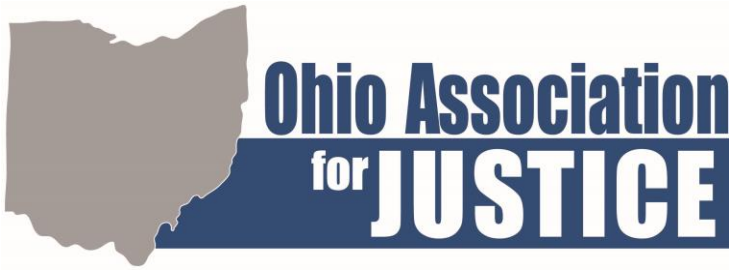

Navigating Through Statutes, Insurance Policies, and Regulations
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Insurance Coverage for Intentional and Unlawful Acts

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Insurance Coverage for Intentional and Unlawful Acts

Presented by: Ben Wright

1. **TOPIC:** This outline will discuss Insurance Coverage for intentional conduct and generally intended consequences. The issue of insurance coverage for intentional conduct and unintended consequences is not addressed herein. For that issue, *see Allstate Ins. Co. v. Campbell*, 128 Ohio St. 3d 186 (2010). ("the trier of fact must conduct a factual inquiry . . . to determine whether the [tortfeasor] intended or expected the harm that resulted from their intentional actions.")

2. **OUTLINE**

   2.1. Anatomy of a Business Insurance Policy

   2.2. Personal and Advertising Injury

   2.3. Coverage

   2.4. Exclusions

   2.5. Recent Changes

   2.6. Commercial Property Coverage Part

   2.7. Inland Marine Policy

   2.8. Strategic Considerations

   2.9. Bottom line: Read the policy closely!

3. **ANATOMY OF A BUSINESS INSURANCE POLICY:** This outline will focus on business policies. Homeowner's and Renter's policies often contain similar provisions.

3.1. Jargon:

Insurer Jargon	Lawyer Jargon
Bodily Injury	Personal Injury
Personal Injury	False arrest, wrongful eviction, defamation, etc.
Advertising Injury	Copyright infringement, plagiarism, etc.
Occurrence	Accident

3.2. Commercial General Liability Form ("CGL")

3.2.1. Coverage A: Bodily Injury and Property Damage "We will pay those sums that the insured becomes legally obligated to pay as damages because of 'bodily injury' or 'property damage' to which this insurance applies. We will have the right and duty to defend the insured against any 'suit' seeking those damages." ISO Form CG 00 01 12 07 (2006)

3.2.1.1. The way this coverage part plays out is that to trigger a duty to defend, there must be an accident (i.e. "occurrence") causing bodily injury and property damage.

3.2.2. Coverage B: Personal and Advertising Injury (discussed in detail below) "We will pay those sums that the insured becomes legally obligated to pay as damages because of 'personal and advertising injury' to which this insurance applies." ISO Form CG 00 01 12 07 (2006); an excerpt of another form is provided with these materials.

3.2.3. Coverage C: Medical Payments -- "We will pay medical expenses . . . for 'bodily injury' caused by an accident . . . because of your operations . . . . We will make the payments regardless of fault." ISO Form CG 00 01 12 07 (2006)

3.3. Commercial Property: Commercial property insurance helps businesses, including farms and ranches, pay to repair or replace property that was damaged by a fire, storm, or other event covered by the policy. It also pays to replace stolen or lost property.

3.4. Inland Marine: Inland marine insurance was first created to cover the transport of goods over water, but the definition of the term has expanded to refer to the coverage of goods in transit on land, as well as to the property of others that is at the insureds premises or being transported to or from the insureds premises.

4. COVERAGE B: PERSONAL AND ADVERTISING INJURY

4.1. Generally

4.1.1. Generally speaking, the duty to defend, who is an insured, supplementary payments and the requirement that the offense occur in the coverage territory is the same as Coverage A.

