



Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Cinemark Seeks \$400M From Insurer For COVID-19 Losses

By **Katie Buehler**

Law360 (December 23, 2020, 5:48 PM EST) -- Movie theater chain Cinemark Holdings Inc. is seeking more than \$400 million from Factory Mutual Insurance Co. for unpaid COVID-19 business interruption claims, alleging it instructed adjusters to "suggestively steer" policyholders toward filing claims under coverages with the lowest limits, according to Texas federal court filings.

In a case removed to federal court Tuesday by the insurer, Cinemark Holdings and six related entities accuse FM of failing to properly investigate and make a ruling on business closure claims the movie theater chain submitted in April. Cinemark is seeking at least \$400 million from its "all risks" coverage that has a limit of \$500 million, according to court documents.

FM allegedly provided its adjusters with a "talking points" handout that acknowledges policyholders will be affected in a variety of ways by COVID-19, but that encourages adjusters to "reach conclusions without considering the specific facts of a particular claim."

"Instead, the FM talking points coach the adjuster to suggestively steer the policyholder toward the on-site sublimited communicable disease coverages, which provide only a fraction of the coverage limits otherwise available under the policy," Cinemark said.

According to court filings, Cinemark paid FM roughly \$3.7 million for its all risk policy with an effective term of April 30, 2019, to April 30, 2020. Cinemark claims the policy includes coverage for communicable diseases, which are defined as diseases transmitted from human to human through direct or indirect contact.

During the coronavirus pandemic, Cinemark was forced to close the vast majority of its 332 theaters in 42 states, according to the complaint. It also paid employees for 5,562 sick days between March 18 and Nov. 3, the chain said. Even now, with some states loosening restrictions, Cinemark said it hasn't fully recovered from the coronavirus' effects.

"Even with reopening and loosening of restrictions in certain jurisdictions, Cinemark's operations have not yet returned to pre-loss levels," Cinemark said.

Cinemark submitted its COVID-19 claims to FM on April 20 via email and by phone seven days later, the chain said. But since May 18, when FM responded asserting its right to limit or deny coverage, Cinemark said all communication has ceased with its insurer, according to the complaint.

"Instead, FM choreographed a calculated claims handling strategy designed to limit or altogether deny Cinemark the recovery it is entitled to under an insurance contract it relies on as protection against unforeseen loss or damage and resulting loss of income," Cinemark said.

That claims handling strategy is evidenced in the "talking points" handout, which states, in contradiction to Cinemark's policy, that the presence of a communicable disease doesn't constitute physical damages, according to the complaint. Instead, Cinemark claims an FM adjuster focused on whether any employees or people present at Cinemark locations had tested positive for the novel virus.

Cinemark is seeking a declaratory judgment from the court stating it has properly triggered its \$500 million policy and is entitled to the amount of damages it seeks. The movie theater chain is also seeking punitive and exemplary damages related to breach of contract, breach of the covenant of good faith and fair dealing, and violations of the Texas Insurance Code, according to court documents.

Thomas H. Cook Jr. of Zelle LLP, representing FM, declined to comment Wednesday, and counsel for Cinemark didn't immediately respond to requests for comment.

Cinemark is represented by Jarrett L. Hale, Abigail M. Lyle, Michael Horne, Michael S. Levine, Rachel E. Hudgins and Michael L. Huggins of Hunton Andrews Kurth LLP.

FM is represented by Thomas Hal Cook Jr. and Michael P. O'Brien of Zelle LLP.

The case is Cinemark Holdings Inc. et al. v. Factory Mutual Insurance Co., case number 2:20-cv-00392, in the U.S. District Court for the Eastern District of Texas.

--Editing by Philip Shea.

All Content © 2003-2020, Portfolio Media, Inc.