

Finding Insurance Coverage After The Claim is Denied

By Robert J. Mulvihill, Esq.

A client turned to HKC with the following problem: A roofing contractor was hired to replace the roof on his office building. After the old roof was removed, but before the new roof had been completed, it rained! Although the roofer attempted to protect the building, the wind blew off the tarps, exposing the building interior and its contents (desks, supplies, computers, etc.) to the rainstorm. Substantial water damage occurred and, in addition, our client's business operations were interrupted for weeks. His damages were in excess of \$500,000.

Our client initially looked to the roofer to pay for the damages. However, when the roofer tendered the claim to his general liability insurance carrier, the carrier replied that his policy contained a "Course of Roofing Operations Exclusion," which (as astounding as it might seem) excluded coverage for claims arising during the roofer's negligent roofing operations!

Our client then tendered the claim to his own liability carrier. It also denied coverage, asserting that the carrier was not responsible for damage to the interior of the building caused by rain unless the building was first damaged by a Covered Loss through which the rain entered. In other words, because the old roof was intentionally removed during the installation of the new roof, the policy did not cover the resulting water damage.

First, HKC sent a demand letter to the roofing contractor, a sole proprietorship with few assets. Upon reviewing

the roofer's commercial general liability policy, we discovered that the policy did in fact exclude coverage for claims arising out of roofing operations. Our client therefore entered into a settlement agreement with the roofer who paid \$100,000.

We then turned our attention to our client's insurer. In reviewing the policy, we noted that the key language was not an "exclusion," that would

entirely prohibit coverage. Rather, it was merely a "limitation" which, if it applied at all, would only limit the carrier's responsibility to pay for damage to the "interior" of the building. Faced with our interpretation of the policy, the carrier relented and agreed that its earlier denial was improper.

The carrier agreed to reim-

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Register Your Copyright

By David Christopher Baker, Esq.

During a high-spirited game of "Call of Duty"® on the Xbox360®, my 10 year old son turned to me and asked, "Dad, what's the little letter "C" in a circle next to the game title mean? It's on the box, it's on the DVD, it's on the manual, and it's even on the opening screen. It's everywhere."

"Well, son," I began, "That little "C" in a circle means the game company is telling the world that it owns the copyrights to the game and that the world can only use the game if it abides by the company's licensing policies." I then deftly explained some of the intricacies of copyright registration and the "fair use" doctrine and touched on the evils of software piracy. I sensed

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HK&C welcomes two new attorneys to the firm...

Katrina Johnson is a litigation associate who brings six years of experience to the firm. Katrina focuses her practice on real estate and business litigation matters, including business and contract disputes, Mobilehome Residency Law, landlord-tenant law, and labor and employment law.

Ms. Johnson received her law degree from the University of California, Hastings College of the Law and a B.A. from the University of California, Davis.

Michael S. Marshall has joined the firm as a five year litigation associate. Mike's practice concentrates on business and real property litigation. He is also experienced in administrative, employment, and probate law.

Mr. Marshall earned his law degree from Pepperdine University Law School and a B.A. from Pepperdine University.

Insurance Claim Denied?

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burse our client for interior building damage, the building's contents and personal property, and, as a result of the carrier's initial wrongful denial of coverage, they paid our client's business interruption losses without regard to the policy limits. In addition, the carrier paid our client's attorneys' fees that were incurred while making the

claim. The carrier paid \$425,000 on claims that were initially denied, in addition to the \$100,000 paid by the roofing contractor.

In the event that an insurance carrier denies your claim, you should be aware that a carrier's interpretation of its policy and its consideration of your claim, may be self-serving and wrong.

In such event, it is often beneficial to have the issue of coverage reviewed by counsel familiar with the interpretation of liability insurance policies.

Bob Mulvihill is a partner with HK&C and his practice emphasizes business litigation, homeowner association law, and all areas of construction law. He may be reached at rmulvihill@hkclaw.com and 714.432.8700 x 404.

Register Your Copyright

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I might be losing his attention when his eyes began to glaze over so I wrapped up the discussion by saying, "Essentially, it's a warning to anyone who wants to copy the game that they better not."

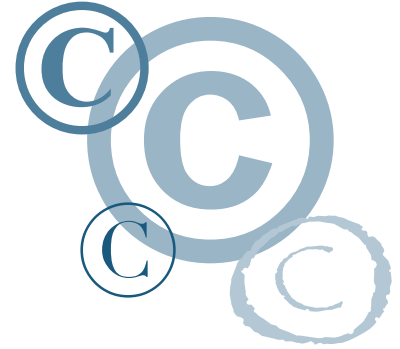
"Oh," he said, glad the lecture had ended, and returned to blasting digital Germans off the beaches of Normandy.

The use of the © symbol carries a very powerful meaning. Companies like Microsoft™ are well aware that the true value of their products lie not in the CD's or manuals or boxes they sell, but rather lie buried deep in the software code that comprises the programs copied onto those CD's. If you have ever loaded software onto a computer or turned on and used a new computer, you have had to acknowledge those rights by reading and checking off your acceptance

of a licensing agreement written in terse legalese. The source of the right to use the © is the U.S. Copyright Office and the precondition to its use is registration.

Registration requires the appropriate government forms and submission of the requisite fees and copies of the software materials to the Copyright Office. The forms seem relatively simple. In reality, the analysis and decisions that go into the answers on the form and the submission of materials are fraught with complicated implications.

For example, the answer to an apparently innocuous question such as "who authored the software?" can have significant, long-lasting and unintended consequences. The same is true of the determination of whether there are trade secrets contained in the source code because the entire source code will have to be deposited with the Copyright Office and then will be available to the public. If so, special deposit rules may have to be followed and written instructions provided to the



Copyright Office regarding the deposit.

Although software registration is only one part of a company's comprehensive intellectual property management system, its value is unquestionable. However, registration must be done right in order to have the desired protective effect and the best way to get it done right is by consulting a competent intellectual property attorney. Otherwise, that little © symbol may be rendered meaningless.

David Baker is a partner with Hart, King & Coldren. His practice includes litigation and transactional work in the areas of intellectual property, business and real estate law. Mr. Baker may be reached at dbaker@hkclaw.com and 714.432.8700 x 344.

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