

9th Circ. Won't Reverse Amber Heard's Loss In Coverage Suit

By **Craig Clough**

Law360 (November 25, 2024, 9:25 PM EST) -- The Ninth Circuit upheld an insurer's favorable ruling Monday in its legal dispute with actress Amber Heard, affirming that she had no right to independent counsel paid for by New York Marine and General Insurance Co. in a defamation suit by her ex-husband, Johnny Depp.

The unpublished **opinion** affirmed a district court's order that the insurer did not breach its contract or the implied covenant of good faith and fair dealing with Heard while also rejecting Heard's **argument** that California law, and not Virginia law, should have applied to the dispute.

Heard argued that a conflict of interest arose between her and her counsel at Cameron McEvoy PLLC because New York Marine reserved the right to deny coverage if her conduct was "willful" and "intentional."

The actress also argued that the district court asked itself the wrong question in its analysis, deciding to rule based on whether Heard's defense counsel met their ethical duties when the actual issue was whether New York Marine fulfilled its policy obligations. The Ninth Circuit rejected this argument and found that Virginia law applied to the dispute, which benefited Heard.

"There was no conflict of interest between New York Marine and Heard," the panel wrote. "Cameron McEvoy's attorneys litigated the defamation case in Virginia, were members of the Virginia bar, and were bound by Virginia's, and not California's, ethics rules. Unlike California, Virginia's ethics rules provide that a lawyer appointed by an insurer owes a duty only to the insured, not to the carrier."

New York Marine created a clear conflict by agreeing to defend Heard in Depp's March 2019 Virginia state court suit but reserving its rights to deny coverage based on intentional behavior, Heard claimed in her appellate brief. The insurer refused to allow Heard to choose independent counsel and eventually withdrew from her defense entirely, forcing her to bear a significant amount of legal costs not covered by a separate Travelers policy, according to the brief. New York Marine also refused to cover any portion of Heard and Depp's **December 2022** settlement of their underlying defamation claims, filings show.

Travelers sued New York Marine in January 2022 over their mutual defense obligations to Heard, filings show. During that case, in which Heard did not participate, the court found that New York Marine had no obligation under its policy to provide her with independent counsel in the underlying defamation suit, according to the brief. The insurers **settled their dispute** in September 2023.

New York Marine brought the present declaratory relief suit against Heard in July 2022, and she filed counterclaims against the insurer for breach of contract and bad faith, filings show. The court sided with the insurer, finding that there could not be a conflict under Virginia law because it bars defense counsel from acting against their client's interests. Heard appealed the court's ruling to the Ninth Circuit in November.

Among other things, Heard argued that California law entitles an insured to independent counsel in circumstances where an insurer's appointed counsel can fully control the outcome of an underlying coverage issue through its defense, Heard said. She claimed that New York Marine's reservation of rights for intentional behavior conflicted with her defamation defense, making it "impossible" for her to fully accept the insurer's counsel without potentially prejudicing herself.

"New York Marine did not breach its duty to defend Heard," the panel said Monday. "New York Marine agreed to 'provide a defense at our expense by counsel of our choice, even if the suit is groundless, false or fraudulent.' New York Marine fulfilled that duty by continuing the appointment of Cameron McEvoy."

In affirming the ruling on the bad faith claim, the panel said Heard "has not alleged any facts establishing that New York Marine withheld benefits due under the policy." The district court dismissed the claim with leave to amend, but she declined to do so, the panel said.

"Thus, her breach of the implied covenant claim rested entirely on her allegation that New York Marine failed to provide independent counsel," the panel said, adding that "[b]ecause we affirm the dismissal of Heard's counterclaims, we also affirm the district court's dismissal of New York Marine's declaratory judgment action as moot."

U.S. Circuit Judges Barrington D. Parker, Andrew D. Hurwitz and Roopali H. Desai sat on the panel for the Ninth Circuit.

Representatives of the parties did not immediately respond to requests for comment.

New York Marine is represented by Lawrence A. Tabb of Musick Peeler & Garrett LLP.

Heard is represented by Kirk Pasich and Christopher T. Pasich of McGuireWoods LLP.

The case is New York Marine and General Insurance Co. v. Heard, case number 23-3585, in the U.S. Court of Appeals for the Ninth Circuit.

--Additional reporting by Riley Murdock. Editing by Rich Mills.