4.1.2. Personal and advertising injury[1] includes the following specific offenses:

4.1.2.1. Personal Injury

4.1.2.1.1. False arrest, detention, or imprisonment;

4.1.2.1.2. Malicious prosecution;

4.1.2.1.3. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord, or lessor;

4.1.2.1.4. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products, or services;

4.1.2.1.5. Oral or written publication, in any manner, of material that violates a person's right of privacy;

4.1.2.2. Advertising Injury

4.1.2.2.1. The use of another's advertising idea in your "advertisement"; or

4.1.2.2.2. Infringing upon another's copyright, trade dress, or slogan in your "advertisement."

4.1.3. Distinctions between Coverage A and Coverage B

4.1.3.1. Personal and Advertising Injury is not triggered by an occurrence (read: accident) causing physical harm. The concept of an “occurrence” is irrelevant to Coverage B, which does not require personal or advertising injury be caused by an “occurrence.” Instead, it requires that an insured commit a listed “offense” for coverage to apply. ***This is a key distinction.*** In other words, for “personal and advertising injury” there is no language conditioning coverage on an accident or occurrence. Stated another way, absent an exclusion, Insurer agreed to insure for covered intentional and unlawful acts such as wrongful eviction, slander and trademark infringement.

[1] Some policies separate “personal injury” from “advertising injury,” the analysis remains largely the same

4.1.3.2. In general, an "offense" involves a violation or infringement of the rights of others. Further, a person or organization alleged to have committed a personal or advertising injury offense usually intended their actions (but not necessarily the result of their actions).

4.1.3.3. That is not to suggest that intentional injury will always be covered by Coverage B. However, eliminating coverage for intentional injury is accomplished by exclusions to coverage, not by limitations found in the Coverage B insuring agreement.

4.2. Coverage

4.2.1. Personal Injury: In order to trigger Personal Injury coverage, the pleading must allege that the injury arises from one of the enumerated offenses in the policy, and the injury arises out of the insured's business and there is a causal connection between the offense and the injury.

4.2.1.1. Enumerated Offenses

4.2.1.1.1. False arrest, detention, or imprisonment

4.2.1.1.1.1. False arrest and false imprisonment are the intentional detention or confinement of a person within a limited area for an appreciable time against the person's will and without lawful justification, the difference being that false arrest is committed by law enforcement, whereas false imprisonment is committed by a private individual. *Evans v. Smith*, 97 Ohio App. 3d 59, (1st Dist. Hamilton County 1994).

4.2.1.1.1.2. The effect of the word "detention" is unclear. Arguably, it could mean "trespass to chattels." Consider that Coverage B states: "We will pay those sums that the insured becomes legally obligated to pay as damages because of 'personal and advertising injury' . . ." The term "personal and advertising injury" is defined as follows: "'Personal and advertising injury' means injury, including consequential 'bodily injury,' arising out of one or more of the following offenses: a. False arrest, detention or imprisonment. . . ." "Detention" is defined as "the withholding of what belongs to or is claimed by another." *See* Random House Dictionary, Random House, Inc. 2014. Applying the word "detention" to the case at hand, it refers to items that were lost or taken. Substituting the parties and conduct into the policy language renders: "Insurer will pay those sums that Insured becomes legally obligated to pay as damages because of withholding what belongs to or is claimed by another."

4.2.1.1.2. Malicious prosecution

4.2.1.1.2.1. The elements of a cause of action for malicious prosecution are: (1) malice in instituting or continuing a prosecution; (2) lack of probable cause; and (3) termination of the prosecution in favor of the accused. *Garza v. Clarion Hotel, Inc.*, 119 Ohio App. 3d 478, 695 N.E.2d 811 (1st Dist. Hamilton County 1997); *Broadnax v. Greene Credit Service*, 118 Ohio App. 3d 881, (2d Dist. Greene County 1997).

4.2.1.1.2.2. The amount of time involved in the underlying action raises problems in terms of when the offense happened. The majority view among the various states is that the offense is deemed committed when the legal proceeding is commenced, rather than when it ends in favor of the party against whom it was initiated. OH. INS. COVERAGE § 5:4

4.2.1.1.3. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord, or lessor;

4.2.1.1.3.1. There is, for example, uncertainty about whether the offense encompasses claims that: (1) do not involve the physical occupation of, or trespass upon, real property; (2) whether coverage is meant to be limited to circumstances involving a landlord and tenant relationship and (3) whether the phrase "other invasion of the right of private occupancy" includes claims of racial or housing discrimination. OH. INS. COVERAGE § 5:5 (citing Windt, INSURANCE CLAIMS AND DISPUTES: REPRESENTATION OF INSURANCE COMPANIES AND INSUREDS § 11:28 (5th ed.); Donald S. Malecki and Arthur L. Flitner, COMMERCIAL GENERAL LIABILITY 93–95 (8th ed. 2005).

