

May 15, 2020

New Jersey – Intellectual Property Exclusion in D&O Policy Held to Apply to Misappropriation Claim

BY: Copernicus T. Gaza

In *Sprout Health, LLC v. RSUI Indemnity Co.*, 2020 WL 2507776 (D.N.J. May 15, 2020), the United States District Court for the District of New Jersey, applying Delaware law, held that an intellectual property exclusion in a directors and officers liability policy applied to bar coverage for a claim alleging misappropriation of a customer call log. The insured, Sprout Health, LLC (“Sprout”), provides addiction recovery services and was sued by a competitor, American Addiction Centers (“AAC”), which alleged that Sprout misappropriated AAC’s proprietary phone call list of potential clients. The RSUI policy contained an intellectual property exclusion, which applied, in relevant part, to claims “[f]or actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, secret or any other intellectual property rights[.]”

AAC’s complaint against the insured contained a statutory cause of action under the California Uniform Trade Secret Act and a cause of action for common law negligence for failure to supervise the employees who allegedly stole the lists. Sprout argued that the negligence claim fell outside the scope of the exclusion such that RSUI had a duty to defend. The court disagreed, finding that the negligence count “rises and falls” with the statutory trade secret count. In so holding, the court distinguished *WoodSpring Hotels LLC v. National Union Fire Ins. Co.*, 2018 WL 2085197 (Del. Super. Ct. May 2, 2018), in which the underlying claim contained a cause of action under the federal Computer Fraud and Abuse Act in addition to misappropriation.