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THE ADVERTISING INJURY ENDORSEMENT IN THE CGL RESPONDS TO "BUSINESS TORT" ACTIONS

June 2004

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By Dale E. Walker

1. INTRODUCTION:

Since 1973, Commercial General Liability ("CGL") insurance policies have typically included coverage for advertising injuries. In the United States the volume of litigation involving coverage issues arising from the advertising injury liability endorsement has been increasing over the years. Recent Court decisions in California and Minnesota have substantially enlarged the ambit of endorsement to include coverage for a variety of torts not previously contemplated by insurance underwriters.

The advertising injury endorsement policy wordings used in Canadian and American CGLs are essentially the same. As the decisions of American Courts on matters of insurance law are often persuasive in this country, it is quite possible that Canadian judges will follow the lead of certain of their American counterparts, if and when the Canadian Courts are called upon to interpret the advertising injury endorsement.

This paper reviews the typical CGL advertising injury endorsement, with a special emphasis on the coverage terms most scrutinized by certain American Courts. The balance of this paper surveys a few of the torts and statutory breaches which Canadian Courts might decide are covered under the advertising injury endorsement.

2. THE ADVERTISING INJURY ENDORSEMENT:

The following is an example of a typical advertising injury endorsement:

1. Insuring Agreement

To pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as compensatory damages because of personal injury or advertising injury.

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2. Definitions

When used in this endorsement:

> "Advertising Injury" means injury arising out of an offense committed during the policy period occurring in the course of the Named Insured's advertising activities, if such injury arose out of libel, slander, defamation, violation of right of privacy, piracy. unfair competition or infringement of copyright, title or slogan.

Over the years, advertising injury endorsement coverage issues have most often arisen in connection with the following undefined terms: *advertising activities, unfair competition* and *piracy.* While most CGL policies written since 1986 have excluded *unfair competition* from the enumerated advertising injuries, the majority of the court cases which have considered the advertising injury endorsement have dealt with the pre-1986 provisions. As well, many CGL policies continue to include coverage for *unfair competition.*

Where material terms are undefined in an insurance policy, Canadian Courts generally construe the policy against the insurer. The British Columbia Supreme Court recently restated the general principles of insurance policy interpretation as follows:

> "1. the objective in construing the policy's coverage of liability must be to give effect to the policy's dominant purpose of indemnity;
>
> 2. ambiguity in an insurance contract must be construed in favour of the insured;
>
> 3. the court should ordinarily strive to give effect to the objectively reasonable expectations of the insured." [1]

3. "ADVERTISING ACTIVITIES":

The threshold question when determining whether an "advertising injury" is covered by the endorsement is whether the injury arise out of an offence committed in the course of the insured's *advertising activities*? What constitutes an insured's *advertising activities* has been the subject of much judicial consideration in the United States in recent years.

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[1] *Privest Properties et. al. v. The Foundation Company of Canada Ltd. et. al.* (1991), unreported, B.C.S.C. Vancouver Registry Action No. C884875, at p. 19.

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While most decided cases have required the insured establish a nexus between the *advertising activity* and the alleged injury,[2] in the past six or seven years some American Courts have determined that the term *advertising activities* should no longer be restrictively defined as the "widespread distribution of promotional material to the public at large".[3] Instead, these Courts have stated that the term *advertising activities may* include any form of solicitation[4] or any activities designed to bring a seller's goods or services to the attention of potential buyers.[5] *Advertising activities* have even been held to include any and all steps in the advertising process,[6] including communications which are not directed at the ultimate consumer.[7]

These liberal interpretations of *advertising activities* alarm insurers in the United States. By adopting a very broad definition of *advertising activities* these Courts have opened the doors to coverage claims which might, on their face, have little or nothing to do with what is generally regarded as an advertising activity. As a result, coverage has been extended in a number of cases to include claims never contemplated by the underwriters when the policies were drafted.

4. "UNFAIR COMPETITION" AND "PIRACY":

Once it has been determined whether the offence occurred in the course of the insured's *advertising activities,* it must next be determined whether the claim against the insured is covered as an insured *advertising injury.* Many of the terms in the definition section of the advertising injury endorsement are relatively straightforward and uncontroversial. However, some of the undefined coverage terms have received extensive judicial consideration in the United States. Most of this attention has been focused on two of the coverage terms: *unfair competition and piracy*.

