7/02 - HAMEID V. NATIONAL FIRE [AC]

S104157

IN THE SUPREME COURT OF CALIFORNIA

MOHAMMED A. HAMEID,

Plaintiff and Appellant,

vs.

NATIONAL FIRE INSURANCE OF HARTFORD,

Defendant and Respondent.

AFTER A DECISION BY THE COURT OF APPEAL
FOURTH APPELLATE DISTRICT, DIVISION THREE
CASE NO. G026525

APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF; AMICI CURIAE BRIEF OF AMERICAN INTERNATIONAL COMPANIES IN SUPPORT OF RESPONDENT NATIONAL FIRE INSURANCE OF HARTFORD

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Under California Rules of Court, rule 29.3(c), the American International Companies request permission to file the attached amici curiae brief in support of defendant and respondent National Fire Insurance of Hartford.

The American International Companies (American Home Assurance Company, National Union Fire Insurance Company of Pittsburgh, Pa., Insurance Company of the State of Pennsylvania, Commerce & Indemnity Insurance Company, Birmingham Fire Insurance Company) are wholly owned subsidiaries of American International Group, Inc. They issue insurance policies throughout the United States, including California.

The insurance policy issued by defendant and respondent National Fire Insurance of Hartford (National) to plaintiff and appellant Mohammed A. Hameid (Hameid) is a standard form policy written on a nationwide basis, and includes advertising injury policy language the same as or similar to language in policies issued by the American International Companies. In recent years, insureds have attempted to expand the scope of advertising injury coverage to include virtually every claim that might be asserted against an insured — e.g., antitrust claims, environmental pollution claims, patent infringement claims — so long as the insured also happened to advertise. Consequently, the American International Companies are vitally concerned with the issue presented by this case — whether an allegation in an underlying lawsuit that the insured took a competition's customer list and customer preference information and then solicited those customers, gives rise to an insurer's duty to defend under the "advertising injury" provision of a commercial general liability insurance policy as the "misappropriation of advertising ideas."

National's briefs on the merits persuasively demonstrate that a customer list is not an advertising idea, that one-on-one solicitation is not advertising, and that the Court of Appeal's contrary conclusions in this case are against the overwhelming weight of authority throughout the United States. In the accompanying amici curiae brief, we explain that the Court of Appeal also erred in finding potential coverage for an even more fundamental reason: Where a policy insures against "advertising injury" caused by an offense

committed "in the course of advertising," there is no coverage unless the damage was caused by the content of the advertisement itself, i.e., by its text, words or form. The claim against National's insured did not satisfy this requirement.

In addition, we show that nationwide uniformity in the interpretation of standard form policies is essential if insurers are to predict losses and set appropriate premiums and reserves. If the Court of Appeal's interpretation of the National policy were upheld, that standard policy language would mean one thing in California and another in virtually every other state. As a consequence, standardization and predictability would be lost and insurers could not accurately gauge premiums. The end result would be higher costs for the insuring public.

Accordingly, we respectfully request leave to file the accompanying amici curiae brief.

INTRODUCTION

In this case, National's insured was sued for allegedly misappropriating a competitor's customer list and customer preference information and then soliciting those customers. The issue is whether these allegations were potentially covered under the "advertising injury" provision of the National policy, which covers liability for, among other things, the "misappropriation of advertising ideas" in "the course of advertising . . . ."

National's briefs on the merits persuasively show that a customer list is not an advertising idea, that one-on-one solicitation is not advertising, and that the Court of Appeal's contrary conclusions are against the overwhelming weight of authority in the United States. In this brief, we show that the Court

of Appeal also erred in finding potential coverage under the National policy for an even more fundamental reason: In *Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254 (*Bank of the West*), this court held that where a policy insures against liability for damages caused by an offense "'occur[ing] in the course of . . . advertising,'" there is no coverage unless the damage is caused by the advertising itself. (*Id.* at p. 1274.)

