Local businesses join virus insurance fight

By Todd Nelson

A Twin Cities restaurant and bar chain and a Minneapolis dental practice are among small businesses filing federal class-action lawsuits over denials of business-interruption claims as a high-stakes standoff ignites between business owners and insurance carriers across the country.

The local businesses — closed under various state orders stemming from the COVID-19 pandemic — are Willy McCoys, a tavern chain with seven suburban locations and up to 500 employees, and Dr. Christie Berkseh-Rojas’ solo practice at Rojas Family Dental. Korey Bannerman, a McCoys owner, said takeout service is available at some spots.

The McCoys chain alleges that Society Insurance of Fond du Lac, Wisconsin, has refused to pay for losses suffered because of the pandemic and shutdown orders in a complaint filed in U.S. District Court for the Eastern District of Wisconsin. Berkseth-Rojas makes a similar allegation against Aspen American Insurance Co. in a complaint filed in U.S. District Court for the Northern District of Texas.

McCoys and Berkseh-Rojas assert that their business-interruption policies do not include “any exclusion for losses caused by viruses and communicable diseases.”

“We filed a claim right away and that got denied relatively quickly,” Bannerman said of McCoys, which operates in Albertville, Andover, Bloomington, Champlin, Chaska, Ramsey and Shakopee. “They said it’s not covered.”

McCoys’ insurance carrier, Society Insurance, doesn’t comment on pending litigation, a spokeswoman said in an email reply.

Attorney Ryan Palmer, partner in the Minneapolis firm Yost & Baill, said many insurance companies are taking the position that business interruption isn’t covered unless the insured’s property has suffered “actual physical damage.”

“That’s a big question,” Baill said. “There’s an obvious argument that it’s not damaged but there are also some arguments that how do we know it’s not damaged.”

“Some of these cases may involve policies that don’t have that [virus] exclusion,” Baill said. “But if there is an exclusion the insurance company is going to claim they’ve excluded any damages caused by viruses. That’s going to be a tough one for the plaintiffs to get around. But all these policies are a little bit different.”

Matty O’Reilly, a leading Twin Cities restaurateur and co-founder of hospitality consultancy Banner Year Advisors, said most restaurant managers and chefs struggle with business issues outside of their direct skill sets. O’Reilly’s Republic and Foxtrot Burger Spot restaurants are closed for now while Sandy’s Tavern in Richfield is offering takeout service and Bar Brigade may “reboot” soon.

“It’ll be interesting to see how this plays out,” O’Reilly said in an e-mail exchange. “But predictably [it will be] costly and ugly during a time that we need compassion, help and understanding. … In any case, fighting insurance companies over the fine print doesn’t sound like tons of fun.”