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2 *International Insurance Co. v. Florists Mutual Ins. Co.,* 201 Ill. App. 3d 428 *National Union Fire Insurance Co. of Pittsburgh v. Siliconex Inc.,* 729 F. Supp. 77 (N.D. Cal. 1989); *A. Myers & Sons Corp. v. Zurich American Insurance Group,* 545 N.E. 2d 1206 (1989); *Lazzara Oil Co. v. Columbia Casualty Co.,* 683 F. Supp. (N.D. Fla. 1988).

3 *Playboy Enter. v. St. Paul Fire And Marine Insurance,* 769 F. 2nd 425, 429 (7th Cir. 1985).

4 *John Deere Insurance Co. v. Shamrock Industries Inc.,* 696 F. Supp. 434 (D.Minn. 1988).

5 *Bank of the West v. Superior Court,* 226 Cal. App. 835, 852, 277 Cal. Rptr. 219 (1991) review granted 279 Cal. Rptr. 777(1991).

6 *Liberty Life Insurance Co. v. Commercial Union Insurance Co.,* 857 F. 2nd 945, 950 (4th Cir. 1988).

7 *Kociemba v. G.D. Searle & Co.,* 680 F. Supp. 1293 (D. Minn. 1988).

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(a) Unfair Competition:

Several recent California decisions have held that the term *unfair competition* in an advertising injury endorsement provides coverage for a wide variety of claims. These claims include unauthorized copying of another's goods,[8] patent infringement,[9] false disparagement of another's goods (slander of goods),[10] anti-trust claims,[11] misappropriation of trade secrets,[12] and even claims for intentional interference with contractual and business relationships.[13] In 1991, a California State Court even held that an advertising injury endorsement provided coverage for all unlawful or unfair business practices committed against either a business rival and/or the general public.[14] (This decision is, however, currently under appeal and, under California law, is therefore of no precedential value at present).

(b) Piracy:

With respect to the coverage term *piracy,* many American Courts now agree that coverage *for piracy* in an advertising injury endorsement affords coverage for most claims of patent and copyright infringement.[15]

The 1989 decision of the California District Court in *National Union Fire Insurance Company of Pittsburgh v. Siliconex Inc. et. al.*[16] illustrates how a court decides whether an undefined coverage term in the advertising injury endorsement provides coverage for a particular claim. Deciding whether a claim of patent infringement fell under the *piracy* coverage offered by the insurer for *advertising injuries,* the Court held that:

a. "Piracy" was not a defined term in the insurance policy;

b. Coverage clauses should be interpreted broadly to afford the greatest possible protection to the insured;

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8 *Aetna Casualty & Surety v. Watercloud Bed Co.,* 1988 U.S. Dist. LEXIS 17572 (C.D. Cal. 1988) (unpublished opinion); see also *Haeger Potteries v. Gilner Potteries,* 123 F. Supp. 261, 270 (S.D. Cal. 1954).

9 *Aetna Casualty And Surety Co. Inc. v. Centennial Insurance Co.,* 838 F.2nd 346 (9th Cir. 1988).

10 *Aetna Casualty*, *supra* at Note 7, at p. 15.

11 *Ruder & Finn Inc. v. Seaboard Surety Co.,* 422 N.E.S. 2nd 518, 522 - 523 (1981).

12 *CNA Casualty of California v. Seaboard Surety Company et. al.* 176 Cal. App. 3rd 598, 222 Cal. Rprt. 276, 281 (1986).

13 *Ruder & Finn Inc.*, *supra*, at Note 11.

14 *Bank of the West*, *supra*, at Note 5.

15 *National Union Fire Insurance Co. of Pittsburgh v. Siliconex Inc.,* 729 F. Supp. 77 (N.D.Cal. 1989), See also cases cited at Note 8 and Note 11.

16 *Siliconex*, *supra*, at Note 15.

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c. All ambiguities are construed against the insurer to protect the insured's reasonable expectations of coverage;

d. A contractual provision is ambiguous if it is capable of two or more reasonable constructions;

e. The term "piracy" was capable of at least two definitions and was therefore ambiguous;

f. Because the term "piracy" could potentially include patent infringement, the policy should be construed in favour of the insured. Accordingly, "piracy" encompasses claims of patent infringement.[17]

5. THE ADVERTISING INJURY ENDORSEMENT AND CANADIAN CLAIMS:

In light of the above-noted American decisions, there is a risk that Canadian Courts may hold that the terms *unfair competition and piracy* in the advertising injury endorsement provide coverage for the Canadian versions of the U.S. torts noted above. These Canadian torts include: passing off, copyright infringement, trade mark infringements, anti-trust claims under the *Competition Act*, unlawful interference with economic interests, injurious falsehood and appropriation of personality. The following is a brief outline of the elements of each of these torts in Canada:

[17] *Siliconex*, *supra* at Note 15, at, p.79.