As subsequent cases have explained, the damage therefore must be caused by the content of the advertising, i.e., by its text, words or form. (See *Iolab Corp. v. Seaboard Sur. Co.* (9th Cir. 1994) 15 F.3d 1500, 1506 (*Iolab*); *Select Design, Ltd. v. Union Mutual Fire Ins. Co.* (Vt. 1996) 674 A.2d 798, 802 (*Select Design*).) Because there was no claim that the content of the solicitations in question in this case — even assuming they met the definition of advertising — included the competitor's advertising ideas, there was no potential for coverage.

In reaching the opposite conclusion, the Court of Appeal here relied on *Sentex Systems, Inc. v. Hartford Acc. & Indem. Co.* (9th Cir. 1996) 93 F.3d 578 (*Sentex*), a decision by the United States Court of Appeals for the Ninth Circuit which purported to apply California law. However, *Sentex* did not hold there is a causal connection between advertising and injury whenever an insured misappropriates a competitor's customer list and subsequently solicits customers, even if the solicitations themselves do not incorporate the competitor's advertising ideas. To the contrary, causation was not an issue in *Sentex* — the insurer did not challenge the trial court's finding that the insured's advertising caused the injuries. To the extent certain dicta in *Sentex* suggests an insured commits a covered advertising offense simply by misappropriating a competitor's customer list and other confidential information and then contacting the customers, this court should clarify that the dicta does not accurately reflect California law and should not be followed.

Finally, we show that nationwide uniformity in the interpretation of standard form policies is necessary to permit insurers to predict losses and set appropriate premiums and reserves. If the Court of Appeal's interpretation of the National policy were upheld, it would follow that standardized policies covering liability for damages caused by misappropriation of advertising ideas in the course of advertising would mean one thing in California and something else in virtually every other state. As a consequence, standardization and predictability would be lost and insurers could not accurately gauge premiums. The end result would be higher costs for the insuring public.

FACTUAL BACKGROUND

The relevant facts are set forth in detail in National's opening brief on the merits. (See Opening Brief on the Merits (OBM) pp. 3-10.) To briefly summarize: KWP, Inc., dba Belezza Salon/Day Spa (KWP), sued National's insured, Mohammed Hameid, dba Salon T'Shea, and two former KWP employees for misappropriating its trade secrets, "including, but not limited to its customer list, price list and pricing policies and information regarding suppliers." The defendants allegedly "misappropriated the above-described trade secrets by committing certain acts, including, but not limited to: utilizing the customer list in order to identify and solicit plaintiff's customers, and utilizing plaintiff's confidential price list and pricing policies to undercut plaintiff." According to the complaint, KWP's two former employees solicited "plaintiff's clients by mail and telephone." KWP did not allege that its trade secrets were used in any advertising.

Hameid tendered his defense to National, which insured him under a commercial general liability policy which included coverage for "'advertising injury' caused by an offense committed in the course of advertising your

goods, products or services . . . ." The policy defined "advertising injury" to mean injury arising out of one or more of the following offenses:

> (a) Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
>
> (b) Oral or written publication of material that violates a person's right of privacy;
>
> (c) Misappropriation of advertising ideas or style of doing business; or
>
> (d) Infringement of copyright, title or slogan.

National denied a defense on the ground KWP's claims did not raise a potential for coverage. Hameid sued National for breach of contract and breach of the covenant of good faith and fair dealing. The trial court granted summary judgment for National, finding that KWP's lawsuit was based on misappropriation of trade secrets, not advertising.

The Court of Appeal reversed. Relying on *Sentex, supra,* 93 F.3d 578, the Court of Appeal held that because KWP alleged that the defendants misappropriated its confidential customer list to identify and solicit clients about whom it kept private information, the claimed "misappropriation of trade secrets related to marketing, not performance of services or manufacturing of a product," and hence was potentially covered as the misappropriation of advertising ideas "in the course of advertising." (*Hameid v. National Fire Insurance of Hartford* (2002) 94 Cal.App.4th 1155, 1163, review granted April 10, 2002, No. S104157.)

LEGAL DISCUSSION

I.

