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Evolution of Insurance Coverage for Intellectual Property Litigation

By Kevin P. Kalinich and Laura J. Grabouski

Evolving Intellectual Property Opportunities, Exposures, and Coverage Issues
Intangible assets now exceed the value of tangible assets in many Fortune 1000 organizations, as well as small and medium-sized private entities.[1] One of the largest and fastest-growing intangible asset classes is intellectual property (IP).[2] With the growth of IP assets, IP litigation is frequently in the spotlight. Recent IP litigation includes a $440 million patent troll verdict against Apple, upheld in 2019, related to secure communications over the internet,[3] and Cox Communications was hit with a $1 billion copyright verdict on December 19, 2019, in a lawsuit alleging that it allowed its internet subscribers to illegally download music.[4] On November 19, 2019, the U.S. Supreme Court granted certiorari in *Google v. Oracle*,[5] dubbed Silicon Valley's "Lawsuit of the Decade," which addresses Oracle's demand for $9 billion in connection with (1) whether copyright protection extends to a software interface and (2) whether, as the trial court jury found, the petitioner's use of a software interface in the context of creating a new computer program constitutes fair use.

Yet, the standard commercial general liability (CGL) and media liability forms have limited coverage for IP-related claims. The current ISO form for the CGL policy has considerably tightened the language for "personal and advertising injury," where coverage battles are fought over such claims. The current CGL form excludes trademark and patent infringement altogether, with coverage provided for copyright, trade dress, and slogan infringement *in advertising*.

With the growing risk of IP litigation, the marketplace is responding, much as the industry responded to the need for employment practice liability insurance due to exclusions under workers' compensation and CGL coverage. This article explores the most recent coverage decisions—which indicate a trend toward some, albeit limited, coverage under CGL and media liability forms—and addresses material updates to the insurability of IP and potential sources of coverage for IP litigation. The type of policy under which coverage is sought (and fought) will thus be critical.

Standard CGL and Media Coverage Forms

The applicability of IP insurance varies depending on the type of policy, the policy's wording, and the intent of the parties. In today's insurance marketplace, most of the IP coverage components are available for inclusion in CGL insurance policies, media liability policies, errors and omissions or professional liability policy forms, and cyber liability policy forms. The specific wording is more important than the name used to identify the coverage because the wording can vary materially within the same line of coverage.

Media liability coverage is specifically intended to address content-based injury (copyright and trademark infringement), personal injury (libel, slander, defamation), and errors in content. This coverage is commonly purchased by media, entertainment, and advertising organizations, or by other content providers in the growing digital economy.

However, even though most types of IP can be addressed by one or more generic insurance policies, some of the most severe IP exposures, such as patent infringement and trade secret theft and misappropriation, are typically excluded from standard policies.

Recent decisions illustrate the scope and gaps in coverage under the two principal policies: (1) CGL, in the case of nonprofessional services organizations, and (2) professional liability/cyber liability or media liability, in the case of professional services and media companies.

Recent Decisions Involving CGL Policies

Personal and advertising injury coverage is a component of CGL insurance that may provide coverage for certain infringement claims, provided the infringement occurs in the company's advertisement. Prior to the addition of the IP exclusion, many courts had held that advertising injury did not include either direct or induced patent infringement.[6] As one court recognized, it is "absurd to suggest" that a general liability policy "encompasses patent infringement or inducement to infringe" even where the policy covers personal and advertising injury.[7] After all, "[s]ince the gravamen of patent infringement is the unauthorized production, use or sale of a patented product and not its advertisement, it could not arise out of or occur in the course of advertising activities."[8] With the express exclusion of patent and trademark infringement, multiple recent cases continue to hold in favor of denial of CGL coverage based on the exclusion.[9]

Yet, some courts have found IP coverage in CGL policies. For example, an insurer sought a declaration that it had no duty to defend or indemnify its policyholder under

a series of general liability policies against allegations of patent infringement and misappropriation of trade secrets.[10] Hartford Fire Insurance contended that all of the claims arose out of violations of IP rights and fell within an exclusion for "'Personal and advertising injury' arising out of any violation of any intellectual property rights such as copyright, patent, trademark, trade name, trade secret, service mark or other designation of origin or authenticity."[11] The policyholder argued that the complaint against it also contained allegations that the insured "spread false rumors"[12] and that those allegations did not involve IP rights referenced within the exclusion. The U.S. District Court for the District of Kansas agreed with the insured, holding that the exclusion did not bar coverage. The court observed that the underlying lawsuit alleged that the insured had disparaged the complainant and that the insurer had failed to demonstrate that the IP exclusion barred coverage for, or a duty to defend against, such claims.

