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BLOG

Insurer Seeks to Enforce Field of Entertainment Exclusion Against Insured in Entertainment Business

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Relying principally on a "field of entertainment" exclusion in its commercial general liability (CGL) policies, Princeton Excess and Surplus Lines Insurance Company (Princeton) recently petitioned a Florida federal district court for a declaration that it has no obligation to cover its insureds against a lawsuit filed by professional models who allege the insured night club entities and owners used the models' images in advertisements without authorization.

The models' suit includes claims typically covered by CGL policies under the "personal and advertising injury" liability coverage part, including invasion of privacy and defamation claims. Princeton, however, disclaims any obligation to defend or indemnify based on a broad exclusion that appears to exclude coverage for any such claims if the insured is in the field of entertainment; the provision purports to also exclude the infringement or unauthorized use of another's copyright, trade dress, and slogan.

The insureds here will likely look to co-opt successful arguments made in a number of California cases where policyholders argued that broadly interpreting the field of entertainment exclusion to bar coverage for any otherwise covered claim connected to their entertainment business would render the policy illusory. These policyholders argued that while the field of entertainment exclusion might bar coverage for injuries that arise from the "substantive content" of their entertainment activities, it should not extend to ancillary activities such as – in Vivid Video's case – its "application of its own identifying mark on its line of products, even if those products are entertainment in nature." *See Vivid Video, Inc. v. North Am. Specialty Ins. Co*., 1999 U.S. Dist. Lexis 15322 (C.D. Cal 1999). Similarly, a rock band convinced a California appellate court that the field of entertainment exclusion only "excludes personal and advertising injury that results from Tool's music, but not personal and advertising injury that results from what is displayed on merchandise." *Tool Touring Inc. v. The American Ins. Co.*, 2012 WL 1595124 (Cal. App. 2012)

TIP: If your company is in the entertainment business (whether in whole or in part), make sure your insurance policies do not contain this field of entertainment exclusion. If your insurer has denied coverage for an otherwise covered claim pursuant to such an exclusion, carefully consider whether the third-party injuries alleged stem from the "substantive content" of your entertainment business or whether they stem from ancillary conduct.

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