

MICHIGAN

'Step towards accountability': Oxford district sues insurer to remove \$5M cap on claims



Jennifer Chambers

The Detroit News

Published 10:54 p.m. ET Jan. 16, 2024 | Updated 6:12 p.m. ET Jan. 17, 2024

The Oxford school district has sued its insurance company, seeking a court order to allow it to offer \$5 million per bodily injury claim among the nine pending lawsuits stemming from the 2021 deadly attack at its high school.

The lawsuit by Oxford Community Schools was filed Wednesday in Oakland County Circuit Court against MASB-SEG Property/Casualty Pool, a nonprofit risk-sharing pool providing coverage to Michigan's public schools.

It seeks a declaratory judgment that the Michigan school is not limited to a single \$5 million cap in settling multiple lawsuit claims filed by families whose children were killed or injured in the attack. The shooter fired his weapon 33 times in the attack that killed four students — Hana St. Juliana, 14; Madisyn Baldwin, 17; Tate Myre, 16; and Justin Shilling, 17 — and injured seven others, including a teacher.

The district alleges the insurer's interpretation of the policy has hampered its ability to move forward with settlement negotiations in the cases by setting an overall \$5 million cap instead of applying the cap to each shooting at Oxford High School that caused an injury.

At issue, the district alleges, is the definition of "occurrences" in the policy for each individual who was injured or for each wrongful act or omission by Oxford or its employees that contributed to or failed to stop the shooting.

Specifically, the suit is asking for a judgment that states that each individual shot fired by convicted shooter Ethan Crumbley that caused an injury to a victim was its own "occurrence" under the policy and that each alleged wrongful act or omission by Oxford or school

employee that contributed to or failed to prevent the shooting is its own "occurrence" under the policy.

The district says the insurance company has taken the position that the 11 lawsuits allege the bodily injury was caused by only one "occurrence" in an effort to cap its liability at a total amount of \$5 million.

"Oxford is not limited to \$5 million in seeking to reasonably settle the underlying suits or in the event of an adverse trial judgment, and is, at minimum, provided with \$5 million of limits per each occurrence," the suit says.

On Tuesday, Oxford's board of education authorized filing the lawsuit against SET SEG, the district's insurance company, said board President Erin Reis, who spoke after the board voted unanimously to take the step.

Reis added: "We hope resolving this matter will also enable the district to resolve the lawsuits in the near future, allowing the community to continue the process of healing and taking our next steps."

Superintendent Vickie Markavitch provided The News with the lawsuit on Wednesday but did not comment further.

District attorney David Z. Adler and officials with SET SEG were not immediately available Wednesday for comment.

The Michigan school district has not resolved numerous civil lawsuits filed by victims of the attack and by families of the four students killed in the shooting.

Wolfgang Mueller, an attorney who represents Nicole Beausoleil, whose daughter, Madisyn, was killed in the attack, said Wednesday the school district is finally acknowledging what the injured victims have said all along.

"Each time a child was shot is a separate 'occurrence' under the insurance policy. There is \$55 million of insurance coverage available," Mueller said. "The insurer says that there was only one 'occurrence,' which is clearly not the case. The insurance company is the impediment to a reasonable resolution of these claims. The insurance company is simply trying to protect its assets."

Meghan Gregory, whose son, Keegan, survived the attack and witnessed the killer shooting Justin in the boy's bathroom, said Wednesday she did not know the specific details of the

lawsuit but said the decision to file signals to her that the district is finally listening to victims of the attack.

"The way the insurance policy is interpreted is crucial," said Gregory, who is suing the district on behalf of her son. "I think this is a step in the right direction and hopefully can start the process of change. It feels like the first step towards accountability."

A federal judge ruled in May that civil claims against an Oxford High School counselor and the dean of students stemming from the attack can proceed against them for their alleged actions before the shooting while dismissing claims against six other school officials.

Shawn Hopkins, a counselor at the school, and Nicholas Ejak, the high school's dean of students, will continue to face "state-created danger claims" made by multiple Oxford families and survivors of the attack, including that Hopkins and Ejak pushed Ethan closer to violent action by threatening in his presence to report his parents to Michigan's Child Protective Services in the immediate future, U.S. District Court Judge Mark Goldsmith wrote in a 27-page ruling.

Ejak and Hopkins, who were put on leave and later reinstated, met with the teen a few hours before he opened fire inside the school.

Ten lawsuits allege the district failed to protect students and downplayed the threat the killer posed to the school. Oxford students and their families contend in their lawsuits that the district took actions that created or increased the danger that the shooter presented to students and teachers.

While other claims against Oxford Community Schools also remain, those against Pam Fine, the school district's restorative practices coordinator; teachers Jackie Kubina, Allison Karpinski and Becky Morgan; former Superintendent Tim Throne; and former Oxford High School Principal Steven Wolf were dropped.

In March, Oakland County Circuit Judge Mary Ellen Brennan dismissed all Oxford governmental employees and entities from civil lawsuits relating to the school shooting.

Brennan concluded the then-15-year-old shooter was the most immediate and direct cause of the mass shooting and dismissed the Oakland County school district and its employees from civil lawsuits.

The ruling was an initial victory for the school district, which had argued it had immunity under state law. Brennan's decision was a blow to the families of students who were killed in

the attack and to the families of four students who survived the attack, their lawyers said.

Doug Young, a Michigan attorney who represents the insured across the state and nation, said it is not uncommon for disputes to arise between insurers and the insured when there is a large liability claim.

"In this case, it sounds like the policy is ambiguous. Our case law says it would be determined in favor of the district," Young said. "There is going to be a fight as to whether each pull of the trigger is an occurrence."

The lawsuit has important ramifications for insurance coverage law in Michigan, Young said.

"It will likely go to the Michigan Supreme Court. We don't have a lot of on-point precedent to decide this case," Young said. "Given the magnitude of the damages, this will no doubt make its way there."

jchambers@detroitnews.com