An IP case decided in 2018 concerned coverage for allegations of misappropriation of confidential information. In the underlying action, the plaintiff, an extended stay hotel company, alleged that National Union's insured had hired one of its former employees.[13] Subsequently, the employee allegedly procured and distributed her former employer's "confidential and competitively sensitive . . . information,"[14] including a detailed customer database, to the insured's sales team. As a result, the former employer initiated a lawsuit regarding the misappropriation of that information. Eleven out of 12 counts specifically referenced the term "trade secrets." The insured sought defense costs and indemnity from National Union regarding the underlying lawsuit. National Union sought to deny coverage based on an exclusion in the policy for claims against the insured "for any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, trade secret or any other intellectual property rights."[15] Subsequently, the insured filed an action seeking a declaration regarding National Union's duty to defend and indemnify the insured and the employee against the claims in the underlying lawsuit. The court held that, while the gravamen of the underlying litigation was misappropriation of trade secrets, a lone count relating to unlawful access of a protected computer system did not fall within the policy's trade secret exclusion. Accordingly, the court ruled that National Union had a duty to defend the underlying lawsuit.[16] But the question of whether there would be a duty to indemnify against the underlying claims survived the motion for summary judgment stage in the insured's action for declaratory relief.

In sum, the current version of the standard CGL policy has eliminated many of the prior coverage disputes over the scope of available coverage for IP claims. The IP exclusion should exclude coverage for a lawsuit solely alleging patent, trade secret,

or trademark infringement. However, as discussed above, where additional facts or claims are alleged, courts have found potential coverage. Moreover, the current ISO preserves coverage for claims of copyright, trade dress, or slogan infringement, or the use of another's "advertising idea,"[17] in the insured's advertisement.

Professional Services, Media, Technology, Telecommunications, Cyber and Digital Economy Insurance Options

Because professional services firms, media companies, entertainment, and evolving digital economy organizations use IP in providing products and services above and beyond the "advertising" intent of coverage in CGL policies), additional IP coverage should be explored. Furthermore, there is often a "professional services" exclusion in CGL policies as well as the advertising/media exclusion if one is in the business of media or advertising. Errors and omissions policies, also known as professional liability policies, are intended to cover financial loss resulting from the rendering of, or failure to render, services to or on behalf of a customer (or other third parties, if the language is broadened). Coverage is usually limited to economic loss only (no bodily injury or property damage coverage unless specifically endorsed), but coverage can include most elements of IP, except patent infringement and trade secret theft or misappropriation.

Coverage for infringement of copyright and trademark is commonly available and is most commonly found in media liability programs, and some policies now include this same scope of coverage in conjunction with professional and technology insuring agreements. Technology errors and omissions policies are similar in scope of coverage to errors and omissions policies, except geared more specifically to technology products and technology service providers. Media liability, referenced above, is a specialized form of errors and omissions policies specifically designed for media, publishers, broadcasters, advertising agencies, authors, and entertainment and digital economy organizations that create or distribute content via various platforms and are at risk of third-party liability for their content.

Recent Decisions Involving Media Liability Policies

In a recent New York state appellate decision, the court rejected AIG's effort to avoid defending McGraw-Hill in a series of copyright suits.[18] In doing so, the court reversed the trial court and rejected the insurer's attempted use of the contract exclusion and fortuity doctrine (the concept that a policyholder can collect insurance proceeds only due to a fortuitous accident or occurrence, rather than a known or expected loss) as a bar to coverage under various multimedia liability insurance policies. While McGraw-Hill paid photographers and stock photo owners for the

right to use certain photos in textbooks and other publications, the underlying suits alleged that the images were ultimately used in ways the parties had not agreed upon.

Timing issues. The insurance marketplace offers both stand-alone media policies and media components that can be combined with other coverages. This coverage can be written on an occurrence basis (an alleged infringement occurred during the policy period even if the claim is made after the policy term) or claims-made basis (allegations claimed during the policy period). However, coverage for patent and trade secret infringement is less commonly included in media liability policies and, in most cases, must be covered by specialized policies. The details of the wording regarding expiration of coverage and potential extended periods to make a claim are significant. For instance, on December 12, 2019, an Illinois appellate court affirmed that two Liberty Mutual units have no duty to defend Ferrara Candy Co. in a suit accusing it of stealing a former business partner's formulas for Welch's Fruit Snacks and Sour Jacks candies to make competing products, while also finding that the insurer can recover defense costs it previously paid on Ferrara's behalf.[19] The appellate panel agreed with the lower court that Liberty's coverage obligations were not triggered because the underlying plaintiff's claims of misappropriation of trade secrets, trade dress infringement, and unfair competition concerned actions that Ferrara allegedly committed after its policies with Liberty had already been canceled.