THE NATIONAL POLICY COVERED ONLY DAMAGES CAUSED BY THE CONTENT OF AN ADVERTISEMENT.

The National policy covered liability for "'advertising injury' caused by an offense committed in the course of advertising your goods, products or services . . ." and defined "advertising injury" as encompassing four separate offenses, including the offense at issue here: "misappropriation of advertising ideas . . . ."

As this court explained in *Bank of the West*, *supra*, 2 Cal.4th 1254, where a policy covers liability for damages that occur "in the course of advertising," there must be a causal connection between the advertising and the injury. (*Id.* at p. 1277.) This court rejected the argument that coverage exists "even if the advertisements, themselves, did not cause the harm." (*Id.* at p. 1274.) It explained that otherwise, "'any harmful act, if it were advertised in some way, would fall under the grant of coverage merely because it was advertised.'" (*Id.* at p. 1275; see also *Simply Fresh Fruit v. Continental Ins. Co.* (9th Cir. 1996) 94 F.3d 1219, 1223 ["the *advertising activities* must *cause* the injury — not merely expose it" (original emphasis)]; *Pacific Group v. First State Ins. Co.* (9th Cir. 1995) 70 F.3d 524, 528 ["[d]oing a wrong, and also advertising, do not generate coverage. 'The injury for which coverage is sought must be caused by the advertising itself'"].)

Because the injury must be caused by the advertising itself, the vast majority of cases have held that there is no advertising injury coverage unless the injury was caused by *the content* of the advertisement. (See, e.g., *Iolab*, *supra*, 15 F.3d at pp. 1503, 1506 [where policy insured against offenses "'arising out of the insured's advertising activities,'" the offense must "occur in the text, words, or form of an advertisement"]; *Perdue Farms, Inc. v. National Union Fire Ins. Co.* (D.Md. 2002) 197 F.Supp.2d 370, 374-375

["advertising liability coverage exists only when the offense giving rise to damages was committed within the four corners of the advertisement itself"]; *Dogloo, Inc. v. Northern Ins. Co. of New York* (C.D.Cal. 1995) 907 F.Supp. 1383, 1390 ["advertising injury coverage does not extend to cases in which advertising alone is not actionable"].) [1/]

Under the foregoing test, simply using a competitor's customer list to solicit customers cannot trigger coverage. Indeed, the Supreme Court of Vermont, relying on *Bank of the West*, reached just that conclusion in *Select Design*, *supra*, 674 A.2d 798. It held that there was no coverage under a policy insuring against liability for "'misappropriation of advertising ideas'" in "the course of advertising" where, as here, the insured used a competitor's customer list to solicit customers, but the content of the solicitations themselves did not use the competitor's advertising ideas. (*Id.* at p. 801.) The court explained that "the term 'advertising injury,' as defined in the offenses set out in the policy, and as construed in an overwhelming majority of cases, is injury to another from the *content* of statements about the products or

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1/ Examples of "offenses" that satisfy this requirement include advertisements which unfairly criticize a competitor's products (e.g., *Shores v. Chip Steak Co.* (1955) 130 Cal.App.2d 627, 628; *Rosenberg v. J.C. Penney Co.* (1939) 30 Cal.App.2d 609, 612-614 [competitor's garment "either a poorly made second or prison-made merchandise"]), advertisements which supposedly infringe a trade or service mark (e.g., *Lebas Fashion Imports of USA, Inc. v. ITT Hartford Ins. Group* (1996) 50 Cal.App.4th 548; *Coffee Dan's, Inc. v. Coffee Don's Charcoal Broiler* (N.D.Cal. 1969) 305 F.Supp. 1210, 1212), advertisements which display a competitor's trade dress (e.g., *R.C. Bigelow, Inc. v. Liberty Mut. Ins. Co.* (2nd Cir. 2002) 287 F.3d 242, 248-249), advertisements which misappropriate a celebrity's name and likeness of personality (e.g., *Motschenbacher v. R. J. Reynolds Tobacco Company* (9th Cir. 1974) 498 F.2d 821, 822), and advertisements which deliberately imitate a distinctive voice (e.g., *Midler v. Ford Motor Co.* (9th Cir. 1988) 849 F.2d 460, 461-462). Such offenses also can occur where one competitor hires someone to stand outside a rival's business to attempt to deter prospective customers. (See *Guillory v. Godfrey* (1955) 134 Cal.App.2d 628, 630-631.)

