

AIG Can't Escape Defending Cosby In Defamation Suits

By **Daniel Langhorne**

Law360, Los Angeles (November 13, 2015, 10:57 PM ET) -- A California federal judge on Friday refused to let AIG Property Casualty Co. escape its contractual duty to defend actor Bill Cosby in defamation suits related to his alleged sexual misconduct, holding that case law supports Cosby's narrower interpretation of two homeowner insurance policies.

U.S. District Court Judge Beverly Reid O'Connell on Friday tossed AIG's claims that it has no obligation to defend or indemnify Cosby and should be reimbursed for fees and costs for the actor's defense in a defamation suit brought by model Janice Dickinson in Los Angeles County Superior Court. Judge O'Connell held that the phrasing of an exclusion in AIG's insurance policies barring coverage for claims "arising out of" sexual misconduct was ambiguous enough to reject the insurance company's non-indemnification claims.

If AIG wanted to exclude a claim "in any way" involving sexual misconduct, it could have included such language in the sexual misconduct exclusion, the opinion said.

"Plaintiff's decision not to do so suggests that a narrow interpretation of the sexual misconduct exclusion, as urged by defendant, is reasonable," Judge O'Connell said.

Friday's decision was a victory for Cosby amid defamation lawsuits that include claims from multiple women alleging he sexually assaulted them.

AIG filed suit in late June in both Massachusetts and California, seeking in both complaints a declaration that it does not need to defend Cosby in defamation suits alleging that he raped women and then called them liars when they came forward with their accusations.

The Massachusetts suit contends that AIG should not have to defend Cosby against defamation claims made in that state's federal court by Tamara Green, Therese Serignese and Linda Trazitz, who all allege that in the 1970s, Cosby offered them pills or pressured them to take them — either misrepresenting them as cold medicine or not saying what they were — and then raped them while they were drugged.

The federal case brings claims similar to those in the state court suit filed by Dickinson, who alleges that in 1982, Cosby drugged, raped and defamed her by calling her a liar after she took her allegations public during a television interview.

In its brief filed in the California action, the insurer argued that the exclusion for claims stemming from

“actual, alleged or threatened” sexual abuse showed clear intent to block coverage for the kind of lawsuits the women had filed.

Judge O’Connell held that both the plaintiff’s broad interpretation and defendant’s narrow interpretation of ‘arising out of ‘are reasonable.

“In light of disagreement among the courts, the sexual misconduct exclusion could reasonably be understood as requiring that Dickson’s claims merely relate to sexual misconduct or that Dickinson’s claims be proximately caused by the sexual misconduct,” she said.

But ultimately, Judge O’Connell held that Ninth Circuit’s ruling in Ticketmaster LLC v. Illinois Union Insurance Co, which also dealt with an ambiguous exclusion clause, supports Cosby’s narrow interpretation of the sexual misconduct exclusion.

AIG also claims that Cosby’s argument overlooks the importance of the word “alleged” in the exclusion cause, saying that it doesn’t have to pay for the defense of allegations of sexual misconduct against Cosby.

But the judge disagreed, saying that Dickinson’s complaint relates to personal injuries to her reputation in the entertainment industry that were caused by Cosby’s statements that she’s a liar.

“There is no evidence before the court to suggest that Dickinson’s defamation, false light and intentional infliction of emotional distress claims proximately resulted from defendant’s alleged sexual misconduct 33 years earlier or even from Dickinson’s allegations of rape in 2014,” Judge O’Connell said.

An attorney for Cosby declined to comment Friday. Attorneys for AIG did not immediately respond late Friday to a request for comment.

AIG is represented in Massachusetts by William A. Schneider and Gina M. Repucci of Morrison Mahoney LLP, and in California by James P. Wagoner, Lejf E. Knutson and Graham Van Leuven of McCormick Barstow Sheppard Wayte & Carruth LLP.

Cosby is represented by Kirk A. Pasich and Kimberly A. Umanoff of Liner LLP and Francis D. Dibble Jr. and Jeffrey E. Poindexter of Bulkley Richardson and Gelinas LLP.

Dickinson is represented by Alan Goldstein of The Bloom Firm. Counsel information for Green, Serignese and Traitz was not immediately available on Tuesday.

The cases are AIG Property Casualty Co. v. Tamara Green et al., case number 3:15-cv-30111, in the U.S. District Court of Massachusetts, and AIG Property Casualty Co. v. William H. Cosby et al., case number 2:15-cv-04842, in the U.S. District Court for the Central District of California.

--Additional reporting by Daniel Siegal and Jody Godoy. Editing by Philip Shea.
