

Client Alert

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Maryland High Court Gives Narrow Interpretation of “Business Pursuits” Exclusion in Adjudicating Coverage for Defamation and Invasion of Privacy Claims

On June 24, 2014, the Court of Appeals of Maryland in *Springer v. Erie Insurance Exchange*, No. 10-C-12-001638 (Md. App. June 24, 2014), held that claims for defamation and invasion of privacy by false light are not excluded from the personal injury coverage of a homeowner’s liability insurance policy under the policy’s exclusion for injuries arising out of “business pursuits.” The court held that the “business pursuits” exclusion applies only where there is a continuity of the insured’s alleged business interests and a profit motive.

Background

J.G. Wentworth (“Wentworth”) is a business specializing in purchasing structured settlements and annuities. Wentworth brought suit in 2011 against David Springer and the Sovereign Funding Group, a business managed by Springer, in the circuit court for Frederick County, Maryland, alleging that Springer had used two websites, jgw-sucks.com and jgwentworth-scam.com, to spread defamatory and false light information in an attempt to lure customers away from Wentworth. The lawsuit alleged that Springer sought, through the websites, “to mislead and misrepresent facts to the public, unfairly and deceptively compete, defame, disparage, and tortuously interfere with the business interests of J.G. Wentworth.”

Springer contacted his insurer, Erie Insurance Exchange (“Erie”), seeking a defense in the Wentworth action under the terms of his “Ultracover HomeProtector” insurance policy. Erie refused to provide a defense, stating that coverage was barred by, *inter alia*, the policy’s “business pursuits” exclusion. Thereafter, Springer retained his own lawyer to defend the Wentworth action, and initiated a separate declaratory judgment action against Erie, seeking a declaration that Erie was obligated to defend him and that Erie had breached its duty by failing to do so. The trial court agreed with Erie, concluding that because Springer’s conduct allegedly originated from Springer’s motive to gain an unfair business advantage, his actions were “for the purpose of a livelihood or profit” and therefore within the scope of the “business pursuits” exclusion. Springer appealed to the intermediate appellate court, and the Court of Appeals of Maryland granted certiorari on its own initiative.

Holdings

The Court of Appeals of Maryland reversed, holding that the “business pursuits” exclusion does not apply. Noting that the policy does not define “business pursuits,” the court followed the analysis adopted in other jurisdictions, requiring a showing by the insurer of both continuity of business and a profit motive in order to trigger the exclusion. According to the court, the continuity of business component requires a finding that an individual has engaged in continuous or regular activity for the purpose of earning a livelihood. Additionally, the profit motive component requires a showing that the activity is undertaken for a monetary gain. In adopting this analysis, the court emphasized that the implicit purpose of the exclusion is to remove from a homeowner’s policy a type of coverage that would normally fall within a commercial liability policy. The court ultimately found that there was no evidence of continuity of business where the complaint had alleged that Sovereign Funding Group was no longer a viable business entity. Moreover,

the complaint alleged no facts regarding Springer's profit motive. The court held, therefore, that the alleged facts failed to support application of the "business pursuits" exclusion, and remanded to the trial court for further proceedings.

Implications

Springer echoes the general rule that the duty to defend must be construed liberally in favor of the policyholder, particularly where critical policy terms are left undefined. The decision also reiterates the widely held view that coverage should be interpreted broadly, whereas exclusions to coverage must be construed narrowly. Furthermore, *Springer* illustrates how the particular facts of each claim are critical to a proper application of any policy exclusion, with an exclusion's narrow potential application turning directly on whether the facts of each case satisfy all of the exclusion's requisite elements.

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