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## Travelers Defeats LA Eatery's Bid For COVID-19 Coverage

By **Hailey Konnath**

Law360 (August 28, 2020, 11:10 PM EDT) -- The Travelers Indemnity Co. of Connecticut needn't cover a downtown Los Angeles restaurant's claims stemming from the COVID-19 pandemic, a California federal judge ruled Friday, finding that the Mediterranean eatery hasn't shown that it is entitled to coverage under the policy as it hasn't suffered any "direct physical loss or damage."

10e claimed in its April suit that Travelers failed to honor an insurance policy covering its business losses, coverage that should've been triggered when Los Angeles Mayor Eric Garcetti issued an order closing nonessential businesses on March 15.

Travelers argued in its motion to dismiss that its policy contains a virus exclusion clause that precludes any recovery. On top of that, the restaurant hasn't adequately alleged that public health restrictions prohibited access as required for civil authority coverage, nor has it plausibly alleged that it suffered direct physical loss of or damage to its property.

In a minute order issued Friday, U.S. District Judge Stephen V. Wilson sided with the insurer, saying losses from inability to use property don't amount to "direct physical loss of or damage to property" under California law. Rather, physical loss or damage occurs only when property undergoes a "distinct, demonstrable, physical alteration," the judge said.

And 10e hasn't alleged that the virus itself infected or stayed on the surfaces of its insured property, Judge Wilson said.

"An insured cannot recover by attempting to artfully plead impairment to economically valuable use of property as physical loss or damage to property," Wilson said, adding that 10e has only plausibly alleged that in-person dining restrictions interfered with the use or value of its property — "not that the restrictions caused direct physical loss or damage."

The judge said the restaurant's complaint indicates that while public health restrictions kept the restaurant's "large groups" and "happy-hour goers" at home instead of in the dining room or at the bar, the restaurant "remained in possession of its dining room, bar, flatware and all of the accoutrements of its 'elegantly sophisticated surrounding.'"

Still, the judge gave 10e two weeks to file an amended complaint, according to the order.

Backed by high-profile criminal defense attorney Mark Geragos and his firm, 10e filed its suit **in California state court** in April, the same day Geragos hit Travelers with his own suit as well as suits on behalf of another restaurant and a business center.

According to the suits, the pandemic has caused real physical loss and damage around the world, including at a property Geragos owns in Glendale, California, his law firm's downtown Los Angeles office and at the restaurants and business center.

All the while, Travelers has been accepting premiums for its all-risk policies "with no intention of providing any coverage under the policy's civil authority coverage section due to a loss and shutdown from a virus pandemic," the suits said.

"Any effort by Travelers to deny the reality that the coronavirus causes physical loss and damage would constitute a false and potentially fraudulent misrepresentation that could endanger policyholders, such as plaintiff and the public," they said.

10e said it had to mostly shut down during the pandemic, arguing it deserved declaratory judgment finding that the mayor's order constitutes a prohibition of access to the insured premises. The policy at issue doesn't include an exclusion for a viral pandemic, the restaurant said.

The suit was removed to California federal court in May, and Travelers filed a motion to dismiss in June.

The restaurant also moved for the case to be remanded back to state court, but Judge Wilson rejected that motion in Friday's order.

A Travelers representative and counsel for 10e didn't immediately return requests for comment late Friday.

10e is represented by Mark J. Geragos, Ben J. Meiselas and Matthew M. Hoesly of Geragos & Geragos APC, and Harmeet K. Dhillon and Nitoj P. Singh of Dhillon Law Group Inc.

Travelers is represented by Theodore J. Boutrous Jr., Richard J. Doren and Deborah L. Stein of Gibson Dunn & Crutcher LLP, and Stephen E. Goldman and Wytan M. Ackerman of Robinson & Cole LLP.

The case is 10e LLC v. Travelers Indemnity Co. of Connecticut et al., case number 2:20-cv-04418, in the U.S. District Court for the Central District of California.

--Editing by Breda Lund.

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