

Intentional Acts, Intellectual Property Exclusion Insurance Coverage Update

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Intentional Acts – Delaware

USAA Cas. Ins. Co. v. Carr

--- A.3d ---, 2020 WL 467935 (Del. Jan. 29, 2020)

The Delaware Supreme Court held USAA Casualty Insurance Company (USAA) does not have to cover litigation costs for a young woman, Trinity Carr (Carr), who sought a defense in two civil suits brought against her for the fatal beating of her classmate. The underlying cause of action arose from a 2016 incident in which Carr and another classmate beat classmate Amy Joyner-Francis (Joyner-Francis) in a bathroom in their high school. Joyner-Francis subsequently died, with her death being attributed in part to the beating, and in part to an underlying heart problem that was unknown prior to her death.

The insurance coverage action made its way to the Delaware Supreme Court, which overturned a trial court judgment, allowing coverage based on the argument that the incident was accidental from the perspective of Joyner-Francis and, thus, covered. The Supreme Court held that whether a death is accidental, and, therefore, a covered incident under a policy, should be viewed from the perspective of the insured. Applying this rule to Carr's case, the Supreme Court determined that Carr intended to inflict some degree of harm on Joyner-Francis. Therefore, the attack qualified as an intentional assault and was not covered under the USAA policy. To hold otherwise would "subvert the 'well-established common law principle that an insured should not be allowed to profit, by way of indemnity, from the consequences of his own wrongdoing...'"

Intellectual Property Exclusion – Second Circuit (New York Law)

Lepore v. Hartford Fire Ins. Co.

--- Fed. Appx. ---, 2020 WL 598539 (2nd Cir. Feb. 7, 2020)

The U.S. Court of Appeals for the Second Circuit held that an insurer had no duty to defend or indemnify the insured fashion designer for a lawsuit alleging breach of an asset purchase agreement. In the underlying case, the plaintiffs alleged that the designer, Nanette Lepore, sold the core assets of her

business to the plaintiffs in 2014. As part of the asset sale agreement, Lepore agreed to sell all of her trademarks, copyrights, internet domain names, license agreements, social media accounts, apparel designs, branding, and other intellectual property and related goodwill, consisting of among other things, her primary trademark NANETTE LEPORE. Lepore also agreed to forego use of the purchased intellectual property except in limited circumstances. The underlying case generally alleged that Lepore systematically violated the terms of the agreement by impermissibly using the purchased intellectual property.

Lepore's insurer, Hartford Fire Insurance Company (Hartford), denied coverage for the underlying case on the basis that, for among other reasons, coverage was precluded by the policy's Intellectual Property Exclusion. Lepore subsequently filed suit, arguing that the Intellectual Property Exclusion did not apply because the suit did not specifically seek damages for intellectual property violations. The district court agreed with Hartford, finding that while the underlying case did not specifically seek relief for the intellectual property violations, the Intellectual Property Exclusion broadly excluded coverage for any suit mentioning intellectual property infringement, which the underlying case clearly did. The appellate court affirmed, finding that because the underlying case contained allegations of unfair competition, the Intellectual Property exclusion, which precluded coverage for suits "arising out of any actual or alleged infringement or violation of any intellectual property right," applied, and Hartford had no duty to defend or indemnify for the purposes of the underlying case.

INTENTIONAL ACTS, INTELLECTUAL PROPERTY EXCLUSION INSURANCE COVERAGE UPDATE Cont.

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