

September 6, 2022 · 5:14 AM EDT

Last Updated 6 days ago

 Insurance COVID-19 Health 

Baylor Medicine gets rare win in Covid coverage case against Lloyd's




By Barbara Grzincic

3 minute read



Signage is seen inside the Lloyd's of London building in the City of London financial district in London, Britain, April 16, 2019. Picture taken April 16, 2019. REUTERS/Hannah McKay

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Lloyd's syndicates on hook for \$12 mln, Baylor's lawyer says

(Reuters) - Baylor College of Medicine has broken the insurance industry's string of wins in Covid-related business income-interruption cases with a \$12 million jury verdict against several Lloyd's of London syndicates in state court in Houston, Texas.

Thousands of such cases have been filed against all-risk commercial property insurers across the country, but only a handful have gone to trial. Baylor's case is believed to be the first to result in a plaintiff's verdict.

The overwhelming majority of federal and state courts to consider the question have found that the virus does not cause any "direct physical loss or damage to" property, resulting in pretrial wins for the insurers, according to the University of Pennsylvania's Covid Coverage Litigation Tracker.

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In Baylor's case, however, "we had a courageous state court judge who decided that the question of whether the virus causes direct physical loss or damage to property is a fact issue for the jury," lead lawyer Murray Fogler of Fogler, Brar, O'Neil & Gray said in an email Friday.

The jury in Harris County District Court deliberated for less than a day before returning its verdict for the medical school on Wednesday.

District Judge Donna Roth has not yet entered the verdict as a judgment. When she does, Fogler said, Lloyd's will "certainly" appeal.

Lloyd's lead attorney, G. Brian Odom of Zelle, did not respond to a request for comment on Friday.

Baylor filed suit in September 2020 against the Lloyd's underwriters and two other insurers, ACE American Insurance Co. and XL Insurance America. In total, the insurers' policies provided \$100 million in coverage.

In an **amended complaint** in January 2021, Baylor alleged that state and county orders designed to slow the pandemic's spread had forced it to "dramatically reduce" operations at its clinics, implement telehealth services, and significantly curtail its laboratory research and teaching programs, at a cost of \$70 million and counting. And since the clinics remained open, Baylor said, the virus was continuously present on the property.

Roth entered judgment for ACE and XL last year because the pollution exclusions in their policies also mentioned viruses. (Baylor is appealing those rulings.)

The judge sent the case against the Lloyd's syndicates to trial because none of their policy exclusions mentioned viruses.

On Wednesday, the jury put Baylor's losses at \$48.5 million. Since the Lloyd's syndicates provided one-fourth of the insurance coverage, they will be responsible for one-fourth of the damages, Fogler said.

The case is Baylor College of Medicine v. XL Insurance America et al., District Court of Harris County, Texas, No. 2020-53316.

For Baylor College of Medicine: Murray Fogler of Fogler, Brar, O'Neil & Gray

For the Lloyd's syndicates: G. Brian Odom of Zelle

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