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Claims of False Advertising and Unfair Competition Are Not Disparagement or Defamation

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Most commercial general liability policies include coverage for personal and advertising injury claims by third parties. In a recent case, the Third Circuit Court of Appeals addressed the issue of whether claims of false advertising and unfair competition brought against a competitor entitled the policyholder to a defense under its personal and advertising injury coverage.

In Albion Engineering Co. v. Hartford Fire Ins. Co., No. 18-1756 (3rd Cir. Jul. 10, 2109) (Not Precedential), the policyholder was sued by a competitor alleging claims for false advertising and unfair competition based on the allegation that the policyholder's products were represented as being made in the US when they were really made overseas. The policyholder sought coverage from its carrier under its personal and advertising injury coverage, particularly for publication of material that slanders or libels a person or disparages a person's goods, products or services. The carrier disclaimed and the policyholder brought suit seeing to enforce coverage. The district court dismissed the complaint after summary judgment in favor of the carrier.

On appeal, the policyholder contended that the claims in the underlying suit were essentially disparaging and defamatory. In applying New Jersey law, the circuit court rejected the policyholder's arguments because nothing alleged by the underlying claimant or in the extrinsic evidence discovered constituted the publication of false statements about the competitor. Under New Jersey law, for the duty to defend to arise, the false and defamatory statement has to be made about another (in this case about the competitor's products). "For the suit to fall within the policy's coverage, [policyholder] must demonstrate [competitor] brings a claim that [policyholder] (1) made an electronic, oral, written or other publication of material that (2) slanders or libels [competitor] or disparages [competitor's] good, products, or services." Here, said the court, the claims were about the policyholder's own products, not about the competitor's products. Thus, because the policyholder had not shown that the competitor's claims constitute disparagement or defamation claims made by the policyholder about the competitor's products, the carrier had no duty to defend the underlying lawsuit.

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