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ILLINOIS LAW MANUAL
CHAPTER XI
INSURANCE COVERAGE AND DEFENSES

F. DEFINITIONS - BODILY INJURY, PROPERTY DAMAGE, PERSONAL INJURY, OCCURRENCE AND INSURED (RESIDENT RELATIVE)

1. Bodily Injury

Both homeowners and comprehensive business liability coverages typically insure against "bodily injury." The business coverage defines that term as:

> bodily injury, sickness or disease sustained by a person, including death resulting from the bodily injury, sickness or disease at any time.

The homeowners coverage defines "bodily injury" as "physical injury, including any resulting sickness or disease to a person." The latter definition, however, specifically excludes "communicable diseases transmitted to an insured by another person" and emotional distress, mental injury and the like unless it arises out of "actual physical injury."

The homeowners policy seems to make clear that "bodily injury" does not include pure emotional or mental distress unaccompanied by a physical injury or manifestations. The more complex question is whether, within the context of the business policy, pure mental or emotional distress can constitute "bodily injury, sickness or disease." While Illinois courts have not decided this question, under the insuring agreement they have held, in the context of interpreting an

exclusion, that "bodily injury" does not include damages due to emotional distress or humiliation. University of Illinois v. Continental Cas. Co., 234 Ill. App. 3d 340, 361 (1992). See also Illinois State Medical Ins. Services, Inc. v. Cichon, 258 Ill. App. 3d 803, 812 (1994) (suggesting that "bodily injury" requires injury of a "physical nature"). Even if the term "bodily injury" does not include emotional distress, however, the terms "sickness" or "disease" may encompass it such that coverage is afforded.

In order to allege a covered "bodily injury," an underlying complaint must actually allege that an actual injury, sickness or disease existed. For example, a request to establish a procedure for determining whether any injury, sickness or disease existed did not allege a covered "bodily injury." HPF v. General Star Indemnity Co., 788 N.E.2d 753 (1st Dist. 2003).

While Illinois courts have not clarified the meaning of "bodily injury" vis-a-vis mental distress, they have held that loss of consortium claims do not constitute separate claims for "bodily injury." Creamer v. State Farm Mut. Auto. Ins. Co., 161 Ill. App. 3d 223, 224-25 (1987). There, the court considered whether the parents' claims for loss of consortium due to the actual physical injury of their minor child were covered as "bodily injury" under their uninsured motorist coverage. The court held that loss of consortium is a "personal injury" rather than a "bodily injury," and not covered by policy language almost identical to that contained in many general liability policies. Illinois courts have held, however, that other policies covering "injury," as opposed to "bodily injury," do cover loss of consortium claims.

2. Occurrence

Both homeowners and the comprehensive general liability policies use the term "occurrence." Under the homeowners policy, an "occurrence" is defined as:

> an accident, including exposure to conditions, which results in . . . bodily injury . . . during the policy period.

The homeowners policy further states that "[r]epeated or continuous exposure to the same general conditions" is considered to be one "occurrence." Even if more than one person is injured in an accident, the accident will generally constitute only one "occurrence" and require only one payment of the "per occurrence" limits. Scottsdale Ins. Co. v. Robertson, 788 N.E.2d 279 (1st Dist. 2003).

The comprehensive general liability policy includes a similar definition of "occurrence." It states that the term means:

> an accident, including continuous or repeated exposure to the same general harmful conditions, which result in bodily injury or . . . the commission of an offense, or a series of similar or related offenses which results in personal injury or advertising injury.

The general liability policy's definition of "occurrence" also states that:

> bodily injury or bodily injury resulting from the use of reasonable force to protect persons or property will be considered an accident.

As both the homeowners and comprehensive general liability policies make clear, there can be no "occurrence" without "bodily injury." Whether something constitutes an "occurrence," then, turns in part on the terms defined above. The comprehensive general liability policy also states, however, that an event may be an "occurrence" if it results in "personal injury" (also defined above) or "advertising injury."

The policy defines the latter term as:

> the publication of material that slanders or libels a person or organization or disparages its goods, products or services; publication of material that violates a person's right of privacy misappropriation of advertising ideas; or infringement of copyright, title or slogan.

