

## Cleaning Biz's Trademark Suit Coverage Bid Scrubbed Out

By **Jeff Sistrunk**

*Law360, Los Angeles (January 2, 2018, 8:52 PM EST)* -- Former franchisees of The Maids International Inc. can't force Ohio Security Insurance Co. to foot the bill for their costs to defend a lawsuit accusing them of using TMI's trademarks to steer customers to their competing cleaning business, a Nebraska federal judge ruled Tuesday, saying the underlying action didn't assert any potentially covered defamation claims.

Ohio Security had issued a liability policy to two former TMI franchisees operating under the "Maids on Call" moniker. Among other things, the policy's "personal and advertising injury" section extends coverage for claims stemming from the publication of material slandering or libeling another company or disparaging another company's products or services, according to court documents.

In the now-settled underlying action, Omaha, Nebraska-based TMI claimed that Maids on Call had breached its franchise agreements and violated federal trademark law by using TMI's marks and an email address associated with the franchisor to steer customers to a competing business.

Maids on Call and its owners sued Ohio Security in July after the insurer declined to defend them against TMI's suit. But on Tuesday, Chief U.S. District Judge Laurie Smith Camp said the insurer's refusal to defend was justified because TMI's suit didn't allege Maids on Call had disparaged the franchisor or its services, either explicitly or implicitly.

"None of [the underlying] claims expressly alleges the elements of defamation, libel, slander, or any similar action, nor could any of the claims in the TMI complaint be interpreted to allege that Maids on Call or any plaintiff published a defamatory, false statement to a third party," Judge Camp wrote, granting the insurer summary judgment.

According to court documents, Maids on Call formerly operated four TMI franchises in Connecticut and Massachusetts. In December 2016, Maids on Call owner Timothy Scussel sent a "retirement letter" to customers, indicating that the four locations would be ceasing to operate as TMI franchises but that Scussel's daughters were starting a new business dubbed "Two Sisters Cleaning Services" that would offer the same services, court papers say.

After TMI learned the Scussels had ditched the franchise operations and begun operating Two Sisters at the same locations, it filed the underlying suit in Nebraska federal court in June. TMI ultimately entered into a confidential settlement with Maids on Call and the other defendants in the underlying action in

December, but Maids on Call's insurance dispute with Ohio Security continued.

In Tuesday's order, Judge Camp quickly determined that TMI's suit didn't explicitly allege that Maids on Call made false or defamatory statements about the franchisor. However, Maids on Call had further argued that Timothy Scussel implicitly disparaged TMI's services in the so-called retirement letter.

Judge Camp was unconvinced. Far from bashing the quality of cleaning services provided by TMI franchises, Scussel's letter merely indicated that his daughters' new Two Sisters business would provide the same "high level of service" as Maids on Call, the judge found.

"The statements in the retirement letter were not defamatory or disparaging because they did not make a false statement about TMI, nor did they 'clearly derogat[e] its business,'" Judge Camp wrote. "The retirement letter simply suggests that customers would receive the same high level of service with Two Sisters that they did with TMI."

Based on her conclusion that Ohio Security had no duty to defend, Judge Camp also granted summary judgment to Maids on Call's umbrella insurer, Ohio Casualty Insurance Co.

Attorneys for Maids on Call and the insurers did not immediately respond to requests for comment.

Maids on Call is represented by Eric D. Mason and David A. Gauntlett of [Gauntlett & Associates](#).

The insurers are represented by Matthew O. Sitzer and Matthew C. Wolfe of [Shook Hardy & Bacon LLP](#).

The case is Maids on Call LLC et al. v. Ohio Security Insurance Co., case number [8:17-cv-00252](#), in the U.S. District Court for the District of Nebraska.

--Editing by Aaron Pelc.