

## Frontier Copyright Row Triggered Duty To Defend, Court Says

By **Ganesh Setty**

*Law360 (September 17, 2025, 9:09 PM EDT)* -- Insurers for Frontier Communications had a duty to defend the telecommunications company against copyright infringement claims that were ultimately settled, a Delaware state court ruled in a recently unsealed opinion, analyzing a deliberate acts exclusion and the timeliness of Frontier's claim notice.

In his summary judgment opinion dated Aug. 14 and unsealed Tuesday according to Frontier's counsel, Judge Sheldon Rennie found that while Frontier's policies didn't define what "knowing" meant in "knowing wrongful act," its policies did cover a "technology wrongful act" committed by a third party. The policies in turn defined "technology wrongful act" to include an "infringement of an intellectual property right" other than patent infringement or trade secret misappropriation.

"By their plain terms then, the policies cover copyright infringement committed by a third party for which Frontier may be found liable," he said, while "[n]either side states what is required to show knowledge under the deliberate act exclusion."

"In essence, the excess insurers ask the court to read in a copyright infringement exclusion in the policies via the deliberate acts exclusion," Judge Rennie continued. "But the policies do not explicitly exclude copyright infringement, even though the insurers demonstrated that they knew how to exclude other intellectual property rights from coverage.

"Accordingly, the court declines to construe the deliberate act exclusion in such a broad fashion," he said.

And while he found Frontier did not provide timely notice to its insurers about certain copyright infringement claims from movie studios during the at-issue policy period spanning from July 2020 to July 2021, Judge Rennie said Frontier did provide timely notice with respect to infringement claims from record companies.

Because those infringement claims from the record companies "are potentially indemnifiable," the insurers' respective duties to defend Frontier were therefore triggered, the judge said.

According to court filings, the coverage dispute stems from copyright infringement claims Frontier litigated against in its bankruptcy, which were asserted by certain movie studios and record companies. They specifically accused Frontier of contributory infringement and vicarious infringement, alleging

Frontier profited from its customers' use of Frontier's internet services to violate the companies' copyrights.

Seeking insurance coverage for the infringement claims under primary and excess policies spanning from July 2020 to July 2021, Frontier sued its various insurers in Delaware state court in January 2024. Frontier said it ultimately settled the infringement claims this past May.

The primary insurer is Indian Harbor Insurance Co., while the excess insurers are Columbia Casualty Co., Axis Insurance Co. and certain underwriting members of three Lloyd's of London syndicates.

To receive coverage, the policies required that Frontier provided notice of a claim "as soon as reasonably practicable" and no later than the end of the policy period or any applicable extended reporting period. The policies further contained "related matter" provisions, stating in part that third-party wrongful acts arising from a "continuous nexus" of circumstances would be deemed first made against the insured "at the time the first such related matter occurred, irrespective of whether such related matter occurred prior to or during the policy period."

In their summary judgment bids, all the defendant insurers noted that Frontier first received a cease-and-desist letter in March 2020 over the movie studio infringement claims and received the record company infringement claims starting in January 2021, but only provided claim notice in April 2021.

To that end, all insurers maintained that the underlying infringement claims were all related and first made in March 2020, meaning Frontier should have instead provided claim notice earlier, under its prior policy spanning from July 2019 to July 2020.

The excess insurers additionally invoked the deliberate act exclusion, which barred coverage for "intentional or knowing" wrongful acts, and a separate "personal profit" exclusion barring coverage for the "gaining of any profit" for which Frontier was not entitled, Judge Rennie's opinion states.

However, the opinion only directly analyzed the deliberate act exclusion, finding that while contributory infringement "requires knowledge," the exact knowledge standard required under the policies was not clear.

As for the timeliness issue, Judge Rennie first found the movie studio claims fell outside the 2020-2021 policy period because they date to March 2020. However, he said record company claims could still be covered, given the first record company claim was made in January 2021 and Frontier gave claim notice in April 2021.

He further rejected the insurers' argument that the "related matter" language aggregated claims for notice purposes and not just to limit the insurers' liability, calling their argument "untenable."

"Under the insurers' reading, a claim would be 'first made' when the first related wrongdoing occurred, not when Frontier received notice of a claim," Judge Rennie determined. "In such a scenario, Frontier would be required to provide the insurers with notice of third-party wrongdoing even if Frontier never received a takedown notice or resulting demand letter.

"No insured could ever comply with such a policy, and it would be difficult to imagine any insured ever purchasing such a policy," Judge Rennie said.

In a separate order Aug. 14, Judge Rennie also rejected the defendant insurers' bid to enforce a settlement they said they reached with Frontier during a July 2024 mediation, noting the "parties agree that there was no agreement signed by the parties."

Representatives of the parties did not immediately respond to a request for comment Wednesday.

Frontier is represented by Philip A. Rovner, Jennifer C. Wasson and Ryan D. Kingshill of Potter Anderson & Corroon LLP and by Robin L. Cohen, Orrie A. Levy and Elizabeth N. Olsen of Cohen Ziffer Frenchman & McKenna LLP.

Indian Harbor Insurance Co. is represented by Julie M. O'Dell of Smith Katzenstein & Jenkins LLP and by Keith Moskowitz and Marilyn Rosen of Dentons US LLP.

Columbia Casualty Co. is represented by Timothy S. Martin and Sean A. Elman of White and Williams LLP and by Jamison R. Narbaitz, Michael G. Niebuhr and Julie Choi Hawkinson of Atheria Law PC.

Underwriting members of Lloyd's Syndicate 623 and 2623 are represented by Brett D. Fallon and Angela Lam of Faegre Drinker Biddle & Reath LLP and by Raymond J. Tittmann of Tittmann Weix LLP.

Underwriting members of Lloyd's Syndicate 3624 are represented by Marc. S. Casarino, Matthew C. Nelson and Cara Vecchione of Kennedys CMK LLP.

Axis Insurance Co. is represented by John C. Phillips Jr. and David A. Bilson of Phillips McLaughlin & Hall PA and by Cary Economou of Werner Ahari Mangel LLP.

The case is Frontier Communications Holdings Inc. v. Indian Harbor Insurance Co. et al., case number N24C-01-131, in the Superior Court of the State of Delaware, Complex Commercial Litigation Division.

--Editing by Nick Petruncio.