IP exclusions. Historically, the exclusions for patent infringement and trade secrets misappropriation have been broadly interpreted by courts. In one representative case, National Union (a unit of AIG), argued that an IP exclusion for "any claim arising out of any misappropriation of trade secret" precluded coverage under a professional liability policy.[20] The policyholder, which provided records management and printing services, was hired by a law firm to provide litigation support services. These services involved analysis of sensitive documents that contained a client's confidential trade secrets. While the documents were in the policyholder's possession, a relative of a policyholder employee obtained the documents and leaked them to a hacker website. The policyholder sought coverage under its professional liability policy after settling a claim with its client. The Supreme Judicial Court of Massachusetts held that the "plain language" of the exclusion precluded coverage, whether the acts were "committed by or at the direction of the insured or third parties."[21] Importantly, the court noted that the phrase "arising out of" in the exclusion "must be read expansively, incorporating a greater range of causation than that encompassed by proximate cause under tort law."[22] This language, the court reasoned, "unambiguously encompasses claims based on third-party conduct."[23]

Another policyholder sought coverage under a professional liability policy for claims against corporate representatives for the alleged theft of copyrighted and confidential material.[24] The claims against the representatives included usurpation of corporate opportunity, tortious interference, and civil conspiracy. The insurer, Federal Insurance, argued that an exclusion for claims "based upon, arising from, or in consequence of any actual or alleged infringement of copyright, patent, trademark, trade name, trade dress, service mark or misappropriation of ideas or trade secrets" applied to bar coverage.[25] The insured argued that several of the claims in the underlying complaint, such as usurpation of corporate opportunity, did not fall within the IP exclusion. The U.S. District Court for the Northern District of Illinois agreed with Federal Insurance's argument and characterized the IP exclusion as being "quite broad."[26] The court held that the claims against the corporate representatives "set[] forth a theory of liability 'based upon' or 'arising from' the core factual allegations of misappropriation of proprietary trade secrets and confidential information."[27]

In another case, an insurer sought a declaration that it had no duty to indemnify its insured against allegations that the insured had hired another company's employees and stolen confidential business information, including the aggrieved company's client list and sales information.[28] As a result of these allegations, the insured faced causes of action for (1) violation of the Uniform Trade Secrets Act, (2) intentional interference with contractual relations, (3) intentional interference with prospective business advantage, (4) unfair competition, and (5) civil conspiracy. The insured claimed it had coverage for the underlying action based on a policy provision concerning coverage for claims arising out of "personal and advertising injury," which included copying another's "advertising idea."[29] Specifically, the insured argued that the underlying complaint alleged that it had copied the plaintiff's "advertising idea"[30] by using sales data to contact customers. The court ruled that there were no allegations in the underlying action that the plaintiff was injured by the insured's copying of its customer list or other trade secrets in an advertisement, as customers had been contacted individually, rather than through mass distribution. The court relied on the fact that there was no allegation that the insured publicly disseminated the customer list or proprietary business information in order to promote its goods or services or to attract customers. Further, the court held that even if the underlying complaint could be construed to allege a "personal and advertising injury," coverage was precluded due to the policy's IP exclusion. Accordingly, the court entered judgment for the insurer.

Not all courts take such a narrow view of IP coverage under professional liability policies. The U.S. District Court for the Northern District of Georgia examined

whether a professional liability policy covered claims of misappropriation of pricing information. In *MedAssets Inc. v. Federal Insurance Co.*, Federal Insurance moved for summary judgment, seeking a declaration that it had no duty to defend its insured against the claims under an exclusion for claims "based upon, arising from, or in consequence of any actual or alleged . . . misappropriation of ideas or trade secrets."[31] The court denied Federal Insurance's motion on the basis that the underlying complaint against the insured characterized the pricing information as both a "trade secret" and "confidential information"—the latter of which did not fall within the trade secret exclusion.