4.2.1.1.4. Oral or written publication, in any manner, of material that violates a person's right of privacy

4.2.1.1.4.1. Categories of violations of a right to privacy

4.2.1.1.4.1.1. Misappropriation of a person's likeness or name, usually for the commercial benefit of another

4.2.1.1.4.1.2. Intrusion upon a person's right of seclusion or solitude, or intrusion into private affairs

4.2.1.1.4.1.3. Use of publicity to place another in a false light, if a reasonable person would find it objectionable (the depiction does not have to be defamatory)

4.2.1.1.4.1.4. Public disclosure of private facts, even if the information is true and not defamatory, if the revelation is embarrassing or otherwise reasonably objectionable

4.2.1.1.4.2. The Fifth, Seventh, Eighth, Tenth and Eleventh circuits, in interpreting "advertising injury" definitions have construed the definition as potentially implicating both one's right to secrecy and one's right to seclusion. *W. Rim Invest. Advisors, Inc. v. Gulf Ins. Co*. (C.A.5, 2004), 96 Fed.Appx. 960; *Universal Underwriters Ins. Co. v. Lou Fusz Auto. Network, Inc.* (C.A.8, 2005), 401 F.3d 876, 881; *Park Univ. Ents.*, 442 F.3d at 1251; *Hooters of Augusta, Inc*., 157 Fed.Appx. at 208. This appears to be the position taken in Ohio as well. *Schuetz v. State Farm Fire & Cas. Co*., 147 Ohio Misc. 2d 22, 41 (Com. Pl. 2007); *accord Motorists Mutual Insurance Co. v. Dandy-Jim, Inc.*, 182 Ohio App. 3d 311 (8th Dist. Cuyahoga County 2009). Meanwhile, the Fourth and, until recently, the Seventh Circuits have interpreted similar policy provisions as implicating one's right to secrecy only. *Resource Bankshares Corp.*, 407 F.3d at 642; *Am. States*, 392 F.3d at 943; *Valley Forge Ins. Co. v. Swiderski Electronics, Inc.* (2006), 223 Ill.2d 352, 307 Ill.Dec. 653, 860 N.E.2d 307.

4.2.1.1.5. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products, or services

4.2.2. Advertising Injury: In order to How to Trigger Advertising Injury Coverage, the pleading must allege advertising injury as defined by the policy, there was advertising or an advertising activity, the injury arises out of the insured's business and there was a causal connection.

4.2.2.1. Enumerated Offenses

4.2.2.1.1. The use of another's advertising idea in your "advertisement"; or

4.2.2.1.1.1. Policy definition of advertisement: "[A] notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters."

4.2.2.1.1.2. What constitutes advertising activity by a policyholder can be one of most litigated issues under advertising injury coverage, especially under the 1973 Endorsement and the 1986 ISO policy form, neither of which included a definition of advertisement. A substantial number of courts have adopted a broad interpretation that considers advertising activity to include any means of drawing

attention to the company's products. Under this view, advertising activity includes not only traditional widespread public advertisements, but also marketing activities directed at specific groups and even the direct solicitation of individual customers. However, the majority of courts require the requisite advertising activity to consist of the widespread public distribution of promotion material.

4.2.2.1.2. Infringing upon another's copyright, trade dress, or slogan in your "advertisement."

4.2.2.1.3. Other possible offenses: *Unfair Competition, Patent Infringement, and Piracy* Advertising injury coverage for a claim involving "unfair competition" was available in the 1973 Endorsement but was eliminated in the 1986 ISO form. Nevertheless, some insurers have continued to offer advertising injury coverage for "unfair competition" claims, and coverage for a claim of "unfair competition" may arise under a pre-1986 ISO form policy if the claim alleges the conduct of an insured prior to 1986.

4.3. Exclusions: The Coverage B exclusions and not the insuring agreement that address the scope of coverage for intentional acts.

4.3.1. Material published with Knowledge of Falsity

4.3.1.1. The insured must ***know*** the information is false. If the insured should have known the information was false, the action would still be covered.

4.3.2. Knowing Violation of Rights of Another: "Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another ***and*** would inflict "personal and advertising injury."

4.3.2.1. The insured must ***know*** their actions violate the rights of another and that the violation would cause Personal and/or Advertising injury. If the insured should have known their actions violate the rights of another, the action would arguably still be covered.