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(a) Passing Off:

The tort of *passing off* is the misappropriation of a trade name or other descriptive means used by a party to identify his goods or services, and thereby the goodwill attached to it.[18] In a *passing off* action, the law seeks to protect the trader's property and his business or goodwill. The offending conduct can include almost any use of the trade name or other descriptive means that has confuses the public into believing that one party's goods or services are another's. The circumstances that give rise to a claim for *passing off* will often also support related but distinct actions such as claims of copyright or trade mark infringement. The tort does not require proof of intent or malice.

The *Trade-marks Act*[19] creates a statutory action for *passing off* which coexists with the common law right of action.[20] However, because the registration of a trade mark creates an exclusive right to use, a *passing off* action under the *Trade-marks Act* differs from the common law action. Under the Act, an action will lie for improper use of a registered trade mark as soon as it is registered. In a *passing off* action at common law, however, the plaintiff must prove that the trade mark or other descriptive means was known by the public to be associated with the plaintiff.

Other federal Acts which prohibit or regulate similar sorts of conduct and which may give rise to a civil cause of action potentially covered by the advertising injury endorsement are: i) s. 51(l)(a) of the *Competition Act* which prohibits misleading advertising with respect to the direct or indirect supply or use of a product;[21] ii) s. 12(l)(a) of the *Canada Business Corporations Act*,[22] which prohibits a corporation from being incorporated with, having, or carrying on business under, or identifying itself by a name that is prohibited, or deceptively mis-descriptive; and, iii) ss. 4 - 9 of the *Consumer Packaging And Labelling Act*[23] which contain provisions governing marketing and labelling designed to avoid consumer deception.

(b) Infringement of Copyright:

The *Copyright Act*[24] provides that a copyright is infringed when another party: i) copies any work in which copyright subsists, including any colourable imitation;[25] ii) without

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18 *Canada Safeway Ltd. v. Man. Food & Commercial Wkrs. Loc. 832*, [1983] 5 W.W.R. 327, 25 C.C.L.T. 1, at p.3 (Man. C.A.).

19 R.S.C. 1985, c.T-13.

20 Note 19, s.7(c).

21 R.S.C. 1985, c.C-34, s. 51(i)(a).

22 R.S.C. 1985, c. C-44.

23 R.S.C. 1985, c. C-38.

24 R.S.C. 1985, c. C-42.

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the consent of the owner of the copyright, does anything that only the owner of the copyright has the right to do;[26] or iii) sells, offers for sale or distributes any work that to the knowledge of that person infringes a copyright.[27]

The *Copyright Act* also protects an author's *moral rights* in his or her work. Specifically, the *Act* states that an author's right to the integrity of his or her work is infringed when, to the prejudice of the author's honour or reputation, that work is distorted, mutilated, otherwise modified, or used in association with a product, service, cause, or institution without the copyright owner's permission. [28]

A breach of the *Copyright Act* for infringement of copyright or an author's moral rights may give rise to a civil action in the Federal or Provincial Courts[29] for damages,[30] and the recovery of any profits which the wrongdoer has realized by reason of the infringement.[31]

(c) Infringement of Trade-mark:

Section 7 of the *Trade-marks Act* prohibits a person or business from making false or misleading statements about competitors; confusing the public as to the identity of a product or a business; "passing off" one's products or services as another's; falsely describing one's services or products or misleading the public regarding its qualities; or doing "any other act or adopting any other business practice contrary to honest industrial or commercial usage in Canada".[32]

The *Trade-marks Act* also provides that where trade mark infringement is proved, the Federal or Provincial Court,[33] in addition to making an order for damages or injunctive relief, may also order recovery of profits and may give directions with respect to the disposition of any offending wares, packages, labels, advertising materials, and so forth.[34]

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25 Note 24, s.1.
26 Note 24, s. 27.1.
27 Note 24, s.27(4).
28 Note 24, s. 28.2(i).
29 Note 24, s. 37.
30 Note 24, s.34(i).
31 Note 24, s. 34(1.1).
32 Note 24, s. 22 (1).
33 Note 19, s.7(e).
34 Note 19, s.53.