Cyber Liability Policies

Most professional liability or errors and omissions policies can incorporate all third-party cyber liability issues. However, if an entity does not purchase professional liability insurance, then it is wise to consider a stand-alone cyber insurance policy, which addresses privacy and security exposures, including collection, analytics, storing, and dissemination of information assets. Cyber insurance policies are being customized in 2020 to include media liability coverages, such as "Advertising Injuries," and provide defense and indemnity for certain types of IP-related claims if the alleged wrongdoing arises out of cyber-related incidents. For example, a cyber insurance policy may afford coverage for claims that a policyholder failed to properly safeguard a third-party's IP that was in its possession, which can be vitally important if the information assets are considered trade secrets. There is potential coverage for costs or expenses that the policyholder incurs for forensics and incident response and indemnity for proven damages for the value of the third-party's IP that has been lost, misappropriated, or stolen. Affirmative language to address third-party trade secret value damages coverage is evolving, but first-party trade secrets value lost is generally excluded.

Finally, cyber insurance policies do not afford coverage for allegations that the policyholder's patents infringe on those of a third party. In an illustrative case, Travelers denied coverage under its CyberFirst policy based on specific exclusions for losses arising out of the actual or alleged infringement of patents or copyright software under each of the three applicable coverage parts: communications and media liability, errors and omissions liability, and information security liability.[32]

A Look Ahead

Given the plethora of insurance policies that might address some elements of IP protection, it is important to consider the scope and gaps of IP coverage for each type of standard policy, as well as emerging options. Consider the following table:

Exposures	General Liability	E&O/ Professional Liability	Cyber Liability	Media Liability	Kidnap and Ransom	Reps and Warranties (Transaction Based)	Intellectual Property Liability
IP Liability Risks							
Patent Infringement	Excluded	Excluded	Excluded	Excluded	Excluded	Cover for the Rep on past issues, no go-forward	Cover available
Trade Secret Misappropriation	Excluded	Excluded	Excluded	Excluded	Excluded	Cover for the Rep on past issues, no go-forward	Cover available, outside the scope of some core policies
Trademark/Trade Dress/Trade Name Infringement	Limited to Advertising Injury, Products and Services Excluded	Cover available if Media Liability insuring agreement is included	Cover available if Media Liability insuring agreement is included	Cover available for material based on policy definition of covered material (media)	Excluded	Cover for the Rep on past issues, no go-forward	Cover available
Copyright Infringement	Limited to Advertising Injury, Products and Services Excluded	Cover available if Media Liability insuring agreement is included Cover available for Software infringement	Cover available if Media Liability insuring agreement is included	Cover available for material based on policy definition of covered material (media)	Excluded	Cover for the Rep on past issues, no go-forward	Cover available
Third Party IP disclosure/release (breach of NDA/confidentiality agreement)	Excluded	Cover available if Media Liability or Cyber Liability insuring agreement is included	Cover available if disclosure/release was caused by a Network Security & Privacy wrongful act	Cover available for material based on policy definition of covered material (media)	Excluded	Cover for the Rep on past issues, no go-forward	Cover can be endorsed for unintentional acts
Contractual Indemnities of IP Risk	Excluded	Cover available if Media Liability or Cyber Liability insuring agreement is included. Liquidated Damages almost always excluded.	Cover available if Media Liability insuring agreement is included. Liquidated Damages almost always excluded.	Cover available for material based on policy definition of covered material (media).	Excluded	Cover for the Rep on past issues, no go-forward	Cover available for IP Infringement of Insured's Product
Breach of IP license agreement	Excluded	Excluded	Excluded	Can be endorsed, limited availability	Excluded	Cover for the Rep on past issues, no go-forward	Can be endorsed, limited availability
IP Ownership Risks							
IP ownership representations	Excluded	Excluded	Excluded	Excluded	Excluded	Cover for the Rep on past issues, no go-forward	Cover available
Loss of IP value due to theft/misappropriation/other loss	Excluded	Excluded	Excluded	Excluded	Excluded	Cover for the Rep on past issues, no go-forward	Solutions being built
IP Enforcement costs	Excluded	Excluded	Excluded	Excluded	Excluded	Cover for the Rep on past issues, no go-forward	Limited availability, only outside of the US
Loss of IP due to legal challenge/Loss of Revenue	Excluded	Excluded	Excluded	Excluded	Excluded	Cover for the Rep on past issues, no go-forward	Limited availability

Regardless of the type of liability policy, customization of the terms, conditions, and exclusions is often necessary to adequately address IP exposures in an accurate, comprehensive, and in-context manner. Businesses must proactively review their policies to determine if gaps exist. Given the erosion of coverage for IP claims under standard CGL policies, businesses should explore the advantages and disadvantages of purchasing specialized insurance products designed to provide coverage for IP claims. Stand-alone IP insurance policies, which can cover patent infringement, trade secrets misappropriation, trademark infringement, and copyright infringement, are available with limits from $1 million for small organizations to over $100 million for larger organizations.[33] Most of the new policies are intended to address infringement defense and indemnity, which covers policyholders for infringement claims brought against them. Abatement enforcement coverage, which provides IP owners (the

insureds) the financial resources to enforce their IP rights and pursue infringement claims against others, is also available but is less common and comes with more restrictions.

