

Seventh Circuit Holds That the Public Display of Satellite Television Without Paying Commercial Subscription Rate Did Not Fall Within the Employment-Related Practices Liability Endorsement

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***Martinsville Corral, Inc. v. Soc'y Ins.*, No. 18-1945, 2018 WL 6566671 (7th Cir. Dec. 13, 2018)**

In *Martinsville Corral, Inc. v. Soc'y Ins.*, the United States Court of Appeals for the Seventh Circuit held that the Employment-Related Practices Liability Endorsement ("Endorsement") of a business owners insurance policy issued by Society Insurance a Mutual Company ("Society") to Martinsville Corral, Inc. ("MCI") did not provide coverage for an underlying action asserted by DirecTV, LLC ("DirecTV") against MCI.

On January 26, 2015, DirecTV filed two lawsuits against MCI pursuant to the Cable Communications Policy Act of 1984, 47 U.S.C. § 521, et seq. ("CCPA"). The complaints alleged that MCI displayed DirecTV's satellite television programming in its restaurants, but paid only for a residential subscription and not the higher commercial subscription rate. DirecTV claimed it was damaged by MCI's actions because, among other things, its goodwill and reputation had been usurped as a result of MCI's violations of the CCPA, while MCI gained unjust profits and goodwill by displaying DirecTV's programming without paying the commercial rate.

Society had issued an insurance policy to MCI that provided general business liability coverage. MCI also purchased additional coverage under the Endorsement. The Endorsement required Society to cover MCI for "damages resulting from a 'wrongful act' to which [the Policy] applies." The Endorsement defines "wrongful act" to include, in relevant part, "[l]ibel, slander, invasion of privacy, defamation or humiliation."

Taking the position that DirecTV's claims for impairment of its goodwill and reputation constituted the "wrongful acts" of libel, slander or defamation under the Endorsement, MCI requested Society to defend the suit and provide indemnification. Society denied coverage.

The United States District Court for the Southern District of Indiana granted summary judgment for Society holding that there was no coverage under the Society policy, including the Endorsement. The Seventh Circuit affirmed. In its decision, the Seventh Circuit observed that to maintain an action for defamation under Indiana law, a plaintiff must demonstrate (1) a communication with defamatory imputation; (2) malice; (3) publication; and (4) damages; and any statement actionable for defamation must not only be defamatory in nature, but false. The Seventh Circuit determined the DirecTV complaint did not allege libel, slander or defamation because there were no allegations that MCI made any kind of statement at all about DirecTV, let alone a false, defamatory statement. Instead, the court of appeals determined that DirecTV's complaint simply alleged that MCI damaged DirecTV's goodwill by showing its programming without paying the correct subscription fee.

Society was represented by Attorneys Heidi L. Vogt, Jason R. Fathallah, and David A. Frank II of von Briesen & Roper, s.c., and Nelson A. Nettles of LeBlanc Nettles Law, LLC.

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