4.3.2.2. Pay attention to what aspect of proof the intent element applies to. For example, *In Westfield Cos. v. O.K.L. Can Line*, 155 Ohio App. 3d 747, 757, (1st Dist. Hamilton County 2003) the insurer argued that the exclusion applied because the complaint alleged intentional infringement. The court held, however, that the exclusion did not apply because the complaint also alleged nonintentional infringement. As the court explained: "Alcoa could have prevailed on the Lanham Act or the common-law trade dress infringement claim without proving intentional or knowing infringement. *Proof of intent is*

required only to justify a request for enhanced damages and attorney's fees. The exclusion, therefore, did not apply under the facts of this case."

4.3.2.3. The use of the word "and" as opposed to "or" means, of course, that the act must be committed both with the knowledge that it would violate the rights of another and that it would inflict "personal and advertising" injury. To the extent it is possible to intend to violate the rights of another without at the same time intending to inflict "personal and advertising injury" or vice-versa, the allegations of the complaint may give rise to a duty to defend where the complaint does not arguably or potentially allege both that the insured knew that his act would violate the rights of another and would inflict "personal and advertising injury." OH. INS. COVERAGE § 6:1

4.3.3. Material Published Prior to Policy Period

4.3.3.1. Exactly how this exclusion will be interpreted depends to a large extent on the circumstances. For instance, there is no bright line rule whether the exclusion reaches material published prior to the commencement of the policy that is similar or substantially similar but not identical to that published after the policy began. OH. INS. COVERAGE § 6:3

4.3.3.2. How courts have interpreted this exclusion is decidedly mixed. The issue is that while the intent appears to be to eliminate coverage for material published before the policy period, even if a subsequent publication of the same or similar material is published during the policy period, some courts find this interpretation less than compelling.

4.3.3.3. In *P.J. Noyes Co. v. American Motorists Ins.*, 855 F. Supp. 492, 495-97 (D.N.H. 1994), the court denied an insurer's demand for summary judgment (applying New Hampshire law): "even though the alleged infringing term was first published prior to the policy inception material issue of fact existed because the alleged infringing term was also published after the inception of the policy and it was unclear which material the advertising injury arose out of."

4.3.3.4. Other courts have interpreted this exclusion to apply regardless of which publication, the publication prior to or the publication during the policy, is alleged to have caused the injury the determining factor is whether any of the injurious material was published prior to the policy. In the case of *Sam Z. Scandaliato & Assoc., Inc. v. First Eastern Bank & Trust*, 589 So. 2d 1196 (La. App. 1991), the court found: "prior publication exclusion applies and thus no duty to defend defamation claim where the plaintiff in the underlying suit alleged defamatory publications by insured were continuous over a number of years and covered several policies, but where first injurious publication was made prior to the effective date of each of the policies."

4.3.4. Breach of Contract: "'Personal and advertising injury' arising out of a breach of contract, except an implied contract to use another's advertising idea in your 'advertisement.'"

4.3.4.1. No coverage for failing to honor term of contract

4.3.4.2. However, there is coverage for breach of an ***implied*** contract – provided the alleged offense was one of those enumerated

4.3.5. Contractual Liability

4.3.5.1. If the insured's liability for a personal or advertising injury offense is based solely on the insured's agreement to assume the liability of others via a hold harmless or indemnity agreement, no coverage exists.

4.3.5.2. However, it could be argued that if the insured would have been liable regardless of whether the hold harmless or indemnity agreement existed, the exclusion should not apply.

4.3.6. Criminal Acts

4.3.6.1. It is the mere *allegation* of a violation that triggers the exclusion

4.3.6.2. There may still be coverage for those who did not participate in the criminal act and cannot be held vicariously.

4.3.7. Infringement of Copyright, Patent, or Trade Secret

4.3.7.1. The extent of coverage for intellectual property has been the subject of a significant amount of litigation, much of which revolves around what, exactly, is meant by advertising in relation to intellectual property rights.