Stand-alone IP insurance can provide the following advantages, among others:

- ➢ Facilitation of the organization's business
- ➢ Available coverage for all IP litigation, litigation expenses, settlements, and damages
- ➢ Potential coverage of infringement, invalidity, and indemnity obligations (licensees)
- ➢ Dedicated policy form and capacity limits designed and underwritten for IP exposures
- ➢ Coverage of specific IP or an entire portfolio
- ➢ The possibility of extending coverage to cover products and services in connection with third-party contractual agreements
- ➢ Possible extension of coverage to cover the supply chain
- ➢ Choice of counsel
- ➢ Annual, renewable policies
- ➢ Incorporation of enterprise risk management to better align the organization's key assets (IP) allocation of resources protection, valuation, and strategy relative to non-IP assets

Conclusion

Despite the growth in the value of IP and the risk of IP liability, much of the coverage litigation under standard CGL policies has focused on what is not covered. CGL policies have traditionally been interpreted to provide limited coverage for certain advertising offenses and exclude coverage for many common IP claims. Historical ambiguities that may have resulted in coverage have been clarified by the current CGL ISO. Other standard forms also have similar limitations. However, there are changes in available coverage that policyholders and coverage practitioners should both be made aware of. What one may previously have assumed is excluded could potentially be a covered claim under such policies.

Kevin P. Kalinich is an attorney with Aon Intangible Assets Global Collaboration Leader, and Laura J. Grabouski is a partner at Tully Rinckey PLLC.

[1] Ponemon Inst. LLC, *2019 Intangible Assets Financial Statement Impact Comparison Report* (Apr. 2019).
[2] *2019 Intangible Assets Financial Statement Impact Comparison Report*, *supra* note 1.
[3] On August 7, 2019, Apple filed a motion to stay the mandate and a motion to vacate in relation to the U.S. Court of Appeals for the Federal Circuit's August 1 order denying Apple's petition for rehearing and rehearing en banc. That petition related to the Federal Circuit's previous Rule 36 judgment upholding a district court decision ordering Apple to pay VirnetX nearly $440 million. Motion of Defendant-Appellant Apple Inc. to Stay the Mandate, *VirnetX Inc. et al. v. Apple Inc.*, No. 2018-1197 (Fed. Cir. Aug. 7, 2019).
[4] *Sony Music Entm't v. Cox Commc'ns*, No. l:18-cv-95 (E.D. Va. 2019).
[5] Google v. Oracle Am., 886 F.3d 1179 (Fed. Cir. 2018), *cert. granted* (U.S. Nov. 15, 2019) (No. 18-956).
[6] *See Heritage Mut. Ins. Co. v. Advanced Polymer Tech., Inc.*, 97 F. Supp. 2d 913, 924 (S.D. Ind. 2000).
[7] *Gencor. Indus. v. Wausau Underwriters Ins. Co.*, 857 F. Supp. 1560, 1564 (M.D. Fla. 1994).
[8] *Atl. Mut. Ins. Co. v. Brotech Corp.*, 857 F. Supp. 423, 429 (E.D. Pa. 1994).
[9] S*outhern-Owners Ins. Co. v. Aqua Box Inc.*, No. 1:12-cv-02621 (D. Colo. 2012) (no duty to defend or indemnify insured in an underlying patent suit over waterproof cases for electronic devices such as smartphones); *Hybrid Promotions LLC v. Fed. Ins. Co.*, No. 8:18-cv-00891 (C.D. Cal. July 2019) (trademark coverage not available because plaintiff in underlying action did not claim that insured's own advertising violated its trademarks and underlying plaintiff not an "Additional Insured"); *Hershey Creamery Co. v. Liberty Mut. Fire Ins. Co.*, No. 1:18-cv-00694 (M.D. Pa. Sept. 2018) (issue is language in the CGL and umbrella policies excluding trademark infringement from coverage, except when it involves advertisements and slogans); *Sentinel Ins. Co. v. Beach for Dogs Corp.*, No. 1:17-cv-01501 (N.D. Ill. June 2019) (do business logo and brand infringement allegations constitute covered or excluded "personal and advertising injury"); *WAWGD, Inc. v. Sentinel Ins. Co., LTD*, No. 3:16-cv-02917 (S.D. Cal. Oct. 2017) (general liability policy contained a clear-cut golf gadgets IP exclusion); *Boehm v. Scheels All Sports Inc.*, No. 3:15-cv-00379 (W.D. Wis. 2015) (sports memorabilia copyright claims not covered since not advertising claims); *Alterra Excess & Surplus Ins. Co. v. Estate of Buckminster Fuller*, No. A140453 (Cal. Ct. App. May 2015) (insurance company's IP exclusion barred a claim for coverage for unfair competition for "Buckyballs"); *Sterngold Dental LLC v. HDI*

