Weekly Law Resume

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WEEKLY LAW RESUME™
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Duty To Defend - Potential For Coverage

John M. Shanahan v. State Farm General Insurance Company
Court of Appeal, Fourth District (March 17, 2011)

When looking at whether it has a duty to defend, an insurer must determine if any of the facts alleged in the complaint or otherwise known may suggest a claim potentially covered by the policy. This case considered whether a claim for sexual battery might provide for coverage under alternate theories not pled by the plaintiff.

Cheryl Skigin sued her employer, John Shanahan, and companies owned by him for various employment claims. Included in her complaint was a cause of action against Shanahan alone, for sexual battery. The complaint alleged that at a Christmas party in 2003, Shanahan "grabbed" her by the buttocks, made comments about her body, and lewdly suggested she engage in sexual intercourse with him. She also alleged that in 2005, while they were on a business trip, he attempted to get her to leave her husband and share an apartment with him, and that he again groped her buttocks, and that upon her return, he sent flowers and a card to her home suggesting their relationship was more personal than professional.

Shanahan was insured at the time with both a renter's policy and an umbrella policy through State Farm General Insurance Company. The renter's policy insured against personal liability "[i]f a claim is made or a suit is brought...because of bodily injury...to which this coverage applies, caused by an occurrence..." The policy specifically excluded emotional distress or mental anguish or similar injury unless it arose out of an actual physical injury. It also defined occurrence as "an accident...which

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results in...bodily injury." On the other hand, the umbrella policy, while still requiring "an accident," specifically included "emotional distress or mental injury" in its definition of bodily injury.

Shanahan tendered the defense of the claims against him to State Farm, which denied coverage and refused to defend, claiming that it did not cover business pursuits under either policy, and that the sexual battery was not the result of an accident. Shanahan thereafter settled Skigin's claims for $700,000 and brought suit against State Farm for breach of contract and breach of the covenant of good faith for failing to defend him in the Skigin lawsuit. State Farm filed a motion for summary judgment, contending that there was no duty to defend, as the policies excluded coverage for business pursuits, as sexual battery is an intentional tort, and there was no possibility of coverage under Shanahan's policies. The superior court granted State Farm's motion, and Shanahan appealed.

The Court of Appeal affirmed the trial court, holding there was no potential for coverage under either policy, and thus no duty to defend. The Court initially noted that there could be no coverage under either policy for intentional acts, and that each policy excluded coverage for business pursuits. It then focused on Shanahan's theories that there was a potential for coverage because, although not pled, the facts might support a finding of negligence, defamation or invasion of privacy.

As to negligence, the Court pointed out that there could be no coverage under the renter's policy, because it did not cover "bodily injury" claims that did not result in an actual physical injury. As to the umbrella policy, it did cover emotional distress or mental anguish claims without physical injury, but required an "accident." The Court pointed out that whether or not Shanahan admitted to the facts which alleged he groped and propositioned Skigin, courts have held that the conduct involved in sexual misconduct claims is intentional in nature, and is excluded from coverage. There was nothing in the facts pled that could be construed as negligent rather than intentional in nature.

Shanahan next argued that his umbrella policy covered slander and invasion of privacy, along with other activities. Although these were not pled, he argued that the facts alleged supported possible claims for those torts. He pointed to the allegation that he groped Skigin in the presence of others, made comments about her body and propositioned her. Skigin had testified in deposition that when he made those comments, no one was present on the first occasion, and the only person present the

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second time did not hear the comments. One of the necessary elements of slander is publication to a third party, and that had not been alleged. Without it, there could be no covered claim for slander.

Finally, Shanahan argued that the facts alleging he pressured Skigin to leave her husband, or sent flowers and a card to her home implying a personal relationship, constituted an invasion of privacy. However, the Court noted that while these facts had been alleged, Shanahan had not cited any authority as to how either of these allegations fit a claim of invasion of privacy, which requires public disclosure of private facts which are offensive and objectionable to a reasonable person of ordinary sensibilities. Hence, not only was invasion of privacy not pled by the plaintiff, it could not reasonably be inferred under the facts pled and there was no duty to defend.

The Court of Appeal affirmed the ruling that under the facts as pled, there was no duty to defend.

COMMENT

Although a carrier must look at the facts to determine whether there is a potential for coverage, this case confirmed that an insurer has no duty to defend where the potential for liability is "tenuous and farfetched." Ultimately, the question is whether the facts "fairly apprise" the carrier that the suit is on a covered claim.

For a copy of the complete decision see:

HTTP://WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/G042988.PDF

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