services of the insured." (*Id.* at p. 802, original emphasis.) In language directly applicable to this case, the court explained:

> Plaintiff's theory seeks coverage for the fact that advertising occurred and not for the content of that advertising. . . . Plaintiffs reason that . . . 'solicitation' constitutes 'advertising.' But . . . it is the *statement* made in connection with the solicitation that is the advertisement. [¶] . . . [¶] There is virtually no causal connection here between the alleged injury and the alleged advertising. RMH alleged that Cousins left its employ, taking with him proprietary information such as the customer list, existing orders, pending quotes and customer art work to use on behalf of SDL to take customers away from RMH. The only relationship between the injury and advertising is that Cousins had to somehow contact these customers to steal them from RMH. If the act of contacting potential customers is advertising for purposes of the policy, then any dispute related to economic competition among businesses is covered by the policy provision for advertising injury.

(*Id.* at pp. 802-803, original emphasis.)

The definition of "advertising idea" confirms that the misappropriation of such an idea can only occur in the content of an advertisement. "An 'advertising idea' . . . is an idea for calling public attention to a product or business, especially by proclaiming desirable qualities so as to increase sales or patronage. This is the ordinary meaning of the term, and we see nothing ambiguous about it." (*Atlantic Mutual Ins. Co. v. Badger Medical Supply Co.* (Wis.Ct.App. 1995) 528 N.W.2d 486, 490.) One proclaims the desirable

qualities of a product or business through the text, words, or form of an advertisement.

Further, the phrase "misappropriation of advertising ideas" must be examined in context, with regard to its intended function in the policy. (*Bank of the West, supra*, 2 Cal.4th at pp. 1265-1266 ["'unfair competition,'" when interpreted *in context of other enumerated wrongs*, could only refer to common law unfair competition]; *id.* at p. 1265 [insured's argument for broader interpretation "is probably correct as a matter of abstract philology [but] it is defective as a matter of policy interpretation because it disregards the context"]; see also *Palmer v. Truck Ins. Exchange* (1999) 21 Cal.4th 1109, 1116 [while "'title' has multiple meanings . . . [] [b]y construing the word . . . in context, we conclude 'title,' as understood in the Policy, can only mean the name of a literary or artistic work"].)

In *Iolab, supra*, 15 F.3d 1500, for example, the court held that because the offense in issue there — piracy — was grouped with other offenses that could only be committed through a communication, the term "piracy" must be limited to "misappropriation . . . found in the elements *of the advertisement itself*" and therefore did not include patent infringement. (*Id.* at p. 1506, original emphasis.)

> While patent infringement can be piracy of the advertised product, generally it is not piracy of the elements of the advertisement itself. The policies in question seem designed to cover two types of injury which might occur in the course of advertising: First, dignitary injuries such as defamation, libel, and invasion of privacy and, second, various kinds of misappropriation and passing off which might occur in the text, words, or form of an advertisement.

(*Ibid.*)

Here, paragraph (c) of the advertising injury clause of the National policy lists two offenses: "misappropriation of advertising ideas or style of doing business." "'Style of doing business' expresses essentially the same concept as . . . 'trade dress'" (*St. Paul Fire & Marine v. Advanced Interventional* (E.D.Va. 1993) 824 F.Supp. 583, 585), i.e., "'the overall appearance or image of goods or services as offered for sale in the marketplace.'" (*Aloha Pacific, Inc. v. California Ins. Guarantee Assn.* (2000) 79 Cal.App.4th 297, 319.) Because the policy provides that misappropriation of a competitor's "style of doing business" must be committed in "the course of advertising," it could only be committed in the content of an advertisement itself. (See *R.C. Bigelow, Inc. v. Liberty Mut. Ins. Co.*, *supra*, 287 F.3d at pp. 248-249.)