The use of the word "occurrence" in insurance policies broadens coverage and eliminates the need to find an exact cause of damages. Indiana Ins. Co. v. Hydra Corp., 245 Ill. App. 3d 926, 929 (1993). As the policies require, however, the occurrence must still be accidental. An

"accident" is an "unforeseen occurrence, usually of an untoward or disastrous character or an undesigned sudden or unexpected event of an inflictive or unfortunate character." Indiana Ins. Co., 245 Ill. App. 3d at 929 (citing Aetna Cas. & Sur. Co. v. Freyer, 89 Ill. App. 3d 617, 619 (1980)). While the natural and ordinary consequences of an act do not constitute an accident, consequences that are neither expected nor intended from the standpoint of the insured will qualify. Id.

Generally, under Illinois law, an event need not be abrupt to constitute an "occurrence." See Outboard Marine Corp. v. Liberty Mut. Ins. Co., 154 Ill. 2d 90, 125 (1993). This is particularly true where, as in the case of both the business and homeowners policies, the definition of the term "occurrence" includes repeated or continuous exposure to conditions. In other words, an "occurrence" encompasses more than what is commonly referred to as an accident (i.e., a one-time, dramatic event such as falling down the stairs). Thus, "property damage" resulting from the discharge of pollutants or asbestos fibers into an environment over a long period of time may constitute an "occurrence" even though it is not sudden. See e.g., Outboard Marine, 154 Ill. 2d at 123-25; U.S. Fid. & Guar. Co. v. Wilkin Insul. Co., 144 Ill. 2d 64, 77 (1991).

As a final note, the homeowners policy requires that the "bodily injury" or "property damage" for which recovery is sought occur "during the policy period." In Pekin Ins. Co. v. Janes & Addems Chevrolet, Inc., 263 Ill. App. 3d 399 (1994), the court considered a similar requirement in several different policies. There, the plaintiff sued to recover damages sustained as the result of a fire that began on adjacent property when petroleum dumped there ignited. The petroleum had been disposed of during the policy periods, but the fire occurred only after the policies had expired. The court held that no "occurrence" had taken place within the meaning of the policies

because the "property damage" for which recovery was sought (damages due to the fire) had occurred only after the policies' effective dates.

3. Property Damage

The policies also insure against "property damage." Many policies define that term as "physical injury to or destruction of tangible property, including all loss of use of such property." In addition, the comprehensive business liability coverage defines "property damage" as "loss of use of tangible property that is not physically injured or destroyed, provided such loss of use is caused by physical injury to or destruction of other tangible property." In policies where the second portion of that definition is not present, an underlying complaint must allege physical injury to the property in question to create coverage. Mutlu v. State Farm Fire and Casualty Co., 337 Ill. App. 3d 420 (1st Dist. 2003).

Investments, anticipated profits, and financial interests are not physical or tangible property. Hartford Accident & Indemnity Co. v. Case Foundation Co., 10 Ill. App. 3d 115, 124 (1973). Thus, under the definition of "property damage" set forth above, there can be no coverage where only economic losses are claimed. Bituminous Casualty Corp. v. Gust K. Newberg Constr. Co., 218 Ill. App. 3d 956, 962-62 (1991). There is also no coverage when property or one of its component parts simply fails to perform as warranted. Diamond State Ins. Co. v. Chester-Jensen Co., 243 Ill. App. 3d 471, 479 (1993). Where some physical property damage is shown, however, there will be coverage not only for the damage, but also for loss of the property's use.

A unique aspect of property damage coverage arises where a building owner sues a contractor alleging faulty workmanship or defects in the construction of (or alteration to) the building and seeks damages for damage or repair to the building itself. Illinois courts generally hold that such claims are not covered if the plaintiff does not seek to recover for damage to any

property (or persons) other than the subject building itself. Monticello Ins. Co. v. Wil-Freds. Inc., 277 Ill. App. 3d 697 (1996) (complaint alleging construction defects did not allege a covered "occurrence" and was also barred from coverage by "own products" exclusion).

4. Personal Injury

The comprehensive general liability coverage insures against "personal injury." This term refers to "injury, other than bodily injury, arising out of" one or more enumerated offenses. The offenses include false arrest, malicious prosecution, a landlord's wrongful eviction or invasion of the right of private occupancy of a room, dwelling or premises, publication of slanderous or libelous statements, and publication of material that violates a person's right of privacy.

