Insurance Law-Coverage

by Ken White

A substantial number of M&M attorneys represent commercial clients, both from a pure business standpoint and also as litigators. Probably a majority of our commercial clients have some form of liability insurance, most likely a commercial general liability (CGL) policy, also sometimes known as a business owner's policy. When two Ohio insurance principles are combined, these types of liability policies have the potential for providing far more coverage than what first may appear.

Principle One: As a general rule, CGL policies encompass two primary duties owed by the insurer-- the duty to defend and the duty to indemnify. In many cases, the duty to defend may be the most important coverage, especially when complex litigation is involved where the cost of defense may rival or ultimately exceed the cost of indemnity. The insurer's duty to defend is much broader than the duty to indemnify. In Ohio, the duty to defend is triggered when the allegations of a complaint state a claim which is potentially or arguably within policy coverage or even if there is some doubt as to whether a theory of recovery within policy coverage has been alleged. *City of Willoughby Hills v. Cincinnati Insurance Company*, 9 Ohio St. 3d 177 (1984). This concept alone can extend defense coverage far beyond what an initial reading of a policy might suggest.

Principle Two: In Ohio, once an insurer has a duty to defend one claim alleged in a complaint, the insurer must defend the insured on all of the other claims within the complaint, even if they bear no relation to the insurance policy coverage. *City of Sharonville v. American Employers Ins. Co.*, 109 Ohio St. 3d 186 (2006).

The marriage of these two principles greatly increases the prospect of an insured obtaining at lease defense coverage. As an example, an insured is sued for patent infringement related to some product. Usually, there is no coverage for patent infringement under a CGL policy, and in fact, there may be a specific exclusion of coverage. But joined with the patent infringement claim, is a second allegation in the compliant that the insured has infringed, during the insured's advertising efforts, the plaintiff's copyright related to the product. This copyright infringement claim is likely covered under the standard CGL policy, and thus the insurer is now required to defend the entire lawsuit, including the patent infringement claim. Another example would be where an insured employer is sued for wrongful termination of a written or oral employment agreement, and contained within the same complaint is language that the insured also allegedly libeled or slandered the former employee in communications with subsequent employers. The standard CGL policy probably will not cover the breach of contract claim, but it likely provides coverage for libel or slander. Hence, the insured would be entitled to defense coverage for the entire lawsuit. As can be imagined, the combination of covered and non-covered claims is somewhat limitless, and so too is the possibility for defense coverage.

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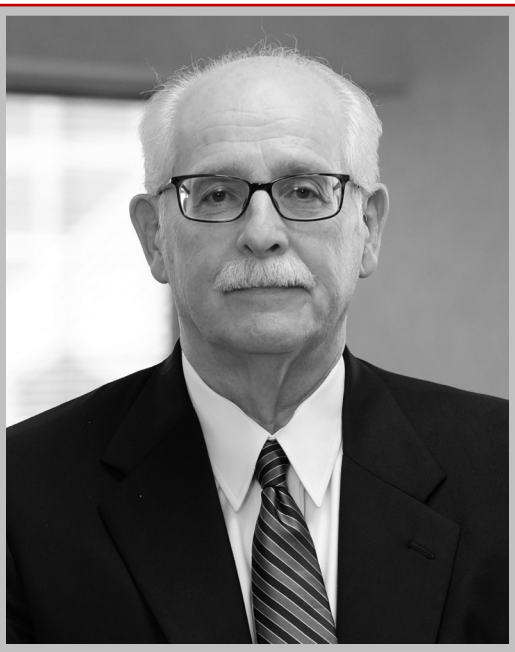
The point is that when almost any type of claim is made or suit is filed against an insured, an exploration of insurance coverage is in order. Coverage is not always available, but broadly worded complaints can trigger coverage in a most unlikely fashion, and in addition, can require the insurer to defend allegations in the complaint for which there is absolutely no relationship to indemnity coverage. Insureds are encouraged to review all of their liability policies, including CGL, Director & Officer (we have seen limited defense coverage provided under D & O polices for what otherwise amounts to breach of contract claims), and umbrella/excess (which can in some instances "drop down" to provide coverage even if coverage is otherwise not afforded under the primary policy).



Ken White is head of the firms Insurance Recovery Practice. With over 40 years of experience in representing clients in various insurance related matters, Ken has a vast array of knowledge to assist clients in exploring insurance coverage opportunities.

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In addition, just because an insurance company says there is "no coverage" does not mean that the insurer is correct. Insurance law is not always what the insurance company says it is and an insurer's determination of "no coverage" deserves a second look. On more than one occasion, and without litigation, we have successfully persuaded an insurance company to provide coverage after its initial declination to do so. We offer a very valuable service to clients when we help them secure insurance coverage where none was thought to exist.

Further Reading :

Insurance Law-Lawsuits and Reservation of Rights Letters/ Website Article

Insurance Law-Claims Submission/Excess Policies/Website Article