Moreover, the offenses of misappropriation of advertising ideas and style of doing business appear in the third of four paragraphs enumerating the advertising offenses covered by the policy. The policy expressly states that the offenses in the first two paragraphs — slander, libel, disparagement, violation of privacy — can only be committed in the contents of a publication. And, as this court observed in *Bank of the West*, the fourth offense, infringement of title, copyright or slogan, "typically occurs upon unauthorized reproduction or distribution of the protected material." (*Bank of the West*, *supra*, 2 Cal.4th at p. 1276.)

Thus, the National policy, like the policy in *Iolab*, seems designed to cover either dignitary injuries or injuries that might occur in the text, words, or form of an advertisement.

II.

THE COURT OF APPEAL ERRED IN RELYING ON *SENTEX* TO FIND A POTENTIAL FOR COVERAGE. TO THE EXTENT THAT DICTA IN THAT CASE SUPPORTS THE COURT OF APPEAL'S DECISION, THIS COURT SHOULD MAKE CLEAR IT DOES NOT ACCURATELY REFLECT CALIFORNIA LAW.

In light of the foregoing, the Court of Appeal clearly erred in finding a potential for coverage under the National policy. Even assuming that one-on-one solicitation is advertising, there was no claim that the content of the solicitations to KWP's customers themselves misappropriated any unique words, phrases or slogans used by KWP in the course of its own advertising, i.e., that the alleged damages were caused by the content of the alleged advertising itself. Just as in *Select Design*, "[t]here is virtually no causal connection here between the alleged injury and the alleged advertising." (*Select Design, supra*, 674 A.2d at p. 803.) Rather, as in *Select Design*, Hameid's "theory seeks coverage for the fact that advertising occurred and not for the content of that advertising." (*Id.* at p. 802.)

The Court of Appeal here nonetheless relied on *Sentex Systems, supra*, 93 F.3d 578, a decision by the United States Court of Appeals for the Ninth Circuit purporting to construe California law, to find that KWP's alleged injuries were potentially covered. In *Sentex*, the insured was sued for misappropriating a competitor's trade secrets, including customer lists and marketing techniques, and using the information to solicit the competitor's customers. The insured did not use the competitor's trade secrets in its written sales materials. The policy in *Sentex*, like the National policy, insured against liability for "'misappropriation of advertising ideas'" in "'in the course of

advertising . . . goods, products or services.'" (*Id.* at p. 580.) The insurer, relying on the Ninth Circuit's earlier decision in *Iolab, supra*, 15 F.3d 1500, argued there was no coverage because the wrongdoing did not involve the text, words or form of an advertisement. (*Sentex*, at p. 580.)

In rejecting the insurer's argument, the Ninth Circuit in *Sentex* reasoned that an advertising idea was not limited to an actual advertising text, but was a broader term, and that "[i]n this day and age, advertising cannot be limited to written sales materials, and the concept of marketing includes a wide variety of direct and indirect advertising strategies." (*Sentex, supra*, 93 F.3d at p. 580)

For two reasons, the Court of Appeal here erred in relying on *Sentex*. First, as National persuasively demonstrates in its opening brief on the merits, *Sentex* improperly equated "advertising" with "marketing." (OBM pp. 18-20.) As National explains, not all marketing activities involve advertising. A "marketing idea," e.g., an idea concerning to whom advertisements should be directed, is not the same as an "advertising idea," i.e., an idea concerning what the *content* of the advertisement should include.

