INSURANCE COVERAGE
SECTION OF LITIGATION

CGL Coverage for the Death Star: I Have a Bad Feeling About This

By Judah A. Druck

Don't tell Lord Vader, but CGL coverage is unlikely to be available for the poor contractor of the space station's thermal exhaust port.

According to Wookieepedia, there are five insurance companies within the Star Wars universe. These include Core Health and Life Insurance Consortium (offering life insurance to members of the Rebel Alliance), the Maltsett Insurance Company (offering property insurance), and the Tatooine Planetary Insurance Company (offering coverage for air and land speeders). As a coverage lawyer by day and Star Wars fanatic by night, the existence of these companies raised the obvious question: what are the insurance implications of the major events in the Star Wars films? For example, do Jedi provide a "professional service" covered by professional liability policies? Would the Empire's takeover of Cloud City trigger business interruption coverage? Does Han Solo encased in carbonite constitute "cargo" for purposes of a stock throughput policy? And for that matter, is carbonite a "pollutant" falling within the Total Pollution Exclusion?

The Galaxy's Most Complex Claim

But if we are going to talk about insurance in the Star Wars universe, we have to start with what likely triggered the largest and most complex claims in the galaxy: the destruction of the Death Star at the Battle of Yavin, the result of a direct torpedo hit on the station's thermal exhaust port. One can imagine numerous consequences: a first-party property claim by the Empire; hundreds of thousands of life insurance claims; a D&O claim by Darth Vader for a securities lawsuit filed by Imperial shareholders. But suppose the Empire sued the contractor* responsible for the thermal exhaust port itself, alleging that it negligently designed and constructed the port by running it directly to the Death Star's main reactor (thereby allowing the Rebels to destroy the station). Would the contractor be covered under a standard CGL policy?

(*This article assumes that the Death Star was largely built by independent contractors, following the logic set forth in the 1994 film *Clerks*: "A construction job of that magnitude would require a helluva lot more manpower than the Imperial army had to offer. I'll bet they brought independent contractors in on that thing: plumbers, aluminum siders, roofers.")

First, the insuring agreement. At their most basic, CGL policies provide coverage for "bodily injury" or "property damage" caused by an "occurrence." "Property damage" is defined to mean "physical injury to tangible property, including all

resulting loss of use of that property." An "occurrence" is defined as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions." There is little question that "property damage" occurred—the entire station ("tangible property") was destroyed ("physical injury"). But was the damage caused by an "accident"?

As an initial matter, the contractor's allegedly defective work on the thermal exhaust port caused property damage to the entire Death Star—including portions of the property that it did not work on. This fact is critical because while "defective workmanship standing alone, that is, resulting in damages only to the work product itself, is not an occurrence under a CGL policy," the majority of jurisdictions recognize that "defective workmanship resulting in third party property damage can give rise to an occurrence under a CGL policy." *Pella Corp. v. Liberty Mut. Ins. Co.*, 221 F. Supp. 3d 1107, 1117 (S.D. Iowa 2016) (citing cases); *see also* Thomas E. Miller, et al., § 6.02 *Third Party Coverage, Handling Construction Defect Claims: Western States* 123 (2018) ("The majority of state supreme courts that have decided whether inadvertent faulty workmanship is an accidental 'occurrence' potentially covered under the CGL policy have ruled that it can be an 'occurrence.'") Thus, the contractor's allegedly negligent work will not prevent the finding of an "accident."

So far so good. But was the rebel attack itself an "occurrence"? Analogous case law suggests an answer in the affirmative. In *Donegal Mut. Ins. Co. v. Baumhammers*, 595 Pa. 147 (2007), the Supreme Court of Pennsylvania considered whether multiple shootings qualified as an "occurrence" under the parents' homeowners policy when the underlying suit alleged that the parents of the perpetrator were negligent in failing to take possession of their son's weapons and alert law enforcement authorities. The insurer argued that there was no coverage because the gunman engaged in intentional criminal conduct, and therefore there could be no "accident." But the Court disagreed. Noting that the underlying lawsuit alleged negligence, the Court explained that the mere fact the predicate conduct was intentional "does not absolve an insurer of the duty to defend its insured when the complaint filed against the insured alleges that the intentional conduct of a third party was enabled by the negligence of the insured." *Id.* at 156. The Court further explained that the plaintiffs' injuries were "accidental" from the perspective of the insured parents because the shootings "cannot be said to be the natural and expected result of Parents [sic] alleged acts of negligence. Rather, Plaintiffs' injuries were caused by an event so unexpected, undesigned and fortuitous as to qualify as accidental within the terms of the policy." *Id.* at 159; *see also Nationwide Mut. Fire Ins. Co. of Columbus v. Pipher*, 140 F.3d 222, 226 (3d Cir. 1998) ("The rule seems to be well-settled in other jurisdictions that it is the intentional conduct of the *insured* which precludes coverage, not the acts of third parties. Although a third party may have intentionally injured or killed the plaintiff, the death or injury may still be deemed to be an accident under the terms of the policy." (emphasis in original)).

