



Corporate Exposure: Injury Definitions

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As we have previously noted in this column, the courts have become, regrettably, the definitive source in examining insurance policies to determine coverage. We say regrettably because this practice carries a high cost factor and appears to be territorially influenced. A case in point is the growing debate about whether "emotional distress" is a "bodily injury" covered by liability insurance policies. Liability contracts cover losses in which the claimant has sustained a "bodily injury" due to the insured's negligence.

An example: When non-employees slip and fall on your property, injuring themselves, those injuries are covered by your general liability insurance policy should they seek relief for the injuries and medical expenses. Arguments have been presented, however, that "emotional distress" realized through the insured's performance are synonymous with bodily injuries and should also be covered. A New York State Court of Appeals agreed in a recent case, basing its agreement on its interpretation of the bodily injury definition included in the insured's policy definition section.

Emotional Stress Covered

All policies include a section in which the carrier defines terms used in the policy (this should always be carefully reviewed). In the New York court decision, a ceiling collapsed in a tenant's rented apartment while the building was undergoing renovation. After the ceiling collapsed, the tenant filed suit against the building owner, alleging

negligence resulting in the infliction of emotional distress. The complaint did not indicate that any physical injuries were sustained.

The landlord was covered by a comprehensive general liability (CGL) policy and, quite naturally, sought cover under this policy by presenting the claim to the carrier for handling. The carrier undertook defense of the claim and issued a "reservation of rights" position because it was not certain whether emotional distress would be covered under the policy. When a carrier issues a reservation of rights letter, it is merely

for solely mental or emotional injuries. In the California case, the claimant alleged severe emotional distress due to the collapse of a failed diversified investment services company that had offered the claimant investment opportunities. The firm's failure, it was stated, caused the claimant to sustain distress associated with the loss of savings and financial security. The California Court contended that the bodily injury definition in the policy refers to physical injury to the body and does not cover emotional, mental, or non-physical harm. In the case illustrated, the insured's carrier was successful in denying coverage. Once the carrier is out of the claim process, the suit often loses momentum because the "deep pockets" have been eliminated from any settlement.

Two different views on what constitutes "bodily injury"

advising the insured that, although it is defending the claim, it will hold off satisfying any award until it is certain the loss is covered by the policy.

The court found for the insured and advised the insurance company that any ambiguous terms must be interpreted to the benefit of the insured—or, in this case, the building owner. Since "bodily injury" was defined to include sickness and disease (in which category the average person would tend to include mental illness), the court ruled there was coverage under the policy and the carrier was obligated to defend and pay for any settlements awarded to the tenant. The tenant was thus awarded damages for emotional distress injury.

A Different Ruling

Interestingly, in California the State Court of Appeals ruled that "bodily injury" specifically *excludes* coverage

Know the Definitions

In summary, two prominent courts arrived at diametrically opposite interpretations of what constitutes bodily injury as defined in most liability policies. This leaves the policy holder in a real quandary. Coverage may or may not apply, depending on the circumstances of the lawsuit and, possibly, the location of the court. Those states with more liberal courts may expect to see more of these types of defining roles. Evaluations of your policies and their language is suggested to minimize any confusion. Where necessary, ask your insurance carrier to provide a written, easily communicated list of definitions of items (along with examples for clarity) that are covered or excluded under the policy.

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