

Insurance Coverage Requires Causation

By Kelly M. Lippincott, Esq. and Matthew D. Berkowitz, Esq.

On April 21, 2015, the Maryland Court of Appeals, in *Maryland Casualty Company v. Blackstone International Ltd*, No. 51, Sept. Term, 2014, issued an opinion in which it reversed the judgment of the Court of Special Appeals and held that an insurer did not have a duty to defend under the insurance policy because the underlying complaint did not implicate an advertising injury for which there might be coverage as there was no causation between the injury suffered and the insured's advertisement activities.

In *Blackstone*, Gary/RMG and Black/Blackstone discussed a joint venture "to market and sell lighting products to people with low vision problems." Over the next four years, the parties worked together to develop their product, "Vision Enhance." As part of his work with Blackstone and the joint venture, Gray participated in the development of a sales presentation to Wal-Mart in an effort to place the product line for sale in its stores. Black told Gray that no progress had been made with Wal-Mart, yet Gray subsequently learned that "Vision Enhance" was being sold by Wal-Mart throughout the United States. In short, Gray/RMG was cut out of the sales commissions and profits. RMG filed suit against Black and Blackstone for breach of contract and intentional misrepresentation, *inter alia*.

Blackstone sought coverage and a defense under the advertising injury provisions in its insurance policy with Maryland Casualty. Maryland Casualty declined coverage and the defense, asserting that the underlying lawsuit did not allege that Blackstone had engaged in advertising, that RMG suffered an advertising injury, or that there was any "causal connection between any of RMG's claimed damages . . . and any advertising conducted by Blackstone." The Court of Appeals agreed with the Maryland Casualty. Although the Court acknowledged that an insurer is obligated to provide a defense if there is a potentiality that the claim could be covered by the policy, it nonetheless concluded that there was no possibility of coverage under the policy. In so concluding, the Court reasoned that none of the allegations brought by RMG identified any injury that was caused by the advertisements created by RMG.