Second, the Ninth Circuit in *Sentex* did *not* hold that the claimed "advertising activities" caused the competitor's injuries. It did not reach that issue because "the district court held that Sentex was engaged in 'advertising activities' and that [the competitor's] injuries were caused by these activities. . . . *These rulings are not challenged on appeal*." (*Sentex, supra*, 93 F.3d at p. 580, emphasis added.) Consequently, the Ninth Circuit concluded that "causation is not at issue . . . ." (*Ibid.*)

Although *Sentex* did not hold there is a causal connection between misappropriation of advertising ideas and advertising activity whenever an insured misappropriates a customer list and then solicits the customers, the Court of Appeal here relied on dicta in that decision to find potential coverage under the National policy. Specifically, the court in *Sentex*, after holding that

causation was not in issue, and that its earlier decision in *Iolab* therefore was not "helpful," went on to state: "It is significant that ESSI's claims for misappropriation of trade secrets relate to marketing and sales and not to secrets relating to the manufacture and production of security systems." (*Sentex*, *supra*, 93 F.3d at p. 580.) If by this statement the *Sentex* court meant that *Iolab* was distinguishable because advertising injury coverage depends on the nature of the idea misappropriated by the insured, rather than whether the idea is used by the insured in the content of an advertisement, it disregarded the clear holding and analysis in *Iolab*, as well as this court's holding in *Bank of the West* that there is no advertising injury unless the damage is caused by the advertising itself.

Unlike *Sentex*, this case directly presents the issue whether there is a causal connection between misappropriation of a customer list and the insured's advertising activities when the offense does not occur in the content of the advertisement itself. This court should clarify that *Iolab* and *Select Design* correctly hold that under policy language the same as or similar to National's, there is no advertising injury coverage unless the offense occurs in the text, words, or form of the advertisement itself. To the extent dicta in *Sentex* might be read to support the opposite conclusion, this court should clarify that it does not accurately state California law. [2/]

2/ Indeed, the Court of Appeal here was not the first court to be misled by the dicta in *Sentex*. A few other courts have also read that decision as standing for the proposition that there is an advertising injury whenever the insured misappropriates trade secrets relating to marketing and sales, regardless of whether the content of the insured's advertising includes the trade secrets. (See *Tradesoft Technologies, Inc. v. The Franklin Mutual Ins. Co., Inc.* (N.J.Super.Ct.App.Div. 2000) 746 A.2d 1078, 1087; *Frog, Switch & Mfg. Co. v. Travelers Ins. Co.* (3rd Cir. 1999) 193 F.3d 742, 748 [dicta].) Hence, it is important that this court make clear that to the extent *Sentex* can be read to support that position, it does not correctly state California law.

III.

INSURERS CANNOT PREDICT LOSSES AND SET APPROPRIATE PREMIUMS AND RESERVES UNLESS STANDARD FORM POLICIES RECEIVE UNIFORM NATIONWIDE INTERPRETATION.

As the cases cited in this brief and National's briefs on the merits show, the Court of Appeal's opinion in this case is contrary to the overwhelming weight of authority in other jurisdictions. If its interpretation of the National policy were upheld, that standard policy language would mean one thing in California and another thing in virtually every other state. As we now show, this would adversely affect insurers' ability to accurately predict losses and calculate premiums and reserves, and would increase the cost of insurance.

Insurance is "a social device for reducing risks." (Mehr & Cammack, Principles of Insurance (4th ed. 1966) p. 34.) Insurers reduce risks by combining "a sufficient number of exposure units to make . . . individual losses collectively predictable." (*Ibid.*) When these predictable losses occur, they are "shared proportionately by all those in the combination." (*Ibid.*)

Insurers predict losses through operation of the law of large numbers. Professors Mehr and Cammack describe the law as follows:

> The law of large numbers becomes the basis of insurance. Under the operation of this law, the impossibility of predicting a happening in an individual case gives place to the demonstrable ability to do so when a large number of cases is considered. Applying these conclusions to insurance, we find, for example, that every year a certain number of dwellings burn, a certain number of deaths occur, and a certain number of accidents occur. If we isolate a small group of cases, we may

> find a wide variation between the actual loss experience within that group and the average losses expected. But, given a large group of exposures, prediction becomes not a matter of guesswork but a matter of mathematical calculation.