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Here, the contractor's alleged negligence enabled the rebels to destroy the Death Star, including third-party property, and it is unlikely that the builder of the thermal exhaust port expected that its work would be exploited to destroy the entire station. Rather, the destruction of the Death Star would likely be viewed as being "unexpected, undesigned and fortuitous" from the perspective of the insured contractor such that it would meet the "occurrence" requirement. The fact that the rebels attacked the station intentionally does not, under the logic of *Baumhammers*, change this conclusion. The insuring agreement of the CGL policy is therefore likely met.

Is the Rebel Alliance a Sovereign?

So the contractor has coverage, right? IT'S A TRAP! Various exclusions found in typical CGL policies will likely cause trouble. The first is the so-called War Risk Exclusion, which excludes from coverage "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 . . . ." The contractor has grounds to argue that the first two provisions are inapplicable. In *Universal Cable Prods., LLC v. Atl. Specialty Ins. Co*., 929 F.3d 1143 (9th Cir. 2019), the Ninth Circuit held that, under California law, "war" and "warlike action by a military force" had specialized meanings in the insurance context that applied only to hostilities between either de jure or de facto sovereigns. The court therefore held that the War Risk Exclusion within a television production policy was inapplicable to losses caused by Hamas rocket attacks into Israel because Hamas is not recognized as either form of sovereign, and further because the underlying conduct—rocket fire into civilian centers— did not constitute "warlike action by a military force." *Id.* at 1157-61. Here, while the opening title crawl of Star Wars states that "[i]t is a period of civil war," thereby ostensibly falling squarely in exclusion (1), the Rebel Alliance is arguably not a de jure or de facto sovereign: "[u]nder international law, a state is an entity that has a defined territory and a permanent population, under the control of its own government, and that engages in, or has the capacity to engage in, formal relations with other such entities." *Id.* at 1157 (citation omitted). As depicted in the Star Wars films, the Rebel Alliance—a ragtag collection of resistance groups and renegade members of the Imperial Senate moving from planet to planet to escape the Empire—does not appear to satisfy any of those requirements.

But there is another. Exclusion (3) explicitly applies to "insurrection, rebellion, [and] revolution," each of which would likely apply here. In *Hartford Fire Ins. Co. v. W. Union Co*., No. 22-CV-0557 (JMF), 2022 U.S. Dist. LEXIS 171694 (S.D.N.Y. Sept. 22, 2022), the district court found that the downing of a commercial aircraft by Russian-backed separatists in eastern Ukraine constituted an "insurrection" excluded by the war risk exclusion because the term required "(1) a violent uprising by a group or movement (2) acting for the specific purpose of overthrowing the constituted government and seizing its powers," both of which were present. *Id.* at

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*3 (quoting *Pan Am. World Airways, Inc. v. Aetna Cas. & Sur. Co*., 505 F.2d 989, 1017 (2d Cir. 1974)); *see also Home Ins. Co. of New York v. Davila*, 212 F.2d 731, 736 (1st Cir. 1954) ("To constitute an insurrection or rebellion within the meaning of these policies, there must have been a movement accompanied by action specifically intended to overthrow the constituted government and to take possession of the inherent powers thereof."). The Rebel Alliance—often referred to as the "Rebellion"—similarly fits comfortably within that definition: a violent uprising acting for the specific purpose of overthrowing the Galactic Empire. And because "'[i]nsurrection' is the most basic form of civil unrest, the definition of which encompasses all other forms of civil commotion addressed by the war risk exclusions," the exclusion would likely bar the contractor's claim. *Younis Bros. & Co. v. CIGNA Worldwide Ins. Co*., 91 F.3d 13, 14 (3d Cir. 1996).

Other exclusions could cause similar difficulties. A Professional Services exclusion (often added via endorsement), which excludes from coverage "bodily injury" or "property damage" arising out of "the rendering of or failure to render any professional services by you," could apply to the contractor's work, given the (presumably) specialized skill required to work on the Death Star. *See, e.g.*, *Witkin Design Grp., Inc. v. Travelers Prop. Cas. Co. of Am.*, 712 F. App'x 894, 897 (11th Cir. 2017) ("The conduct of Witkin in designing and constructing the intersection falls squarely within the professional services exclusions."). The contractor's carrier, perhaps recognizing the inherent risk of insuring anything related to the Galactic Civil War (particularly on a station literally called the "Death Star"), could also have added a Designated Operations Exclusion Endorsement, which excludes coverage for specific operations. Or perhaps the galaxy far, far away has developed its own CGL exclusions, such as "bodily injury" or "property damage" arising from the use of the Force.

And so, while my lack of faith may seem disturbing, CGL coverage is unlikely to be available for our poor thermal exhaust port contractor. Hopefully contractors working on the second Death Star planned their insurance programs with greater care.

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