

Fall, 2022

AEI CLAIMS LAW QUIZ

LIABILITY INSURANCE COVERAGE FOR PURELY MENTAL INJURY

[Ref. *Liability Insurance Principles, Para. 2.09*]

FACTS: Watson filed a lawsuit against Warzecha alleging that he had “engaged in serial acts of surveillance, stalking, and harassment against her and her children, including taking photographs and videos of them and their home.” The lawsuit included three counts: invasion of privacy (count one), intentional infliction of emotional distress (count two), and negligent infliction of emotional distress (count three). Watson only claimed damages for emotional distress, although in count three, she alleged “emotional distress so severe that it could cause physical illness.”

Warzecha made a claim under his homeowners policy issued by USAA Casualty Insurance Company. The policy provided coverage “if a claim is made or a suit is brought against any insured for damages because of bodily injury . . .” USAA reviewed the allegations in Watson’s complaint and denied the claim for coverage based on the absence of any allegation in the complaint that Watson sustained a bodily injury.

Warzecha then sued USAA seeking a declaratory judgment that the policy required USAA to provide him with a legal defense and indemnity. Both parties then filed motions for summary judgment. The court granted USAA’s motion and dismissed Warzecha’s suit. Although Warzecha conceded that counts one and two of Watson’s complaint alleged intentional acts excluded from coverage, he argued that count three alleged that she suffered “emotional distress so severe that it *could* cause physical illness.” Warzecha argued that the possibility of a physical injury was sufficient for the court to conclude that a bodily injury was alleged to have been sustained.

QUESTION: If a liability insurance policy provides that it will defend and indemnify the insured when a claim is made or a suit is brought for damages “because of bodily injury,” is there coverage for a claim or suit that alleges emotional distress without an allegation of bodily injury?

ANSWER: No, according to the Appellate Court of Connecticut in *Warzecha v. USAA Cas. Ins. Co.*, 259 A3d 1251 (Conn. App. 2021), which held that USAA had neither a duty to defend nor a duty to indemnify its insured when the plaintiff’s complaint did not allege a bodily injury.

The court began by stating that construction of an insurance policy presents a question of law for the court to decide. Insurance policies are interpreted based on the same rules that govern the interpretation of contracts. According to those rules, if the terms of the policy are clear and unambiguous, the policy language must be given its natural and ordinary meaning. A provision in an insurance policy is ambiguous when it is reasonably susceptible to more than one meaning. If a provision in an insurance policy is deemed to be ambiguous, the ambiguity must be construed in favor of the insured.

The insured claimed that USAA had a duty to defend and indemnify him under the terms of his liability policy. The court, however, disagreed. The court said that an insurer's duty to defend is determined by the allegations in the complaint. If an allegation in the complaint states facts that bring a claim within coverage, the insurer has a duty to defend even if the facts can't be proved. The insurer's duty to defend is broader in scope than its duty to indemnify and, therefore, when an insurer does not have a duty to defend, it also will not have a duty to indemnify.

The question here was whether the complaint alleged a claim that fell within the coverage of the policy. The policy provided liability coverage, including a duty to defend and indemnify "if a claim is made or a suit is brought against any insured for damages because of bodily injury . . ." The policy defined "bodily injury" as "physical injury, sickness or disease . . ." The policy further stated that "bodily injury" does not include "mental injuries such as: emotional distress, mental anguish, humiliation, mental distress, or any similar injury unless it arises out of physical injury to the person claiming a mental injury." On the basis of this language, the court found that the policy was clear and unambiguous and, therefore, must be read as providing coverage only for damages resulting from bodily injury. Bodily injuries, including mental injuries that arise out of physical injuries and physical injuries that arise out of mental injuries, are covered under the policy, but mental injuries alone are not.

Watson never alleged that a bodily injury occurred, and the court was unpersuaded by Warzecha's argument that the *possibility* of a physical injury, which Watson alleged in the third count of her complaint, was sufficient for the court to conclude that a bodily injury was alleged to have occurred. The court found that Watson made this claim to demonstrate the extent of the emotional distress she suffered in order to satisfy the pleading requirements of her legal claim for negligent infliction of emotional distress. The court, however, found that this had no bearing on the insurance policy's requirements for coverage.

The court held that since the policy applied only to claims for "damages because of bodily injury," and Watson's claim made no such allegation, the insured was not entitled to coverage under the policy and, therefore, the trial court did not err in granting summary judgment in favor of USAA.

CONCLUSION: Determining coverage under an insurance policy typically involves a two-step analysis. First, you must identify the language in the policy that addresses the coverage issue in question. Next, it's important to consider how courts have interpreted that language. Since an insurance policy is a contract, courts apply rules of contract law to determine the meaning of the policy language. If the policy language is clear and unambiguous, courts will enforce the contract according to its plain and ordinary meaning. That is what happened in this case. The court found that the policy language was clear and unambiguous. The evidence established that the insuring agreement provided coverage for a claim against its insured alleging "damages because of bodily injury." The policy defined "bodily injury" as a "physical injury, sickness, or disease." In addition, this policy specifically excluded "mental injury" from coverage unless it arose out of a physical injury.

When a policy like this one limits coverage to claims alleging "damages because of bodily injury," most courts have denied coverage for purely mental injury. For coverage purposes, most courts hold that bodily injury does not include purely mental injury.