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(d) Breach of The *Competition Act:*

In Canada, the equivalent to an anti-trust claim is commenced under the *Competition Act* (formerly the *Combines Investigation Act*). The *Competition Act* contains a number of criminal and civil prohibitions relating to business conduct in the marketplace. In essence, the *Competition Act* prohibits various deceptive trade practices or other improper business conduct that create conditions which unfairly inhibit competition.[35]

The prohibitions in the *Competition Act* apply not only to corporations, but also to any of their officers or directors who "direct, authorize, consent to, acquiesce or participate in the commission of an offence under the Act".[36] Such officers or directors risk both criminal prosecution and/or civil liability.

The *Competition Act* prohibits various "restrictive" business or trade practices such as refusal to deal, tied selling, market restriction, exclusive dealing, bid rigging,[37] price discrimination,[38] geographic price discrimination[39], predatory pricing,[40] illegal promotional allowances,[41] any form of misleading advertising,[42] double ticketing or double pricing, inducing participation in pyramid selling schemes[43] and influencing the pricing policies of competitors.[44]

However, the most serious *Competition Act* offence involves agreements which lessen competition "unduly"; that is, conspiracies in restraint of trade. In addition to civil liability, any person or corporation which is found to have breached this provision of the *Competition Act* is guilty of an indictable offence and liable to a fine of up to $1,000,000.00 or five years in jail or both.

It has recently been held that there is an independent civil cause of action for anti-competitive behaviour founded upon the breach of any of the provisions of the *Competition Act*.[45] This means that an action may be maintained for a breach of the

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35 Note 21, s.65(4).
36 Note 21, s.65(4).
37 Note 21, s.47.
38 Note 21, s. 50.
39 Note 21, s. 50.
40 Note 21, s. 50.
41 Note 21, s. 51.
42 Note 21, s. 51(i)(i)(a).
43 Note 21 ss. 54 – 56.
44 Note 21 s. 61.
45 *Westfair Foods v. Lippins Inc.* (1990), 64 D.L.R. (4th) 335.

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Competition Act in addition to a separate civil action alleging the torts of unlawful interference with economic interests and conspiracy to injure.

(e) Unlawful Interference with Economic Interests:

The tort of unlawful interference with economic interests requires that the plaintiff prove that the defendant intended to injure the plaintiff, that the plaintiff suffered economic loss or a related injury, and that the means employed by the defendant were unlawful.[46]

(f) Defamation: Libel and Slander

The advertising injury endorsement expressly covers claims for a) defamation, libel and slander; and, b) invasion of the right to privacy. On their face, these coverages may appear to be reasonably straightforward. However, these coverage terms may be construed by Canadian Courts as providing coverage for a wider ambit of claims than first realized.

The tort of defamation consists of two distinct torts, libel and slander. Libel is any publication of defamatory material in permanent form. Slander is the defamatory imputation communicated by spoken words or in some other transitory form. In an action for libel or slander, malice is presumed.

As the term *slander* is not generally defined in an advertising injury endorsement, a Canadian Court could find that the insured is also covered for the related claims of injurious falsehood, slander of title, and/or slander of goods.

(i) Injurious Falsehood:

> The tort of injurious falsehood consists of the malicious publication of false statements, either oral or written, concerning the plaintiff or his property, calculated to induce others not to deal with him.[47] The tort of injurious falsehood may give rise to an action for slander of title.

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[46] P. Burns, "Tort Injury to Economic Interests: Some Facets of Legal Response" (1980), 58 Can. Bar Review 103, at 141.

[47] Fleming, *The Law of Torts*, 5th ed. (1983), at pp. 670 - 71, quoted with approval in *Captain Dev. Ltd. v. Nu-West Group Ltd.* (1982), 131 D.L.R. (3d) 502 (Ont. H.C.J.)

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(ii) Slander of Title:

An action for slander of title lies against any person who maliciously publishes a false statement that an owner of real property has a defective title, thereby causing him special damages.

