reporting by Lauren Berg. Editing by Breda Lund.