(*Id.* at pp. 35-37, fns. omitted; accord Wherry & Newman, Insurance and Risk (1964) pp. 16-18; Riegel, Miller & Williams, Insurance Principles and Practices (6th ed. 1976) pp. 17-20; Williams & Heins, Risk Management and Insurance (4th ed. 1981) pp. 218-219.)

Insurers review prior loss experience to ascertain a defined hazard's tendency "toward a certain constant" damage figure. (Mehr & Cammack, Principles of Insurance, *supra*, at p. 34.) Finding that figure, they extrapolate it into the future and set their premiums accordingly:

> From a ratemaking standpoint, the law of large numbers is essential. "There must be a sufficient body of experience on past exposures if the premiums are to be statistically based. . . . If past experience is too limited to be useful for ratemaking purposes and unlikely to improve, the expected loss allowance in the premium is subject to considerable error."

(Gudmundsen, *Catastrophe and Capacity: Treating the Risk of Earthquake* in 4 Journal of Insurance Regulation (1986) pp. 7, 20, citing Williams, et al., I Principles of Risk Management and Insurance (2d ed. 1981) p. 236.)

As Professors Keeton and Widiss explain, "[R]isk distribution on the scale that exists in a complex commercial society may only be feasible if insurance transactions employ standardized insurance policy terms" (Keeton and Widiss, Insurance Law (West 1988) § 2.8(a), p. 119) because "[t]he use of standard coverage terms facilitates the sharing of information of loss experience that is essential to setting appropriate premiums." (*Id.* at § 2.8(b), p. 121.) Of course, if standard form policies are interpreted differently from

state to state, standardization is lost and so is predictability. Thus, for the process to work, it is essential there be uniformity in interpretation. Otherwise, prior loss experience for a particular coverage will be of no assistance to insurers in calculating premiums.

Decisions of this court reflect an implicit recognition of the need for uniformity in interpretation of standard policy language. When confronted with such policy provisions, it has demonstrated a salutary respect for the decisions of other states. (See *Bank of the West, supra*, 2 Cal.4th at p. 1263 [in holding that coverage for "unfair competition" was limited to common law tort, and did not include conduct prohibited by unfair business practice statutes, this court noted that majority of courts had reached same conclusion]; *id*. at p. 1274 [in rejecting argument that policy did not require causal connection between "advertising activities" and "advertising injury," this court noted that the "argument has not found acceptance in other jurisdictions"]; *J.C. Penney Casualty Ins. Co. v. M. K.* (1991) 52 Cal.3d 1009, 1027 ["To allow coverage for child molestation [under a standard form homeowners' policy] would be contrary to the almost unanimous rule in other states"]; *AIU Ins. Co. v. Superior Court* (1990) 51 Cal.3d 807, 813-820 [coverage found under standard form CGL policy for liability for environmental clean up costs where, the court noted, the courts in nearly all other states had found coverage under such policies for those costs]; see also *Moradi-Shalal v. Fireman's Fund Ins. Companies* (1988) 46 Cal.3d 287, 298 [reversal of prior decision holding the Insurance Unfair Practices Act provides private right of action where, the court noted, out of state courts considering similar statutes had rejected private right of action].) The same considerations apply in this case. As this court explained in *Prudential-LMI Com. Insurance v. Superior Court* (1990) 51 Cal.3d 674:

> "[C]ertainty in the insurance industry . . . allows insurers to gauge premiums with greater accuracy . . . .[T]his should reduce costs for consumers because insurers will be able to set aside proper reserves for well-defined coverages and avoid increasing such reserves to cover potential financial losses caused by uncertainty in the definition of coverage."

(*Id.* at p. 699.)

CONCLUSION

For the reasons stated, this court should reverse the Court of Appeal and reaffirm that there is no coverage under a policy that insures against damages caused by an offense committed in the course of advertising unless the damage is caused by the advertisement itself. This court should clarify that damage is not caused by an advertisement unless it is caused by the content of the advertisement, i.e., its text, words, or form.