(iii) Slander of Goods:

An action for slander of goods lies against any person who maliciously publishes a false statement in disparagement of another person's goods, thereby causing him special damages.[48]

In the United States, claims of slander of title and slander of goods fall within the tort of conspiracy to falsely disparage a person's products. As was noted above, American Courts have held that claims of this sort were covered under the *unfair competition* provision of the advertising injury endorsement. It is possible, therefore, that in Canada claims for slander of title or slander of goods may be held by the Courts to be covered by both the *unfair competition and slander* provisions of the advertising injury endorsement.

(g) Violation of Right of Privacy and Appropriation of Personality:

British Columbia, Manitoba, Newfoundland and Saskatchewan have all enacted privacy legislation.[49] These statutes create the tort of "violation of privacy", which tort is actionable without proof of damages.

While none of these statutes define the term *privacy,* the British Columbia, Newfoundland and Saskatchewan legislation provide that the nature and degree of privacy to which a person is entitled is that which is reasonable in the circumstances, with due regard to the lawful interests of others. These privacy acts, in addition to creating a general tort of invasion of privacy, also include the tort of *appropriation of*

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[48] *Gatley on Libel And Slander*, 8th ed. (1981), at p. 317, quoted with approval in *Vulcan Indust. Pkg. Ltd. v. CBC* (1979), 94 D.L.R. (3d) 729 (Master)

[49] *Privacy Act*, R.S.B.C. 1979, c. 336; R.S.M. 1987, c. P-125; S.N. 1981, c. 6; R.S.S. 1978, C. P-24

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personality. All of these statutes except the Manitoba Act require that the invasion be committed "wilfully and without claim of right".

In the Manitoba, Newfoundland and Saskatchewan *Privacy Acts*, the tort of appropriation of personality is incorporated as a part of the general tort of invasion of privacy. Each of these statutes protect a person's name, likeness or voice. The tortious conduct consists of the use of those protected attributes, without the consent of the individual, for "the purpose of advertising or promoting the sale of or any other trading in, the property or services, or for any other purposes of advantage to the user". The individual must be "identified or identifiable" and the user must intend to exploit the attributes of the individual.

In British Columbia, the tort of appropriation of personality involves the use, without consent, of the "name or portrait of another for the purpose of advertising or promoting the sale of, or other trading in, property or services".[50] Where a name is used, the plaintiff has the onus of proving either that the defendant intended to refer to the plaintiff or to exploit his name or reputation, or that the plaintiff's name was connected in the course of an advertising or promotion, with other material sufficient to distinguish the plaintiff from others of the same name. In the case of a portrait, likeness or caricature, the plaintiff must prove that he is identified or that he is recognizable and that the defendant intended to exploit that likeness.

6. EXCLUSION CLAUSES:

The typical exclusion clauses under the advertising injury endorsement in a CGL are as follows:

[50] Note 50, s. 3(1)

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3. Exclusions

This Insurance does not apply to:

a. Personal injury or advertising injury arising out of a publication or utterance of a libel or slander or a publication or utterance in violation of an individual's right of privacy if the first injurious publication or utterance of the same or similar material by or on behalf of the Named insured was made prior to the effective date of this insurance.

b. personal injury or advertising injury arising out of libel or slander or the publication or utterance of defamatory or disparaging material concerning any person or organization or goods, products or services, or in violation of an individual's right of privacy made by or at the direction of the Insured with knowledge of the falsity thereof.

c. personal injury or advertising injury arising out of the conduct of any partnership or joint venture of which the Insured is a partner or member and which is not designated in the Declarations of the policy as a Named Insured.

d. advertising injury arising out of (i) failure of performance of contract but this exclusion does not apply to the unauthorized appropriation of ideas based upon alleged breach of implied contract, or (ii) infringement of trade mark, service mark or trade name, other than titles or slogans, by use thereof on or in connection with goods, products or services sold, offered for sale or advertised, or (iii) incorrect description or mistake in advertised price of goods, products or services sold, offered for sale or advertised.

e. with respect to advertising injury (i) to any Insured in the business of advertising, broadcasting, publishing or telecasting, or (ii) to any injury arising out of any act committed by the Insured with actual malice.

f. with respect to advertising injury, to any claim or suit arising out of comparative advertising by or on behalf of the Insured.

