

Copyright infringement

Factual background

The author of a screenplay entitled "High Wires" contacts numerous individuals in the film industry in an effort to find a producer who will make the script into a movie. She attempts to reach a well-known filmmaker by phoning various companies that she presumes, mistakenly, are owned by the filmmaker. After speaking with someone at one of the companies, she sends a copy of her screenplay to the company, with a request that the script be sent to the filmmaker. No one ever forwards the screenplay. Several months later, the filmmaker releases a film called "Passion Fruit," and the screenplay author, perceiving similarities to her script, sues the filmmaker, as well as the distributors of the film, for copyright infringement.

Litigation proceedings

After the filmmakers' initial motion to dismiss is denied, the parties engage in six months of contentious discovery accompanied by extensive motions practice. The case proceeds to jury trial following denial of the defendants' motion for summary judgment. At the close of the plaintiff's case, however, the court directs a verdict in the filmmakers' favor.

Outcome

The plaintiff appeals, but the order granting judgment as a matter of law is affirmed.

Costs

The total cost of litigating this case for the filmmakers would be expected to be in the range of \$750,000. [This loss scenario is based on *Towler v. Sayles*, 76 F.3d 579 (4th Cir. 1996).]

Theft of idea

Factual background

An accomplished television producer becomes acquainted with a former prosecutor turned aspiring Hollywood writer, who pitches to the producer an idea for shooting a film or TV show about the Mafia in his home state. Intrigued, the producer visits the state, where the former prosecutor arranges meetings with several police detectives who share with the producer stories about their experiences with organized crime and its participants. The producer subsequently drafts a screenplay for a cable TV series that would focus on the personal lives of mobsters. When the draft is complete, he sends a copy to the former prosecutor. Over the course of two years, the two have several discussions about the script and the project. Eventually, the producer succeeds in getting the show on the air, and it quickly becomes a major hit.

Litigation proceedings

Claiming that the producer promised to compensate him for his creative contributions and did not, the ex-prosecutor sues for breach of contract and unjust enrichment. Following ten months of discovery, the defendants move for summary judgment, asserting that the contract is unenforceable for vagueness, uncertainty, and lack of essential terms and that the statute of limitations bars the unjust enrichment claim. The trial court grants the motion in full. The plaintiff takes an appeal, and the judgment is reversed in part, based on a genuine issue of material fact as to the time when the plaintiff last performed services that assisted the producer. On remand, the parties file cross-motions for summary judgment. The trial court grants the defendants' motion. The court of appeals again reverses and directs the trial court to enter partial summary judgment for the plaintiff on the statute of limitations issue.

Outcome

The case returns to the trial court, where the parties subsequently reach a settlement of the claim for \$750,000.

These scenarios each are based on a real case or claim and, although not all of them involved Hiscox insureds, they are illustrative of the losses media companies routinely experience. Stated loss and defense costs are either actual, based on public sources or authorized disclosures, or closely estimated. The types of claims illustrated generally fall within the initial scope of coverage afforded by the typical Hiscox media liability policy form, but whether and to what extent a particular claim would ultimately be covered depends on the specific policy wording and the actual facts relevant to the claim.

Loss Scenarios for TV/Film Producers

Costs

The total cost of litigating this case for the defendants would be expected to be approximately \$685,000. Defense Cost Payment: \$685,000; Indemnity Payment: \$750,000; Total Loss: \$1,435,000. [This loss scenario is based loosely on *Baer v. Chase*, 392 F.3d 609 (3d Cir. 2004).]

Misappropriation of name/likeness

Factual background

An Air Force fighter pilot is shot down during combat and evades capture for six days in hostile territory until he is rescued. The story of his experience receives national publicity. He co-authors two books on the subject, one of which is a best-seller, and he becomes a successful motivational speaker. He gives extended interviews about his experiences to a television production company, which uses the information to create a TV docu-drama. Several years later, a film production company releases a motion picture that is inspired by and loosely based on the events of the pilot's experiences, as reported in the news. The film bears only a slight resemblance to the actual facts of the pilot's story. The producers, however, decide to promote the film by advertising during a special re-broadcast of the docu-drama.

Litigation proceedings

The pilot sues the movie producers, claiming that they misappropriated his name and likeness for commercial advantage through their promotional efforts. The parties engage in eight months of discovery, including substantial expert discovery. The producers then move for summary judgment. The motion is denied, and the parties proceed with pretrial preparations, including motions practice and jury selection.

Outcome

Before the trial commences, the parties settle the claim for \$1 million.

Costs

The total cost of litigating this case for the producers would be expected to be in the range of \$925,000. Defense Cost Payment: \$925,000; Indemnity Payment: \$1,000,000; Total Loss: \$1,925,000. [This loss scenario is based on *O'Grady v. Twentieth Century Fox Film Corp.*, 2003 WL 24174616 (E.D. Tex. Dec. 19, 2003).]

Public disclosure of private facts

Factual background

A television production company produces a documentary program about the murder of an automobile salesman by a hired hitman. Included within the documentary is a discussion of the role of a man who had been charged as a co-conspirator in the murder-for-hire scheme and pleaded guilty to being an accessory after the fact.

Litigation proceedings

After the documentary airs, the accessory (who is no longer in prison) sues the production company for invasion of privacy based on the public disclosure of private facts. The company files a special motion to strike the complaint, but the trial court denies the motion, finding that the plaintiff has shown a likelihood of prevailing on the merits of his privacy claim. The company takes an immediate appeal, as permitted by state law, and the appellate court reverses. The court of appeals holds that the disclosure of truthful information contained in public records of a judicial proceeding could not give rise to an invasion of privacy claim. The plaintiff petitions the state supreme court for review, which is granted.

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Loss Scenarios for TV/Film Producers

Outcome

The supreme court affirms the ruling of the court of appeals and directs that the complaint be stricken.

Costs

The total cost of litigating this case for the production company would be expected to be in the range of \$175,000. [This loss scenario is based on Gates v. Discovery Communications, Inc., 101 P.2d 552 (Cal. 2004).]