

Recent Developments in the Law

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In order to keep you abreast of the recent developments in the law, we are reporting the substance of several current decisions of major import in the jurisdictions of Maryland, the District of Columbia, and Virginia

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Application of the Boulevard Rule in Maryland and the District of Columbia

Introduction

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

Insurance Defense -- Applied Signal & Image Technology v. Harleysville Mutual Insurance -- 2003 WL 1549968-- March 14, 2003

The plaintiff ("ASIT") was engaged in the business of signal and image processing technology for government and commercial contracts. In July of 2001, an employee sued ASIT alleging various illegal corporate activities as well as a claim for "false light." The defendant insurer issued a policy to the plaintiff that covered personal injury arising out of its business. The policy covered certain defamation and privacy claims. Plaintiffs notified defendant of the suit and requested defense under the policy. The policy, however, contained an "Employment Related Practices Exclusion" stating that the coverage did not include injuries resulting from types of torts such as the "false light" claim. Additionally, a letter from defendant to the plaintiff in October, 2001 served as a notification that defendant Harleysville had a right to withdraw its defense of the suit if they (Harleysville) determined that there was no duty to defend.

The plaintiff and its employee reached a settlement to which the insurer contributed \$25,000. However, the defendant refused to pay most of the insured's legal fees on the basis that the employee's claims were not actually covered due to the employment practices exclusion. Plaintiff then filed suit against

defendant and moved for partial summary judgment on Harleysville's liability for the fees incurred in defense of the suit brought by its employee.

The U.S. District Court for the District of Maryland determined that the issue before them was whether the defendant was entitled to withdraw its agreement to pay the fees. The court ruled that the insurer, having undertaken to provide a defense and having failed to expressly reserve its right to seek reimbursement of fees, could not withdraw its agreement to pay the fees. Under Maryland law, the duty to defend was separate from the duty to indemnify. The duty to defend existed when there was a potentiality that a claim *could* be covered by the policy. This rule, known as the "potentiality rule," does not make the duty to defend contingent on the duty to indemnify. If the insurer had determined while the suit was pending that it had no duty to indemnify, it could have sought a declaratory judgment that it no longer had a duty to defend. However, the defendant did not do that in this case and, therefore, had an obligation to pay the legal costs of the plaintiff's other suit. The court thus granted the plaintiff's motion for partial summary judgment.