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The problem with the effectiveness of certain of the above-noted exclusion clauses is that, on their face, they purport to exclude coverage for certain offences which are apparently covered by the endorsement. For instance, as was noted above, the tort of defamation and its two constituent torts, libel and slander, presume the element of malice. As well, the torts of slander of goods and injurious falsehood both require proof of malicious intent. However, exclusion clause 3(e) above purports to deny coverage for any advertising injury arising out of an act committed by the insured *with actual malice.*

Another example of an apparent conflict between the coverage and exclusion provisions in the typical advertising injury endorsement arises with respect to coverage for acts which violate a person's right of privacy. As was noted above, the various provincial *Privacy Acts* include the tort of appropriation of personality with the tort of invasion of privacy. A claim for appropriation of personality requires that the plaintiff prove that the defendant "intended to refer to the plaintiff or to exploit his name or reputation". However, exclusion clause 3(b) above purports to deny coverage for any advertising injury arising out of the violation of an individual's right of privacy made by or at the direction of the insured *with knowledge of the falsity thereof.* Exclusion clause 3(b) also purports to deny coverage for claims of libel, slander, defamation and slander of goods where the impugned libel or slander was made with *knowledge of the falsity thereof.* As noted above, in many American cases involving coverage disputes over trade mark infringement actions, the Courts have found that the advertising injury endorsement affords coverage under both the endorsement's *unfair competition* and *piracy* provisions. However, exclusion clause 3(d) specifically purports to exclude coverage for advertising injuries arising out of trade mark infringement. If a Canadian Court were to hold that the advertising injury endorsement covers patent infringement claims, exclusion clause 3(d) would clearly conflict with this coverage.

In one case, an American Court had to decide whether libel and slander were excluded by an exclusion clause which denied coverage for offences involving the insured's "'intentional conduct". The Court noted that the advertising injury endorsement coverage provisions expressly *included* many torts such as libel, slander and unfair competition that characteristically required the elements of intent, malice, or wilfulness. The Court thus found that the exclusion was ambiguous, saying that "in effect, one part of [the] policy insures against intentional torts or acts, while another part of the policy attempts to exclude coverage for these same acts. We must therefore resolve this ambiguity against [the insurer]."[51]

It is likely that Canadian Courts would adopt a similar view with respect to apparent conflicts between coverage and exclusion clauses.

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[51] *Tews Funeral Home Inc. v. Ohio Cas. Ins. Co.*, 832 F. 2nd 1037, 1045 (7th Cir. 1987)

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7. COVERAGE UNDER THE CGL WHEN IT IS HELD THAT THE OFFENCE DID NOT OCCUR IN THE COURSE OF THE INSURED'S ADVERTISING ACTIVITIES:

Where a Court finds that impugned conduct did *not* take place during the insured's *advertising activities*, the insured will probably seek coverage under the personal injury or property damage liability provisions of the CGL.

(a) Personal Injury Liability:

American Courts have repeatedly held that claims of libel and slander are "personal injury" claims and that such claims are therefore covered under the personal injury liability portions of the CGL, unless expressly excluded.

(b) Property Damage Liability:

Where an insured is denied coverage under the advertising injury endorsement, the insured may also be able to find coverage for certain types of intellectual property claims under the property damage liability provisions of the CGL.

American Courts have held that, in certain cases, the property damage liability coverage under the CGL will cover claims of damage to corporate personal property such as trade secrets, trade marks and copyright where such coverage is not expressly excluded by the policy and the property damage coverage is not restricted to damage to "tangible" property.

Where the insurance policy restricts property damage coverage to "tangible" property, American Courts have indicated that coverage may still be available under the CGL for claims alleging the appropriation of trade secret documents such as customer lists, written product specifications, or other *tangible* trade secrets.

A recent British Columbia Supreme Court decision also supports the notion that, in certain cases, where the property damage coverage is not restricted to "tangible" property, certain intellectual property claims may "... constitute 'injury to property' in the sense of an infringement of *intangible property or an incorporeal right*"[52] (emphasis added).

Many American Courts have extended coverage by adopting a broader definition of *advertising activities* and by resolving ambiguous or vague policy wordings in favour of the insured. By being aware of the sorts of claims which a Court might find to be

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[52] Note 1, at p. 65

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covered under the advertising injury endorsement, insurers can draft policy provisions which limit coverage to precisely the claims which the insurer wishes to cover. This can be done through restrictive definitions of coverage terms and the detailed specification of all coverage areas. As noted above, contradictory exclusion clauses cannot be relied upon to restrict coverage.

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