



## Mealey's® Emerging Insurance Disputes

**Mealey's Emerging Insurance Disputes** captures and tracks new areas of coverage liability, novel policy applications, and conflicting policy language interpretations as they arise in the ever-evolving world of insurance litigation. The Report details cases in a wide range of practices areas, from the corporate world to the coverage fallout of high-profile lawsuits.

### Litigation Snapshot

The prescription pharmaceutical drug abuse epidemic in West Virginia and California has triggered new insurance coverage disputes. The defamation lawsuits filed against actor Billy Cosby, the Madoff Ponzi Scheme and the Jerry Sandusky sexual abuse scandal have also spawned a whole realm of insurance coverage lawsuits at the federal and state court level. Data theft, securities fraud, business risk, intellectual property, product liability, municipal liability, fiduciary liability, advertising injury and insurance practices involving the handling of more recent catastrophic events, such as Superstorm Sandy, continue to be hot topics in insurance litigation.

### Areas of Coverage

- » Advertising injury
- » Employment
- » Professional liability
- » D&O liability
- » Sexual discrimination
- » Wrongful death
- » Intentional acts
- » Technology disputes
- » Slander/defamation
- » Malpractice
- » Policy language
- » Insurance practices

### Who Needs to Know

- » Attorneys who focus on insurance
- » Corporate counsel including policyholder or claims counsel
- » Corporate risk managers
- » Judges and court staff

### How Lexis Legal News Can Help

**Mealey's Emerging Insurance Disputes** on Lexis Legal News and via email delivery features unbiased news stories, case summaries, attorney listings, and the PDF of court and agency documents and regulations. Subscribers also receive expert commentary articles and email bulletins of breaking news. This valuable insight into current news and litigation trends helps subscribers to advise clients, prepare for trial, draft pleadings and briefs, develop case strategies, formulate arguments and build compelling cases.

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Lexis® Legal News

**MEALEY'S EMERGING INSURANCE DISPUTES**

**Professional Liability**

**Professional Liability Coverage Owed To Innocent Co-Insureds, 4th Circuit Rules**  
 RICHMOND, Va. — The Fourth Circuit U.S. Court of Appeals Jan. 15 affirmed a lower federal court's ruling that South Carolina law and equity principles dictate that an imposter's fraudulent misrepresentations on a professional liability insurance application should not void the policy for the imposter's innocent employer and fellow employees (Evanston Insurance Co. v. Agape Senior Primary Care, et al., No. 14-2268, 4th Cir., 2016 U.S. App. LEXIS 703).

**Judge: Coverage Owed For Claims That Insured Improperly Published DNA Test Results**  
 HOUSTON — A Texas federal judge on Jan. 6 held that a professional liability insurer has a duty to defend against an underlying lawsuit alleging that its insured violated Alaska's Genetic Privacy Act by improperly publishing DNA test results on its website without its customer's consent (Evanston Insurance Co. v. Gene By Gene, Ltd., No. 14-1842, S.D. Texas, 2016 U.S. Dist. LEXIS 4534).

**Hotel Tax Liability**

**Texas High Court Dismisses Hotel Tax Liability Coverage Suit After Parties Settle**  
 AUSTIN, Texas — The Texas Supreme Court dismissed an insurer's appeal in a dispute over excess coverage for defense costs incurred in an underlying lawsuit alleging that the insured failed to fully remit hotel taxes, according to its Jan. 15 pronouncement (Illinois Union Insurance Co. v. Sabre Holdings Corporation, et al., No. 15-0716, Texas Sup.).

**Entity Liability**

**Insurer Has No Duty To Indemnify SAG For \$330,000 Award, 9th Circuit Affirms**  
 PASADENA, Calif. — The Ninth Circuit U.S. Court of Appeals on Jan. 15

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**Mealey's Emerging Insurance Disputes** Newsletter RSS

January 26, 2016  
**L.A. Lakers, Insurer Spar In 9th Circuit Over TCPA Claim, Invasion Of Privacy**  
 SAN FRANCISCO — With a Jan. 22 reply brief filed in the Ninth Circuit U.S. Court of Appeals, the Los Angeles Lakers Inc. argue that an underlying class action brought against the team for purported violation of the Telephone Consumer Protection Act (TCPA) did not constitute a claim for invasion of privacy and, therefore, its insurer wrongly denied coverage for that underlying suit (Los Angeles Lakers Inc. v. Federal Insurance Co., No. 15-55777, 9th Cir.).

January 26, 2016  
**Judge: Fact Issue Precludes Summary Judgment Ruling On Insured's Bad Faith Claim**  
 SAN FRANCISCO — A California federal judge held Jan. 22 that a genuine dispute of a material fact precludes granting a business and management indemnity insurer's motion for summary judgment on its insured's bad faith claim, denying in part and granting in part the insurer's motion in a coverage dispute over underlying attorney fees (Corthera Inc., et al. v. Scottsdale Insurance Co., No. 14-05014, N.D. Calif., 2016 U.S. Dist. LEXIS 8388.)

