

ENTERED

August 16, 2016

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

MICHAEL J. ANTON &
MAGI CROFCHECK,

Plaintiffs,

v.

NATIONAL SURETY CORPORATION,

Defendant.

CIVIL ACTION H-16-267

MEMORANDUM OPINION & ORDER

Facts: Dentist Dr. Crofcheck and her spouse Dentist Dr. Michael Anton (they are married but they have separate dental practices) are suing their insurance coverage to pay for damages of a claim made by another dentist named Dr. Devoll. The claim by Dr. Devoll is that Dr. Crofcheck wrote a phony review of Dr. Devoll's dental practice. Dr. Crofcheck has admitted to posting on the website Yelp on or about July 21, 2011 that he was a patient of Dr. Devoll and accused him of unprofessional and reprehensible dental care. Dr. Devoll argues that this phony Yelp review benefitted Dr. Crofcheck's and her spouse Dr. Michael Anton at his expense; Therefore, he seeks damages against them. Dr. Crofcheck and Dr. Anton claim that their insurance policy should cover any damages from this incident.

Business Disparagement Claim

Holding: "To support his business disparagement claim, Dr. Devoll alleges that Dr. Crofcheck and her spouse Dr. Michael Anton intentionally posted the Yelp review knowing that the statements contained therein were false. He also alleges that they "[a]cted with malice." The crux of this insurance claim is focused on Dr. Crofcheck's intent to post a review that was known to be untrue. **The court finds that Dr. Devoll's business disparagement claim is based on an intentional act as contemplated by Exclusion One of the Homeowners' Policy. Therefore, the insurance company is not legally obligated to cover the claim of Dr. Crofcheck."**

Intentional Infliction of Emotional Distress Claim

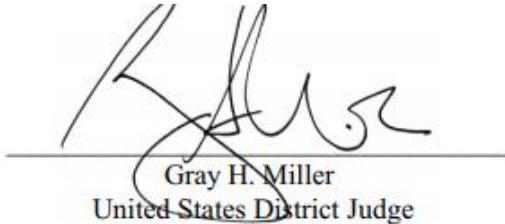
Holding: Dr. Devoll asserts a claim against Dr. Crofcheck and Dr. Anton for intentional infliction of emotional distress. National Surety Corporation (the insurance company denying the claim) argues that this claim is encompassed by Exclusion One of the Homeowners' Policy.

Dr. Devoll alleges that the Yelp review was intentionally posted to cause humiliation and financial harm to him and his business. This claim falls squarely within Exclusion One which precludes coverage for claims arising from intentional acts.

But for Plaintiffs' voluntary and intentional action of posting the review, Dr. Devoll would not have been harmed.

Therefore, The court finds that all claims in the underlying Devoll lawsuit fall within exclusions from coverage contained in the Homeowners' Policy. Accordingly, NSC is not required to provide Plaintiffs defense or indemnity coverage. Surey Corporation's (NSC) motion for judgment on the pleadings is GRANTED. IV. CONCLUSION NSC's motion for judgment on the pleadings is GRANTED. Dr. Crofcheck and Dr. Anton's claims are DISMISSED WITH PREJUDICE. All other pending motions are DENIED AS MOOT. A final judgment will issue consistent with this opinion.

Signed at Houston, Texas on August 16, 2016.



Gray H. Miller
United States District Judge