Glob. Ins. Co., No. 18-2084 (1st Cir. 2019) (insurer does not have to cover a company's insurance claim for a trademark suit involving a dental products manufacturer because the policy has an exclusion for IP claims).

[10] *Hartford Fire Ins. Co. v. Vita Craft Corp.*, 911 F. Supp. 2d 1164 (D. Kan. 2012).

[11] *Vita Craft Corp.*, 911 F. Supp. 2d at 1171.

[12] *Vita Craft Corp.*, 911 F. Supp. 2d at 1170.

[13] *Woodspring Hotels LLC v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, No. CIV. N17C-09-274 EMD CCLD, 2018 Del Super LEXIS 186 (Del. Super. Ct. 2018).

[14] *Woodspring Hotels LLC*, No. CIV. N17C-09-274 EMD CCLD, slip op. at 8.

[15] *Woodspring Hotels LLC*, No. CIV. N17C-09-274 EMD CCLD, slip op. at 6.

[16] Similarly, in *State Auto Property & Casualty Insurance Co. v. Ward Kraft Inc.*, No. 2:18-cv-02671 (D. Kan. Jan. 22, 2020), a federal district court found coverage under the "disparagement" portion of the "personal and advertising injury" provision of a CGL policy even though the gravamen of the complaint alleged patent infringement.

[17] Courts continue to interpret the use of another's "advertising idea" to require (1) misappropriation of an advertising idea from the plaintiff and (2) the requisite causal nexus between the alleged conduct and the damages. *See, e.g.*, *Wardcraft Homes, Inc. v. Emp'rs Mut. Cas. Co.*, 70 F. Supp. 3d 1198, 1210 (D. Colo. 2014) (claim for false advertising by consumer not within scope of advertising injury and no causal nexus where advertising did not cause the injury but merely exposed it).

[18] *See McGraw-Hill Educ., Inc. v. Ill. Nat'l Ins. Co.*, 2019 N.Y. App. Div. LEXIS 9026 (N.Y. App. Div. Dec. 17, 2019).

[19] *Liberty Mut. Fire Ins. Co. v. Ferrara Candy Co.*, No. 17 CH 4666, 2019 IL App (1st) 181385-U (Ill. App. Ct. Dec. 11, 2019).

[20] *Finn v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 452 Mass. 690 (2008).

[21] *Finn*, 452 Mass. at 696.

[22] *Finn*, 452 Mass. at 697.

[23] *Finn*, 452 Mass. at 697.

[24] *Lemko Corp. v. Fed. Ins. Co.*, 70 F. Supp. 3d 905 (N.D. Ill. 2014).

[25] *Lemko Corp.*, 70 F. Supp. 3d at 912.

[26] *Lemko Corp.*, 70 F. Supp. 3d at 919.

[27] *Lemko Corp.*, 70 F. Supp. 3d at 919.

[28] *Sentinel Ins. Co. Ltd. v. Yorktown Indus., Inc.*, No. 14-cv-4212, 2017 U.S. Dist. LEXIS 14439 (N.D. Ill. 2017).

[29] *Yorktown Industries, Inc.*, No. 14-cv-4212, slip op. at 1–2.

[30] *Yorktown Industries, Inc.*, No. 14-cv-4212, slip op. at 2.

[31] *MedAssets Inc. v. Fed. Ins. Co.*, 705 F. Supp. 2d 1368, 1374 (N.D. Ga. 2010).

[32] *Travelers Prop. Cas. Co. of Am. v. Blue Cross & Blue Shield Ass'n*, No. 1:16-cv-07948 (N.D. Ill. Aug. 2016).
[33] "Aon Launches Intellectual Property Liability Coverage," *Ins. J.*, June 28, 2018.