

HB Litigation Conferences

High School Laptop Privacy Controversy Triggers Coverage Debate

by [tomhagy](#) on 29/04/10 at 5:52 pm

A Quick Policyholder View

So a high school student takes home a school laptop. The school allegedly used the laptop's video security system to monitor and snap photos of the sophomore. His family sued. The school filed an insurance claim. The carrier sued for a declaration of no coverage. I think that's where we are so far.

*Naturally we at HB are curious about any disputes over insurance coverage, so I asked **Scott Godes** of **Dickstein Shapiro**, one of the speakers at HB's upcoming [NetDiligence Cyber Risk & Privacy Liability Forum](#), for some quick thoughts on the matter. Below is what Scott had to say. We're looking for other points of view. Please send them to me at tom.hagy@litigationconferences.*

Text of Comments from Scott Godes at Dickstein Shapiro . . .

Without addressing specifically a set of facts or particular insurance policies, I am happy to give the following thoughts about what a policyholder would want to know. I was talking about this type of issue with my colleague **John Gibbons**, and we had the following thoughts.

First, a denial of coverage is not the end of the line for a policyholder; rather, it is a new beginning for the policyholder. If the policyholder has not already done so, it will need to engage counsel that is experienced in insurance coverage disputes. As you know from your work at HB Litigation Conferences, insurance coverage is a complicated area of the law, with sophisticated counsel representing insurance companies.

Insurance companies, and their counsel, work with these issues regularly, and, thus, policyholders are well advised to retain counsel that focuses on representing policyholders in insurance coverage disputes. That is the only way to ensure a level playing field.

Policyholders should be aware that it is not uncommon for insurance companies to deny coverage, and even bring declaratory judgment lawsuits in which they ask a court to support their denial of coverage.

Policyholders should not shy from such events; they should stand up for their rights and demand the coverage that they purchased. Many crucial insurance coverage rulings have come from insurance coverage lawsuits where the insurance companies refused to provide coverage in the first place. Policyholders may be able to recover their attorneys' fees in fighting such actions.

Second, policyholders in situations like you described should review all of their policies closely with coverage counsel, as more than one policy may be triggered, depending on the allegations in the complaint against the

policyholder. But, the first place to look in such a situation is the Commercial General Liability (“CGL”) insurance policy. Standard form CGL insurance policies contain “personal and advertising injury” coverage; that coverage applies to invasion of privacy claims. Other policies in the policyholder’s portfolio of coverage should be reviewed as well. Depending upon the allegations against the policyholder, other policies could be triggered as well, such as, for example, directors and officers, errors and omissions, and crime/fidelity policies.

Liability insurance coverage often includes a duty to defend. What is crucial to keep in mind is that even if the policyholder believes the lawsuit against them is without merit, the duty to defend acts as “litigation insurance” against such claims, meritless or not. The cost of such defense usually is in addition to any limits available to settle the claim or satisfy a judgment. The value of having a defense provided by an insurance company cannot be overstated, and policyholders should keep that in mind when facing initial denials or declaratory judgment actions by their insurance companies. In addition, there may be many other coverage questions that come into play, such as coverage for investigation costs and more.

Policyholders also need to protect their rights to seek coverage for instances where insurance companies have denied coverage wrongfully or reserved their rights. Policyholder-side insurance coverage counsel may be able to protect the policyholder’s rights to recover defense costs and any settlement or judgment costs that were incurred after the insurance company refused to stand with the policyholder in defending the claim.

This is right in line with what I’m going to discuss at the upcoming HB Litigation Conferences NetDiligence(r) Cyber Risk & Privacy Liability Forum. I’ll detail the law regarding insurance coverage for invasion of privacy claims, and why personal and advertising injury coverage does apply in the context of cybersecurity and other computer-related incidents.