

PERSONAL AND ADVERTISING INJURY COVERAGE FOR PROFESSIONAL ATHLETES, SPORTS LEAGUES AND ASSOCIATIONS

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Liability Insurance Terms of Art

- Personal injury is an intangible injury to the reputation or psyche of a third party;
- Bodily injury is a tangible injury to a third party;
- Property damage is tangible damage to property of a third party;
- Liability policies provide coverage for loss sustained by a third party.

Advertising Injury

- Intangible harm to a third party arising from the insured's advertising activities;
 - Expensive to defend;
 - Claimant may be a competitor seeking to put the defendant out of business;
 - Cases are difficult to resolve; and
 - Ambiguities in insurance policy may create coverage disputes with insurer.

Sports Leagues/Associations Exposures

- Prolific Advertisers - mascots, logos, merchandise;
- Negotiate broadcast rights;
- Produce films, publications;
- Content disseminated via websites and social media;
- Public has 24/7 interest in sports;
- Deep Pockets;
- Leagues and Associations manage the likeness of players and license those rights to third parties, thus increasing exposure.

Personal and Advertising Injury Exposures

- Copyright Infringement
- Trademark Infringement
- Right of Publicity
- Defamation
- Unfair Competition

Copyright Infringement – KC Chiefs

Young v. Kansas City Chiefs Football Club



CHIEFS-group-2008_32
Copyright # VAu 987-474



O-Line
HyVee Entrance

Trademark Infringement – Jacksonville Jaguars



Shifting Exposure for Personal and Advertising Injury to Insurance

- The Commercial General Liability Policy;
- The Media Liability or other Specialty Policy
 - Advertiser Liability Coverage for Leagues and Clubs;
 - Multimedia Liability Coverage for Associations;
 - Author Liability Coverage for Sports Figures turned Author;
 - Personal Appearance Coverage for Sports Figures;

The CGL Policy

- The “go to” policy for most business litigation;
- Covers “personal injury” and “advertising injury” under Coverage B;
- An appropriate policy for a typical business that does not have significant exposure to intellectual property risks;
- Sports industries have heightened intellectual property exposures and ARE NOT typical businesses.

Coverage B Named Perils

- False arrest, detention or imprisonment;
- Malicious prosecution;
- Wrongful eviction;
- Oral or written publication that slanders or libels a person or organization or disparages a person's or organization's good, products or services;

Named Perils Continued

- The use of another's advertising idea in your "advertising;"
- Infringing upon another's copyright, trade dress or slogan in your "advertising;"
- Oral or written publication, in any manner, of material that violates a person's right of privacy;
 - Misappropriation of name/likeness;
 - Intrusion upon seclusion;
 - False light invasion of privacy;
 - Public disclosure of private facts;

CGL Shortcomings

- Trademark is not specifically covered. It may be specifically excluded by endorsement or the policy may be silent;
- Punitive damages are limited by state law prohibitions regarding insurability of punitive damages;
- Does the definition of claim involve injunctive actions?
- The insurer has the right to select counsel;
- Coverage territory is not worldwide.

Key Coverage Exclusions

- Copyright arising from activities other than advertising is excluded;
- patent and theft of trade secrets;
- Breach of contract;
- Excludes PI and AI for Insureds in the business of publishing, broadcasting, advertising or an internet business;
- Excludes claims arising from electronic bulletinboards and chatrooms:
- Employment liability;

Specialty Liability Policies

- Broad Coverage Agreements, including trademark and copyright infringement, right of publicity;
 - Trademark infringement may be excluded under Advertiser Liability form requiring coverage “buy-back.”
- Coverage may be available on an open peril basis;
- Coverage for injunctions;
- Best language for punitive damages is that the carrier will not challenge the insured’s counsel determination of insurability;
- Worldwide Coverage Territory.

Other Benefits of Specialty Coverage

- Insured will have right to retain counsel, if coverage written Defense Within Limits (DWL);
- Coverage broadening endorsements, including subpoena defense, merchandising, broad form errors and omissions covering bodily injury arising from content;
- Experienced in-house insurance counsel;
 - Familiar with IP counsel and their rates;
 - Understands defensive strategy.

Key Coverage Limitations

- Breach of contract;
- Excludes bodily injury;
- Definition of “Loss” or “Damage” does not include license agreements or royalties;
- Employment practices liability;
- SPAM;
- Antitrust;
- Patent Infringement.

How to Procure Coverage

- Implementation and practice of sound loss prevention;
 - Maintain good loss history;
- Execute Insurance Application Completely, Accurately – and Neatly;
- Procure Quotes from Numerous Insurance Markets;
- Compare Premium and Coverage;
 - Review coverage, including all endorsements;
 - Ask questions about confusing language;
 - Does the policy cover social networking?

Maintaining Coverage

- Good Loss History = Lower Premium/Broader Coverage;
 - Control defense spending by negotiating hourly rates, setting defense budgets and monitoring legal bills;
- Hold Annual Insurance Meetings;
 - Review divestments and acquisitions, new business operations;
- Review and Update Loss Prevention Practices and Procedures;
 - Use counsel to review advertisements, Internet content (terms of use and privacy agreements) and social networking policies, licensing agreements, trademarks and to conduct title searches;
 - Use hold-harmless agreements with third parties who supply content or other services;
 - Require third parties to provide proof of insurance.

Maintaining Coverage (cont'd)

- Review license agreements for compliance and expiration dates;
- Educate employees regarding the protection of trade secrets and execute confidentiality agreements;
- Maintain a paper trail;
- Require key employees to execute non-compete agreements.

Questions?

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