4.3.7.2. In some cases, the question litigated is what is meant by copyright, trade dress, or slogan. For example, policyholders have urged courts to consider patent infringement as a misappropriation of trade dress and thus a covered offense

4.3.7.3. The Sixth Circuit in ShoLodge, Inc. v. Travelers Indemnity Co., 168 F.3d 256 (6th Cir. 1999) held that coverage did not exist for trademark infringement under the "infringement of copyright, title or slogan" provision. 168 F.3d at 259. In that case, one hotel chain alleged that another hotel chain had infringed its service mark. The insured, ShoLodge, argued that its insurer had a duty to defend and indemnify it in the underlying lawsuit because, inter alia, the underlying claims fell within the definition of advertising injury as "infringement of copyright, title or slogan." The Sixth Circuit disagreed. The court found that trademarks and service marks were not "copyrightable," that they were not "slogan[s]," and that they could not be considered "title[s]," as

that term was not ambiguous. Id. at 259-60. The court observed that "the word 'title' generally refers to a noncopyrightable title of a book, film, or other literary or artistic work." Id. The conclusion of no coverage, said the ShoLodge court, was further bolstered by the "absence of any express reference to trade mark or service mark infringement" in the insuring agreement. Id. at 260; *compare Houbigant, Inc. v. Federal Insurance Co*., 374 F.3d 192 (3rd Cir. 2004)

4.3.8. Insureds in Media and Internet Type Business: Coverage B is intended to provide coverage for liability for non-media companies arising from personal and advertising injury, such as damage to a third party's reputation or feelings.

4.3.9. Pollution and Pollution Related Exclusions: As discussed above, Policyholders were able, with limited success, to characterize pollution claims as wrongful entry or other type of covered offense. Recent Policies now exclude coverage for the release of any pollutants

4.3.9.1. The Hamilton County Court of Common Pleas held, absent a pollution exclusion applicable to Coverage B, the coverage for personal injury offenses of "wrongful entry or eviction or other invasion of the right of private occupancy" provided coverage for environmental pollution claims. *Morton Thiokol, Inc. v. Aetna Cas. & Sur. Co.*, 1988 WL 1520456 (Ohio C.P. 1988), rev'd on other grounds, 1991 WL 201651 (Ohio Ct. App. 1st Dist. Hamilton County 1991). However, the court in *Sherwin-Williams Co. v. Travelers Cas. & Sur. Co.*, 2003-Ohio-6039, 2003 WL 22671621 (Ohio Ct. App. 8th Dist. Cuyahoga County 2003) held squarely that damages caused by environmental pollution do not constitute "personal injury." The court reasoned that torts of "wrongful entry" and "invasion of the right of private occupancy" require "some purposeful intent by the alleged tortious actor that is absent from harm arising from the gradual spread of pollution." OH. INS. COVERAGE § 4:34

4.3.10. War

4.3.11. Quality or Performance of Goods – Failure to Conform to Statements

4.3.12. Wrong Description of Prices

4.3.13. Electronic Chatroom or Bulletin Boards

4.3.14. Unauthorized Use of Another's Name or Product

4.3.15. Employment related Practices (Endorsement)

4.3.16. Violation of Statutes that govern E-mails, Fax, Phone Calls, etc. (CAN-SPAM, etc) (Endorsement)

4.4. Recent Changes

4.4.1. Prior CGL form revisions focused upon limiting coverage for claims involving intellectual property, such as patent, trademark and copyright infringement, Coverage B has been significantly eroded with respect to coverage for intellectual property causes of action and claims arising from Internet activities.

4.4.2. 2013 ISO revision to the definitions of personal and advertising injury liability deletes the right of privacy offense. Amendment of Personal and Advertising Injury Definition (CG 24 13 04 13 "Amendment"). The Amendment, while quite simple on its face, significantly limits coverage for policyholders under Coverage B. It states as follows:

> With respect to Coverage B Personal And Advertising Injury Liability, Paragraph 14.e of the Definitions section does not apply.

The relevant paragraph deleted by the above Amendment is as follows: . . . 14. "Personal and advertising injury" means injury, including consequential "bodily injury" arising out of one or more of the following offenses: . . . e. Oral or written publication, in any manner, of material that violates a person's right of privacy . . . . In other words, the Amendment eliminates coverage for invasion of privacy, which is a publishing and advertising peril. As one commentator stated:

> CGL insurers are particularly concerned about covering data privacy and network security actions arising from the misuse of personal identifiable information. In ISO's attempt to exclude these perils, coverage for "garden variety" privacy actions relating to reputational harm and hurt feelings consistent with personal and advertising injury actions has been thrown out with the proverbial bath water. The full reach of the new Amendment will have to await judicial review before we fully understand its coverage implication. In the interim, coverage professionals and policyholders are left to wonder about its breadth and how it will be applied by insurers.

