



Insurer Snatches Opportunity to Challenge Coverage for Discovery Sanctions

by William Bennett and Warsame Hassan*

Recently, National Casualty Company (“National”) filed suit in the Southern District of California, claiming that it should not be required to cover court-imposed sanctions against its insured, the National Strength and Conditioning Association (“NSCA”).¹ The sanctions were imposed after CrossFit Inc. (“CrossFit”) acquired judgments against the NSCA in two false advertising suits based on a study published by the NSCA that depicted false information about injuries in CrossFit.

CrossFit and the NSCA have had multiple disputes over the past several years, dating back to 2013, when the NSCA first published a study in NSCA’s Journal of Strength and Conditioning Research (“JSCR”). The study tracked forty-three participants through ten weeks of CrossFit exercise regime. The study ultimately concluded that, although the participants made significant improvements in their body composition, 16 percent of the participants suffered from “overuse or injury” and had to quit the program. Eventually, it was revealed that only two participants had actually dealt with injuries.

CrossFit filed suit in a California federal court against the NSCA for publishing the article in the JSCR in order to gain customers and discourage individuals from signing up with CrossFit. In 2015, the NSCA conceded the data used to conduct the study was not accurate and made corrections. National covered the NSCA’s defense against CrossFit under its commercial general liability (“CGL”) policy.

In 2016, the NSCA filed a separate suit against CrossFit in the San Diego Superior Court for trade libel, defamation, and unfair business practices. The NSCA claims CrossFit intentionally produced defaming information on its company’s blog for the purpose of harming the NSCA’s business reputation. The blog stated that the NSCA operates with “fabricated” and “corrupt” data and studies. National covered the NSCA’s defense in the suit against CrossFit under its CGL policy.

In May 2017, the federal court agreed with CrossFit after finding that there was “ample evidence of willfulness, bad faith, or fault” by the NSCA and that they intentionally posted false information regarding CrossFit in the JSCR. CrossFit filed a Motion for Sanctions in the federal lawsuit accusing the NSCA of failing to produce crucial documents and for violating several discovery orders. The court agreed and found that the NSCA intentionally withheld relevant information in prior court proceedings and lied under oath in the federal lawsuit. As a result, the NSCA was sanctioned \$75,000 because of the misconduct.

One year later, CrossFit proceeded to file a Motion for Sanctions against the NSCA in the state lawsuit. Once again, CrossFit claimed NSCA failed to produce several crucial documents and made false statements under oath. The state court awarded CrossFit monetary sanctions from the NSCA and ordered the NSCA to pay CrossFit’s attorneys’ fees and state monetary sanctions, totaling \$410,000.

¹ Case No. 18CV1292 BEN RBB (June 14, 2018)

National defended the NSCA in both lawsuits under the CGL policy. Once the decisions were released, National took the position that the NSCA's CGL policy did not cover any of the monetary sanctions imposed and that they did not have a duty to represent NSCA in either of the underlying suits due to intentional conduct. National filed a declaratory judgment against NSCA with several allegations, including no duty to cover federal monetary sanctions and no duty to indemnify or defend false advertising claims under the Lanham Act. National contends the policy excludes coverage for both of the underlying suits and seeks reimbursement of the amounts paid.

The decision in this case will potentially influence policyholders' rights under CGL policies when faced with court mandated sanctions, penalties, or other fines. The court will be faced with deciding whether an insurer's coverage obligations extend to litigation-related actions, such as discovery misconduct. The court's analysis will likely center around whether the actions subjecting the NSCA to sanctions constituted intentional acts, for which there would be no coverage, meaning that there will be an extensive analysis of the facts giving rise to sanctions. We will continue to monitor this case and will provide an update when the court reaches its decision.

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