

War Exclusion Does Not Bar Coverage For Malware Claims, Says New Jersey Court (Insurance Law Alert)

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A New Jersey trial court granted a policyholder's summary judgment motion, ruling that a war exclusion in an all risk property policy did not bar coverage for claims arising out of a malware attack. *Merck & Co., Inc. v. ACE American Ins. Co.*, No. UNN-L-2682-18 (N.J. Super. Ct. Jan. 13, 2022).

Merck's computer systems were infected by a malware attack, resulting in alleged losses of more than \$1.4 billion. Merck's insurers argued that the evidence established that the Russian government was responsible for the cyberattack and therefore coverage was barred by an exclusion that applied to:

Loss or damage caused by hostile or warlike action in time of peace or war, including action in hindering, combating, or defending against an actual, impending, or expected attack: a) by an government or sovereign power (de jure or de facto) or by any authority maintaining or using military, naval or air forces; b) or by military, naval, or air forces; c) or by an agent of such government, power, authority or forces.

Rejecting this assertion, the court noted that decisions interpreting war-related exclusions have construed "war" to mean the use of armed forces in conflicts between nations and have deemed such exclusions to be inapplicable to scenarios not directly linked to military conflict. In so ruling, the court noted that the exclusion did not include any language indicating that it was intended to encompass cyberattacks.

Authors and Contacts

[Bryce Friedman](#)

Partner

bfriedman@stblaw.com

+1-212-455-2235

