

ILLINOIS LAW MANUAL
CHAPTER XII
EXCLUSIONS TO COVERAGE

J. COVERAGE FOR PUNITIVE DAMAGES

Generally, a contract of insurance to indemnify a person for damages resulting from his own intentional misconduct is void as against public policy, and courts will not enforce such a contract. Beaver v. Country Mutual Ins. Co., 95 Ill. App. 3d 1122 (1981). See 9 Couch on Insurance 2d at 39:15 (M. Rhodes rev. 1985); 7 Couch on Insurance 3d at 101:28 (2011); 6B J. Appleman & J. Appleman, Insurance Law and Practice at 4252, at 5 (1979). However, the Illinois Supreme Court has found an insurer can indemnify its insured for punitive damages without violating an established public policy in the context of a retaliatory discharge claim. Dixon Distributing Co. v. Hanover Ins. Co., 161 Ill. 2d 433 (1994). See 14 Couch on Insurance 3d at 201:25 (2011).

In Dixon, the insured was sued for retaliatory discharge in the underlying action. It sought coverage from its insurer under a policy defining a personal injury as “an offense which results in personal Injury, other than an offense committed with actual malice or the willful violation of a penal statute or ordinance committed by or with the knowledge or consent of the insured.” Since the term “actual malice” was not employed in the underlying complaint but only the word “intentional,” the court found that the definition’s exclusion of claims of actual malice was not applicable and found a duty to defend and indemnify.

A typical general liability policy has the following pertinent provisions:

We will pay those sums that the insured becomes legally obligated to pay as damages because of bodily injury, property damage, personal injury or advertising injury to which this insurance applies. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided

for under Supplementary Payments. This insurance applies only:

1. to bodily injury or property damage caused by an occurrence which takes place in the coverage territory during the policy period;
2. to personal injury caused by an occurrence committed in the coverage territory during the policy period. The occurrence must arise out of the conduct of your business, excluding advertising, publishing, broadcasting or telecasting done by or for you;
3. to advertising injury caused by an occurrence committed in the coverage territory during the policy period. The occurrence must be committed in the course of advertising your goods, products or services.

RIGHT AND DUTY TO DEFEND

We have the right and duty to defend any claim or suit seeking damages payable under this policy even though the allegations of the suit may be groundless, false or fraudulent. The amount we will pay for damages is limited as described in Limits of Insurance. Damages because of bodily injury include damages claimed by any person or organization for care, loss of services or death resulting at any time from the bodily injury. We may investigate and settle any claim or suit at our discretion. Our right and duty to defend end when we have used up the

applicable limit of insurance in the payment of judgments or settlements or medical expenses.

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GENERAL LIABILITY EXCLUSIONS

Under general liability coverage, this insurance does not apply:

- 1. to bodily injury or property damage:
 - a. expected or intended from the standpoint of the insured; or
 - b. to any person or property which is the result of willful and malicious acts of the insured.

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- 16. to personal injury or advertising injury:

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- c. arising out of the willful violation of a penal statute or ordinance committed by or with the consent of the insured.

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The definitions of “bodily injury” and “personal injury” have been previously discussed. The general liability policy does not provide coverage for “willful” acts, omissions, or violations. Moreover, it does not provide coverage for bodily injury “expected” or “intended” by the insured, *i.e.*, intentional harm. Accordingly, unlike the Dixon case, should a plaintiff claim an “intentional” act, omission, or violation, there most likely would not be coverage since, if either the act or injury is intentionally or willfully caused, the exclusions will prevail. See West Bend Mut. Ins. Co. v. People, 401 Ill.App.3d 857, 929 (1st Dist. 2010). A general liability insurance policy’s exclusion for expected or intended injuries precluded coverage of an insured contractor in lawsuits against him alleging fraud and intentional misconduct. Id.

A typical homeowners policy has the following pertinent policy provisions:

LIABILITY COVERAGES - PERSONAL LIABILITY

If a claim is made or a suit is brought against an insured for damages because of bodily injury or

property damage to which this coverage applies, caused by an occurrence, we will:

- 1. pay up to our limit of liability for the damages for which the insured is legally liable; and
- 2. provide a defense at our expense by counsel of our choice. We may make any investigation and settle any claim or suit that we decide is appropriate.

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EXCLUSIONS

- 1. Coverage does not apply to:
 - a. bodily injury or property damage:
 - 1) which is either expected or intended by an insured; or
 - 2) to any person or property which is the result of willful and malicious acts of an insured.

Again, as in the comprehensive general liability policy, intentional and wilful acts or injuries are excluded in the homeowners policy. Accordingly, there would be no coverage for punitive damages under the homeowners policy. In American Family Mut. Ins. Co. v. Guzik, 406 Ill.App.3d 245, 247 (3rd Dist. 2010), the court held the insured was not entitled to coverage for damage caused in connection with a fire that destroyed his home and damaged neighboring properties pursuant to the policy exclusion excluding coverage for bodily injury or property damage caused intentionally by or at direction of insured, even if actual injury or damage was different than that which was expected or intended from the insured’s standpoint. The insured intentionally caused the fire, and it spreading to neighbors’ properties was expected as a probable consequence. Id.