

## New York Court Rules That War Exclusion Bars Coverage For Claims Against Financial Institution (Insurance Law Alert)

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A New York district court ruled that an insurer had no duty to defend or indemnify claims against Western Union, finding that a war exclusion squarely applied to bar coverage. *Hartford Fire Ins. Co. v. W. Union Co.*, 2022 WL 4386836 (S.D.N.Y. Sept. 22, 2022).

The coverage dispute arose out of an attack on a Malaysian airline that resulted in the death of an American college student. The student's family sued Western Union and other financial institutions, alleging that they provided financial support to the Donetsk People's Republic ("DPR"), a Russian-backed separatist group in Ukraine responsible for the attack. Western Union tendered the lawsuit to Hartford, seeking coverage under a general liability policy. Hartford denied coverage on the basis of a war exclusion that applied to bodily injury or property damage arising directly or indirectly out of "(1) War, including undeclared or civil war; (2) Warlike action by a military force . . . ; or (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these."

Applying Colorado law, the court held that the exclusion unambiguously precluded coverage for the underlying claims. In particular, the court explained that it need not decide whether the claims arose out of "war" or "warlike action" because they clearly stemmed from an "insurrection." In so ruling, the court emphasized that the underlying complaint alleged that the DPR engaged in a violent uprising in order to create a "proto-state" through control of territory in eastern Ukraine. The court deemed it irrelevant that other allegations in the complaint gave rise to the possibility that the DPR had other motives for the attack, noting that its objective of overthrowing the Ukrainian government was its primary purpose.

The court further held that coverage was barred in any event by a financial services exclusion, which applied to bodily injury "resulting from the rendering of or the failure to render financial services." Because the underlying complaint alleged that Western Union's role in the attack stemmed solely from its financial support to the DPR, the court concluded that the exclusion plainly applied—regardless of whether Western Union allegedly provided non-financial support as well.

The applicability of a war exclusion is at the heart another coverage dispute, *Mondelez Int'l, Inc. v. Zurich Am. Ins. Co.*, 2018 WL 4941760 (Ind. Cir. Ct.). There, Zurich cited a war-related exclusion in denying coverage for a claim arising out of a 2017 malware attack that affected the policyholder's servers and computers. The parties settled this matter last week.

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