



Grant & Eisenhofer

Grant & Eisenhofer Files Class Action Lawsuit against Illinois-based Markel Insurance Co. over Failure to Cover Business Losses Suffered by Anytime Fitness Franchisees from COVID-19

Franchisees in Mississippi and Alabama bring action on behalf of 4,500 Anytime Fitness outlets nationwide; Markel refuses to honor explicit terms of insurance contract as policyholders struggle through COVID crisis

CHICAGO/BIRMINGHAM, AL (June 24, 2020) – Leading plaintiffs’ law firm **Grant & Eisenhofer** has filed suit today against Deerfield, Ill.-based Markel Insurance Co. for failing to accept claims from franchisees of national fitness chain **Anytime Fitness** that were shuttered and lost business due to state-imposed COVID-19 restrictions.

The four Anytime Fitness outlets named in the complaint are operated by Fountain Enterprises, of West Point, Miss., and located in Mississippi and Alabama. They represent a tiny fraction of the 4,500 Anytime Fitness gyms nationwide, all of which are insured by Markel. The lawsuit, alleging breach of contract and violations of the duty of good faith and fair dealing, seeks to represent all Anytime Fitness locations who duly paid premiums to Markel and were denied compensation for losses suffered due to shutdowns ordered by state authorities to fight coronavirus.

The suit was filed in U.S. District Court for the Northern District of Illinois. The Anytime Fitness policyholders seek a declaratory judgment from the Court that their losses should be covered by the Markel Insurance contract, as well as compensatory, punitive, and other damages.

Diandra Debrosse Zimmermann, a Grant & Eisenhofer director who heads the firm’s office in Birmingham, AL, said, “Markel issued commercial policies and collected regular premiums from Anytime Fitness and thousands of other similar businesses for years. These policies specifically provide for coverage in the event of a crisis, for business interruption and for acts of a civil authority that impedes business operations. Now, while our clients are fighting to stay afloat in a crippling pandemic with state-imposed restrictions on operations, Markel refuses to honor the terms of the policies it issued. Anytime Fitness franchisees have been forced to bring suit to assert their rights as commercial policyholders.”

Grant & Eisenhofer is joined by co-counsel Rogers Law Group, of New Albany, Miss., and The Collier Firm, of Oxford, Miss.

In keeping with much of the country, Alabama and Mississippi gradually shut down non-essential businesses, including fitness centers, and prohibited large gatherings of people, starting in the second half of March and beginning of April. The Anytime Fitness location in Fulton, Miss., was the first Fountain outlet to suspend operations, on March 23; its other Mississippi location, in West Point, shut down on April 3. The Alabama locations, in Brewton and Monroeville, closed on March 27. The day before, according to the complaint, the United States had registered the largest number of COVID-19 cases in the world.

The gyms’ closures triggered a pause in billing for prepaid memberships, adding the lost time to the end of those memberships. The closures also forced a halt to signing up new members and an end to in-house sales of fitness-related items that were part of the operations. Cumulatively, these represented a significant loss to franchisees’ revenues.

Since mid-May, Mississippi and Alabama have allowed fitness centers to reopen, but under vastly restricted circumstances. Mississippi Anytime Fitness locations are no longer 24-hour, and must close by 10 p.m. They are restricted to no more than 30% of maximum capacity, and disinfecting and deep cleaning by staff is constant.

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Workout equipment has been moved around to effectuate a six-foot distance between users. Employees are screened for coronavirus. In Alabama, capacity is limited to no more than 50% of the maximum, and showers, locker rooms, and spa facilities remain closed. Fitness classes that were popular at all four Fountain franchisees are canceled for the foreseeable future.

According to the complaint, Fountain Enterprises and Markel agreed to an all-risk coverage policy, meaning that all risks are covered unless specifically excluded or limited by the policy. It protects Fountain against loss of business income due to a suspension of operations, and also covers expenses incurred in maintaining the business while it is closed, or in restarting it.

The complaint notes that the “civil authority” portion of the policy protects the insured in the event that there is no lawful way to reach the premises, i.e., when civil authorities prevent access to the business – which is the exact circumstance of the COVID pandemic. In short, Markel promised, “We will pay for the actual loss of Business income you sustain due to the necessary suspension of your operations during the period of restoration.”

Markel not only renegeed on its contract to compensate Fountain Enterprises for business losses, allege the Anytime Fitness franchisees, but it did so with implausible swiftness. According to the complaint, Fountain made the insurer aware of its losses on April 18; Markel notified Fountain of its intention to deny payment less than one week later on April 23 – “showing Markel engaged in no meaningful investigation of the claims or review of the Policy,” says the complaint.

The suit goes on to state, “The actions of Markel in improperly denying Fountain’s claim were a blatant disregard for the contractual rights of Fountain resulting in a material breach of Markel’s duties and obligation owed under the Policy and deprived Fountain of the benefit of its bargain, causing serious financial damages to Fountain.”

Grant & Eisenhofer attorney [Adam Gomez](#) added, “Insurance exists to protect people and their property, including businesses. For this safety net and peace of mind, a fair premium is paid. No one expects or wants to turn to insurance payouts, but when extreme circumstances demand it we must be able to count on the agreements we’ve signed. For Markel to turn from its contractual obligations in the face of the terrible toll this virus has exacted is inexcusable. We intend to hold them to account, and to their word, to Anytime Fitness.”

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