

The Coming Clash of Intellectual Property with Insurers

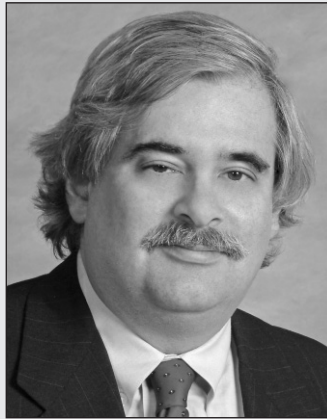
NJBIZ: How have trends moved over the years in litigation over intellectual property?

Chesler: The first intellectual property cases go back to the mid-1970s, but they were mostly trademark and copyright infringement suits. It has become an active field of dispute for about 15 years. It has become a central part of the practice at law firms. It has been a shift over time, from a bricks-and-mortar economy to an IP-based economy. The dot-com boom reflected the rise of IP as a major part of the economy—it was a mix of trademark, patent and copyright, and “trade dress” [for how products look] infringements.

Patent infringement disputes have now become more important; those are the ones with big dollars attached. The bulk of the cases are in the pharmaceutical industry and life sciences, including biotechnology, especially with the intensity in new product development in that area.

NJBIZ: Are companies facing financial troubles in the current economy turning to the legal system to try and extract compensation for IP infringements and the like?

Chesler: We are seeing a rise in IP cases over the past three, four years, especially in those with large sums of money involved. In the current economic turmoil, we are seeing



Expect to see more and more companies file insurance claims over intellectual property, or IP, infringements as times get tougher, says **Robert D. Chesler**, a member of the Roseland-based law firm of **Lowenstein Sandler P.C.** and chair of its insurance practice group. Chesler recently co-authored a book titled “Assets & Finance: Insurance Coverage for Intellectual Property and Cyber Claims” with **Tod I. Zuckerman** and **Christopher Keegan**. In an interview with **NJBIZ** Staff Writer **Shankar P.**, he says the insurance policy landscape has changed considerably in recent years, and many businesses don’t know their way around it any longer.

more businesses buy these new types of insurance policies.

NJBIZ: Should we expect more litigation related to IP claims?

Chesler: In the foreseeable future, several insurance companies, like **AIG**, that have done very badly in this turmoil may not want to pay claims as quickly, and that may lead to insurance lawsuits against them.

Also, business policyholders that five years ago may have settled insurance litigation may not want to settle with their insurance companies now, and seek [compensation] judgments. These new “cyber policies” are very broad, and people expect the coverage they were promised. Also, companies are in a lot more difficulty, financially, and

want the money; they also want the full insurance value.

NJBIZ: What has changed in the insurance landscape over the years as it relates to IP coverage?

Chesler: The biggest change in recent years has been with general-liability policies. In the last 20 to 30 years, every company had a general-liability policy, which they assumed would cover most of their business activities. But over time, insurance companies inserted exclusions in their general-liability policies to say that they will no longer cover IP, data loss and other privacy claims.

Consequently, new policies have emerged to cover IP infringement and privacy claims, and also related claims arising from comput-

er disruption and loss of data. These new policies cover nontangible property; the older policies cover tangible properties.

A lot of people don’t realize that these new policies exist, and the older policies don’t cover nontangible property. Right now is the moment when you are seeing the shift from the general-liability policies to the cyber policies. We capture both sides of that phenomenon in the book.

NJBIZ: Are these cyber policies designed differently?

Chesler: These new cyber policies didn’t exist 10 years ago, and there are great differences between those of one insurance company and another. You can craft policies to suit

your need; you can buy very narrow policies. For instance, you can buy a policy only to cover your business-interruption loss if your computer fails, or you can buy one for each—business interruption loss, computer data loss, et cetera. There are about 30 different cyber policies insurance in the market now.

NJBIZ: Why did you choose to write your book now?

Chesler: My book concentrates on the insurance aspects of intellectual property and cyber claims. The bigger pharmaceutical companies do have sophisticated in-house staff, but they are not necessarily knowledgeable about the insurance issues. Even a lot of smaller companies are worried about privacy violations and trademark and copyright infringements.

NJBIZ: How is your book different from others on the same subject?

Chesler: There is no other book that deals exclusively with IP insurance. There exist a number of basic treatises on insurance law, and they will all have sections on insurance coverage of IP, but they don’t cover the latest issues and new policies. Also, it includes sections on privacy and data and computer systems—it goes beyond trademark and copyright infringements. ♦