January 26, 2016  
**Judge: Misappropriation By Insureds For Theft Of Chemical Is Not Covered**  
 SEATTLE — Misappropriation of a product and its qualities is not the same as misappropriation of an advertising idea, style of business or trade dress, a Washington federal judge ruled Jan. 21, finding that alleged misappropriation for which a company seeks damage is for insureds' theft of a formula and method of manufacture for the production of a chemical and resulting unfair competition (Evanston Insurance Co. v. Clartre, Inc. and Scott Clarke, No. 14-0095, W.D. Wash., 2016 U.S. Dist. LEXIS 7289).

January 25, 2016  
**9th Circuit Rejects Insureds' Appeal Seeking Additional \$20M In Defense Costs**  
 PASADENA, Calif. — The Ninth Circuit U.S. Court of Appeals on Jan. 22 affirmed a lower court's ruling that a directors, officers and private company liability insurer has no duty to pay its insureds an additional \$20 million in underlying defense costs (James P. Previt, et al. v. National Union Fire Insurance Company of Pittsburgh, PA, No. 13-56368, 9th Cir., 2016 U.S. App. LEXIS 1139).

January 25, 2016  
**Fatal Injury That Occurred On University's Campus Is Not Covered, Judge Rules**  
 LOUISVILLE, Ky. — A Kentucky federal judge on Jan. 21 held that primary and excess commercial general liability insurers do not owe coverage for a fatal injury that occurred on a university campus during a men's lacrosse practice (Underwriters Safety and Claims Inc., et al. v. Travelers Property Casualty Company of America, et al., No. 15-00183, W.D. Ky., 2016 U.S. Dist. LEXIS 7429).

ARTICLE HEADLINE  
Links to the full article, related stories, related documents and comments section.

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**Insurer Has No Duty To Indemnify SAG For \$330,000 Award, 9th Circuit Affirms**

Share on

Mealey's (January 19, 2016, 12:53 PM ET) — PASADENA, Calif. — The Ninth Circuit U.S. Court of Appeals on Jan. 15 affirmed a lower federal court's finding that a directors and officers and entity liability insurer has no duty to indemnify the Screen Actors Guild American Federation of Radio and Television Artists (SAG) for \$330,000 awarded to an actor and SAG member who filed a class action lawsuit seeking recovery of the class share of "foreign levy funds" (Screen Actors Guild-American Federation of Television and Radio Artists v. Federal Insurance Co., No. 13-56402, 9th Cir., 2016 U.S. App. LEXIS 785).

(Memorandum available: Document #15-180121-0142.)

On Sept. 18, 2007, Ken Diamond, an actor and a member of SAG, filed a class action against SAG in the Los Angeles County Superior Court for conversion, unjust enrichment, accounting and violation of California Business & Professions Code Section 17209, et seq.

Diamond alleged that since 1996, SAG has "intentionally collected and took possession of" more than \$8,123,000 in foreign levy funds that were due to the actors from various foreign countries. Diamond contended that SAG held the funds for an "unreasonably long period of time" and that class members were entitled to possession of their share of the funds. He sought "restitutory relief," compensatory and punitive damages, an accounting, a constructive trust, costs, reasonable attorney fees, prejudgment interest and injunctive relief.

**\$330,000 Settlement**

The underlying parties eventually reached a settlement, under which the Superior Court awarded Diamond a \$15,000 enhancement payment and \$315,000 in class counsel fees and costs.

SAG sought indemnification for the \$330,000 award under a directors and officers liability and entity liability insurance policy issued by Federal Insurance Co.

After the insurer denied coverage, SAG sued it in the Superior Court for breach of contract and bad faith. The insurer removed the case to the U.S. District Court for the Central District of California, where the parties moved for summary judgment.

On July 11, 2013, Presiding Judge Dolly M. Gee ruled in favor of Federal.

Portable Version Documents Memorandum District Court's order Related Mealey's California Insurance Mealey's Emerging Insurance Disputes

**Judge: Insurer Has Duty To Defend Defective Mattress Class Action Complaint**  
 SACRAMENTO — A California federal judge held Jan. 20 that a comprehensive general liability insurer has a duty to defend against an underlying consumer class action lawsuit alleging that the insured's mattresses were contaminated with arsenic (Tempur-Sealy International Inc., et al., No. 14-cv-01861-HSG, N.D. Calif., 2016 U.S. Dist. LEXIS 8700).

**Court opts Recommendation To Award Credit Union \$47,399 In Fees, Costs**  
 HONOLULU — A Hawaii federal judge on Jan. 16 adopted a magistrate's findings of fact and recommendation to award a credit union \$47,399.75 in attorney fees and costs arising from a third-party complaint filed by its external auditor (CUMIS Insurance Society Inc. v. CU Pacific Audit Solutions LLC, et al., No. 14-00140, 110 U.S. Dist. LEXIS 5605).

**Court Must Indemnify Insurer For Expenses, New York Federal Judge Says**  
 NEW YORK — A reinsurer must indemnify an insurer for settlement expenses incurred in settling asbestos bodily injury claims filed against an insured because the follow-the-settlement doctrine applies and the insurer's billings are reasonable (The Hartford American Insurance Co. v. The Hartford American Insurance Co., No. 15-cv-00114, S.D.N.Y., 2016 U.S. Dist. LEXIS 7429).