

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-13581

Non-Argument Calendar

CITIZENS INSURANCE COMPANY OF AMERICA,
MASSACHUSETTS BAY INSURANCE COMPANY,

Plaintiffs-Counter Defendants-Cross Defendants-
Appellees-Appellants,

WESTFIELD INSURANCE COMPANY,

Intervenor Plaintiff-Appellee-Appellant,

versus

BANYAN TREE MANAGEMENT, LLC,
ALBANY DOWNTOWN HOTEL PARTNERS, LLC,

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Opinion of the Court

22-13581

Defendants-Counter Claimants-Third-Party Plaintiffs-
Counter Defendants-Appellees,

JANE DOE,

Defendant-Cross Defendant-Appellee,

STARR INDEMNITY & LIABILITY COMPANY,

Third-Party Defendant-Cross Claimant-Counter Claimant
Cross Claimant-Appellant-Appellee.

Appeals from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:19-cv-05292-MHC

Before WILSON, ROSENBAUM, and JILL PRYOR, Circuit Judges.

PER CURIAM:

Four companies (collectively, the appellants) appeal the district court's order finding they are required to provide insurance coverage for an incident at Hampton Inn-Albany, a hotel owned by Albany Downtown Hotel Partners, LCC (Albany), and managed by Banyan Tree Management, LCC (Banyan). Appellants, the four

insurance companies—Citizens Insurance Company of America and Massachusetts Bay Insurance Company (collectively, Hanover), Westfield Insurance Company (Westfield), and Starr Indemnity & Liability Company (Starr)—issued commercial general liability insurance to Banyan and Albany.

In 2015, an employee of Hampton Inn-Albany secretly recorded a hotel guest while she was showering in the hotel bathroom. Years later, the video was circulated, and the guest sued Banyan and Albany for negligence, premises liability, and vicarious liability, alleging she suffered emotional and subsequent physical injury (Underlying Complaint). Banyan and Albany subsequently sought coverage from their insurance providers, who disputed their duty to cover this injury, primarily arguing that the Underlying Complaint did not include allegations of “personal and advertising injury” arising out of Albany’s “legitimate business,” and that their policy exclusions precluded coverage.

Georgia law requires a liberal construction of coverage and strict construction of exclusion. *Great Am. All Ins. Co v. Anderson*, 847 F.3d 1327, 1332 (11th Cir. 2017). The district court therefore rejected Hanover’s, Westfield’s, and Starr’s motions for summary judgment.¹

After careful review of the briefs and record, we agree with the district court on all counts. Georgia law makes clear that

¹ But the district court found Starr was entitled to summary judgment on Count II of its counterclaim and crossclaim. This claim is not on appeal.

ambiguities are to be resolved in favor of the insured. *Hoover v. Maxum Indem. Co.*, 730 S.E.2d 413, 417 (Ga. 2012); *see also World Harvest Church v. Guideone Mut. Ins. Co.*, 695 S.E.2d 6, 10 (Ga. 2010) (noting that “if [the policy exclusions] [are] ambiguous, the purported reservation of rights must be construed strictly against the insurer and liberally in favor of the insured”).

The appellants failed to even make a showing of ambiguity, let alone definitively establish that the Underlying Complaint falls outside their policies or that an exclusion precludes coverage. Notably, we find unpersuasive their arguments that the hotel guest’s right to privacy was not violated, and that the recording did not arise out of Banyan and Albany’s business. While filming a showering guest is clearly not a “legitimate” hotel practice, when a hotel employee—who would not have had access to the room but for his authority—places the camera in the bathroom and circulates the video, the injury undoubtably imputes to the hotel. Moreover, the only policy exclusion argument we find compelling again aligns with the district court’s findings: coverage under Coverage A of Starr’s policy is excluded, as the Underlying Complaint does not include allegations of “bodily injury” required to trigger coverage.

Accordingly, we affirm the district court’s well-reasoned decision.

AFFIRMED.

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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September 28, 2023

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 22-13581-AA

Case Style: Citizens Insurance Company of America, et al v. Banyan Tree Management, LLC,
et al

District Court Docket No: 1:19-cv-05292-MHC

All counsel must file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Although not required, non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at www.pacer.gov. Information and training materials related to electronic filing are available on the Court's website.

Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

Pursuant to Fed.R.App.P. 39, costs taxed against appellants.

Please use the most recent version of the Bill of Costs form available on the court's website at www.ca11.uscourts.gov.

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OPIN-1A Issuance of Opinion With Costs