In Pipefitters Welfare Educ. Fund v. Westchester Fire Ins. Co., 976 F. 2d 1037, 1040 (1992), the court held that a similar policy provision gave rise to potential coverage, and thus a duty to defend, where the underlying complaint alleged that the insured was responsible for the discharge of polychlorinated biphenlys (PCBs) on the plaintiff's land. According to the court, the complaint alleged an invasion of the right of private occupancy of premises that potentially fell within the policy's coverage. The court further held that invasion of the right of occupancy did not require a particular intent and that coverage could be afforded even if the acts in question were merely negligent.

5. Advertising Injury

Finally, the comprehensive business liability coverage insures against "advertising injury." This term refers to injury arising out of "one or more of the following enumerated offenses." The offenses include libelous and slanderous statements directed toward one's products or services, oral or written publication which violate a right of privacy, misappropriation of advertising ideas, and infringement of copyright, title, or slogan. Liability policies generally require that any alleged

"advertising injury" must be published or distributed to the public at large (Playboy Enterprises, Inc. v. St. Paul Fire & Marine Ins. Co., 769 F.2d 425 (1985)) and must take place during the course of the insured's advertising activity. International Ins. Co. v. Florists Mut. Ins. Co., 201 Ill. App. 3d 428 (1990).

A complaint alleging the misappropriation of trade secrets does not allege "advertising injury." A covered complaint must necessarily allege an attempt to "pass off" an entity's product as that of another. A covered complaint could also contain allegations that the insured criticized or "disparaged" another entity's product. Lexmark International, Inc. v. Transportation Insurance Co., 327 Ill. App. 3d 128 (1st Dist. 2001).

6. Insured (Resident Relative)

In many homeowners coverages, an "insured" is defined as the named insured and, if residents of his or her household, the named insured's relatives. In interpreting policies, Illinois courts have held that the term "relative" is not ambiguous and have defined it as "a kinsman; a person connected with another by blood or affinity." Calloway v. Allstate Ins. Co., 138 Ill. App. 3d 545, 547 (1985). See also State Farm Mut. Auto. Ins. Co. v. Byrne, 156 Ill. App. 3d 1098, 1101 (1987) ("relative" defined as someone related by blood or affinity in connection with policy expressly defining that term as someone related by blood, marriage, or adoption).

"Affinity" has been defined as the relationship that one spouse, because of the marriage, has to the blood relatives of the other spouse. Calloway, 138 Ill. App. 3d at 547. In Calloway, the court held that an insured was not related by affinity to the wife of her step-grandson for purposes of the uninsured motorist coverage at issue because the insured and the step-grandson were not related by blood. As there was no relationship by affinity, the insured and the wife were not "relatives" within the meaning of the policy. Id. at 546-48.

Illinois courts have held that the phrase "resident of the household" is not ambiguous. Coriasco v. Hutchcraft, 245 Ill. App. 3d 969, 971 (1993).[1] The determination of whether one is a resident of the named insured's household in a given case, however, will turn upon an analysis of intent, physical presence, and permanency of abode. Id. at 971.

For example, in Coriasco, the court considered whether the minor child of divorced parents could be considered a resident of her non-custodial father's household for purposes of the father's underinsured motorist coverage. While the mother had custody pursuant to a court decree, the child visited her father on weekends and occasionally during the week, kept clothing, a toothbrush, and some personal items at her father's residence, and occasionally received mail at her father's home. Holding that the child's regular visits provided an element of permanency and that she obviously intended to reside with her father when visiting him, the court found that the child was a resident of her father's household within the meaning of the policy provision at issue. Id. at 972. See also Casolari v. Pipkins, 253 Ill. App. 3d 265, 268 (1993).

[1] Note, however, that a split of authority exists between the Illinois Appellate Districts as to whether a similar provision, requiring that a relative "live with" the named insured, is ambiguous. At least one Illinois Appellate Court has found the phrase to be ambiguous as a matter of law because it does not specify whether the relative must "live with" the named insured at the time of the policy's issuance or only at the time of the loss. Murphy v. State Farm Mut. Auto. Ins. Co., 234 Ill. App. 3d 222, 225-26 (1992). But see, State Farm Mut. Auto. Ins. Co. v. Taussig, 227 Ill. App. 3d 913 (1992) (holding same policy provision to be unambiguous).