4.4.3. Exclusion p: Recording And Distribution Of Material Or Information In Violation Of Law, which was previously entitled, "Distribution Of Material In Violation Of Statues," has been broadened to exclude coverage for "Personal and advertising injury " that violates or is alleged to have violated TCPA, CAN-SPAM, FCRA, FACTA

5. COMMERCIAL PROPERTY COVERAGE PART

5.1. The Commercial Property Coverage Part at the "Legal Liability Coverage Form" provides: "We will pay those sums that you become legally obligated to pay as damages because of direct physical loss or damage. Including loss of use, to Covered Property . . . ." It goes on to say that "Covered Property, as used in this Coverage Form, means

tangible property of others in your care, custody, or control." As such, the Policy provides coverage for property that was lost [or stolen] from the Insured's care.

6. INLAND MARINE POLICY

6.1. The Inland Marine Policy in "Installation Floater Coverage" at "Property Covered" provides "We cover direct physical loss caused by a covered peril to materials . . . at 'your' 'jobsite' . . . and . . . that will become a permanent part of 'your' . . . construction . . . ." It goes on to say at "Perils Covered" that "'We' cover risks of direct physical loss . . ." As such, the Policy provides coverage for property that was lost [or stolen] from the jobsite.

6.2. The Inland Marine Policy in "Miscellaneous Bailee – Processor Floater Coverage" at "Property Covered" provides "'We' cover direct physical loss caused by a covered peril to property of others . . . that is in 'your' care, custody, and control for processing. Processing includes finishing, repairing, restoring, . . . or other work. . . ." It goes on to say at "Additional Coverages" that "'We' pay for direct physical loss caused by a covered peril to covered property that 'you' store after processing." At "Loss Payment" the Policy provides that payment may be made to the owner. As such, the Policy provides coverage for property that was lost or stolen from the Insured's care.

6.3. If the Insured was defrauded and/or accidently delivered the property to the wrong person and/or the property was stolen, then the Inland Marine Policy provides coverage for each loss resulting from fraud or theft at the "Additional Coverages Endorsement".

7. STRATEGIC CONSIDERATIONS

7.1. Considerations in determining whether to trigger insurance cover:

7.1.1. If you represent the Defendant, triggering insurance coverage allows the Defendant to defray the costs of litigation -- including expert witnesses. However, should the Court ultimately determine there is no insurance coverage, the Defendant may have to reimburse the insurer.

7.1.2. If you represent the Plaintiff, triggering insurance coverage may allow you access to insurance funds for judgment or settlement. On the other hand, triggering the duty to defend will give the Defendant competent attorney(s) and may cause you to lose leverage over the Defendants personal assets. Naturally, if the Defendant is not collectible, then you may be left with little choice.

7.2. Jury Instructions: Unless you represent the insurer, you will want the jury instructions to reflect findings of fact that are covered by the policy. At the very least, you will want to craft instructions that do not allow the insurer to avoid coverage.

7.3. Motion Practice: In arguing motions regarding coverage, focus heavily on the Policy language.

7.4. Pleading Strategy:

7.4.1. Plead in the alternative. Maybe your theory is that the Defendant stole property entrusted to it and sold it on Craigslist; but an alternate theory that the Defendant just misplaced the property entrusted to it. But be wary of triggering exclusions (i.e. the criminal conduct exclusion).

7.4.2. While it is not necessary that the complaint use the specific words describing the offense, the complaint must allege a cause of action encompassing the elements of one or more of the offenses. OH. INS. COVERAGE § 5:2, *see generally United Natl. Ins. Co. v. SST Fitness Corp.*, 182 F.3d 447, (6th Cir. 1999); *Erie Ins. Exchange v. Lansberry*, 2008-Ohio-1553 (Ohio Ct. App. 7th Dist. Columbiana County 2008); *Schuetz v. State Farm Fire & Cas. Co.*, 147 Ohio Misc. 2d 22 (C.P. 2007); *Owners Ins. Co. v. William Benjamin Trucking, Inc.*, 2005-Ohio-2970, 2005 WL 1398836 (Ohio Ct. App. 9th Dist. Summit County 2005); *Westfield Cos. v. Pins & Needles*, Inc., 1996 WL 575977 (Ohio Ct. App. 5th Dist. Tuscarawas County 1996).

7.5. When drafting the prayer for relief and the jury instructions, bear in mind that equitable relief such as injunctive relief and lost profits (which is equitable in nature) are often not covered.

8. BOTTOM LINE: Read the policy closely. Insurers modify the ISO language, particularly for specialized coverages. Also, personal and advertising injury has undergone some significant changes since its inception in the 1970's.

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