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Coverage B: Defamatory and Injurious Falsehood Torts

As business litigation continues to increase in both volume and complexity, claims professionals can expect to see more and more claims based on defamatory torts, i.e., libel or slander, as well as more claims based on injurious falsehood torts, i.e., trade libel or slander to title.

But even where a complaint does not include a specific cause of action based on one of these torts, the insurer may still have a duty to defend. This is because California courts have found that a specific claim for defamation or an injurious falsehood tort is not necessary to trigger the duty to defend. So long as facts to support a claim for a defamatory or injurious falsehood tort are stated within the complaint or would be found after reasonable investigation of the complaint, an insurer will have the duty to defend against the claim.

Thus, a complaint that at first glance appears to seek only non-covered economic losses may in fact trigger a duty to defend if it includes facts that support a claim for defamation or injurious falsehood. As a result, it is particularly important for claims professionals to recognize the elements of both torts

even when they are not plead as specific causes of action.

Generally speaking, the law regarding defamation is designed to protect one's reputation. The defamatory statements may be either spoken, in which case the claim would be slander, or written, in which case the claim would be libel. Both individuals and corporations may sue for defamation. But corporations may do so only where the statement had a direct negative impact on its property or credit, and where the statement was made against the corporation itself and not against an officer or board member.

The facts to support a claim for defamation must include the "publication" of a false, defamatory and unprivileged statement. The "publication" may be made in several ways, but as a minimum it must be made to a third party who understands the defamatory meaning and its applicability to the plaintiff.

Injurious falsehood torts include trade libel and slander of title. Trade libel refers to the disparagement of the quality of another's goods or services, while slander of title refers to the disparagement of another's title to property. In order to state

claim for trade libel, a plaintiff must allege the publication of the disparaging statement and that the statement has played a material and substantial part in causing others not to deal with him.

The plaintiff must also allege the damage that resulted from the statement. Often this includes the loss of prospective contracts, but the plaintiff must do more than just describe a general decline in business. Rather, the plaintiff must identify particular customers and transactions that he lost because of the disparaging statement.

Slander of title or disparagement of title refers to the false disparagement of the plaintiff's right to title that results in monetary damage to the plaintiff. This tort is not limited to slander of title to land: courts have found that a claim for slander of title exists when the statement casts doubt as to the title to crops, cattle, trademarks, copyrights, patents, corporate shares and literary property.

In order to make a successful claim for slander of title, the plaintiff must prove that the publication of the unjustified and unprivileged disparaging statement is false and



caused direct and immediate monetary loss. Typically, the damage consists of the loss of a prospective purchaser or lessee, the impairment of the ability to sell property, the decrease in the value of the property, and or the costs of litigation to remove the doubt cast on the title.

In conclusion, because California courts have found a duty to defend against claims of defamation even where such claims are not listed as separate causes of action within a complaint, it is important for that claims professionals to recognize the

facts that constitute a claim for libel, slander, trade libel and or slander of title. As stated above, these facts generally include the publication of a false and disparaging statement that resulted in financial harm to the plaintiff. Such facts may be found within the general allegations of the complaint, as well as within the specific causes of action.

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