



If you have questions or would like further information regarding Emotional Distress, please contact:

Kevin Caplis  
312-540-7630  
[kcaplis@querrey.com](mailto:kcaplis@querrey.com)

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## ILLINOIS LAW MANUAL

### CHAPTER VI OTHER CAUSES OF ACTION

#### A. EMOTIONAL DISTRESS

Illinois courts currently recognize two separate and distinct causes of action for emotional distress, one for intentional infliction of emotional distress and another for negligent infliction of emotional distress.

##### 1. Intentional Infliction of Emotional Distress

The Illinois Supreme Court first recognized intentional infliction of emotional distress as a cause of action in Knieriem v. Izzo, 22 Ill. 2d 73 (1961). The court discussed the elements that a plaintiff must prove to recover damages for intentional infliction of emotional distress in Public Finance Corp. v. Davis, 66 Ill. 2d 85 (1976).

##### a. Basic Law

A plaintiff may recover damages for intentional infliction of emotional distress if he or she can prove:

- (1) that the defendant's conduct was extreme and outrageous;
- (2) that the defendant intended to cause or recklessly or consciously disregarded the probability of causing emotional distress;
- (3) that he or she suffered severe or extreme emotional distress; and
- (4) that the defendant's conduct actually and proximately caused emotional distress.

Public Finance, 66 Ill. 2d at 89-90. See also Doe vs. Calumet City, 161 Ill. 2d 374 (1994). The plaintiff does not, however, need to establish a contemporaneous physical impact or injury. Honaker v. Smith, 256 F.3d 477 (7<sup>th</sup> Cir. 2000).

**b. Analysis**

There are four elements that a plaintiff must prove to recover damages for intentional infliction of emotional distress.

First, a plaintiff must prove that the defendant's conduct was extreme and outrageous. A determination of whether words or conduct are extreme and outrageous must be made objectively, on a case-by-case basis. Knieriem, 22 Ill. 2d at 86. Without special knowledge or notice to the defendant, words or conduct must cause a person of ordinary sensibilities to suffer emotional distress. Knieriem, 22 Ill. 2d at 86. Mere insults, indignities, threats, annoyances, oppressions, trivialities, vulgarities or other meaningless and abusive expressions do not constitute extreme and outrageous conduct. Knieriem, 22 Ill. 2d at 86; Public Finance, 66 Ill. 2d at 89-90. A cause of action for intentional infliction of emotional distress must be premised on conduct that is so extreme and outrageous that it goes beyond all possible bounds of decency. Public Finance, 66 Ill. 2d at 90. See also Rekosh v. Parks, 316 Ill. App. 3d 58 (2000). In determining whether conduct is extreme and outrageous, the relationship between the parties must be considered, especially when one of the parties has actual or apparent power or authority over the other party. Public Finance, 66 Ill. 2d at 90. Other factors to be considered are whether the defendant reasonably believed that his objectives were legitimate and the defendant's awareness that the plaintiff was particularly susceptible to emotional distress. Graham v. Commonwealth Edison Co., 318 Ill. App. 3d 736 (2000).

Second, a plaintiff must prove that the defendant intended to cause, or recklessly or consciously disregarded the probability of causing, the plaintiff to suffer emotional distress. A defendant recklessly or consciously disregards the probability of causing emotional distress if he or she is certain, or is substantially certain, that his or her conduct will cause emotional distress. Public Finance, 66 Ill. 2d at 90.

Third, a plaintiff must prove that he or she suffered severe or extreme emotional distress. Fright, horror, grief, worry, shame, and humiliation may constitute emotional distress, but alone they do not constitute severe or extreme emotional distress. Public Finance, 66 Ill. 2d at 90. Emotional distress is considered severe or extreme when no reasonable person could be expected to endure it. Public Finance, 66 Ill. 2d at 90. The intensity and duration of the emotional distress are factors to be considered in determining its severity. Public Finance, 66 Ill. 2d at 90. While courts often look for physical manifestations of the emotional distress, neither physical injury nor the need for medical treatment is a necessary prerequisite to establishing severe emotional distress. Honaker, 256 F. 3d 477. While severe emotional distress must be proved, in many cases the extreme and outrageous character of the defendant's conduct is in itself important evidence of that distress. Illinois courts have tended to merge the issue of the outrageousness of the defendant's conduct with the issue of the severity of the plaintiff's emotional distress. In effect, the courts require more evidence of outrageousness if the evidence of distress is weaker. Id.

Finally, a plaintiff must prove that the defendant's conduct actually and proximately caused emotional distress. (See Chapter II, Section A).

## **2. Negligent Infliction of Emotional Distress**

Illinois law distinguishes between direct victims and bystanders for the purpose of stating a cause of action for negligent infliction of emotional distress. Each cause of action has distinct elements.

The Illinois Supreme Court first recognized negligent infliction of emotional distress as a cause of action in Braun v. Craven, 175 Ill. 401 (1898). In Corgan v. Muehling, 143 Ill. 2d 296 (1991), the court rejected the "impact rule" established in Braun, as it applied to direct victims, and stated the elements that a direct victim must prove to recover damages. Under the "impact rule," a person owed no duty to protect another against the negligent infliction of emotional distress unless it was the result of actual physical impact. Braun, 175 Ill. 401. A direct victim is someone who is directly involved in the incident caused by a defendant's negligence. Corgan, 143 Ill. 2d at 305-306.

In Rickey v. Chicago Transit Authority, 98 Ill. 2d 546 (1983), the court rejected the above rule set forth in Braun, as it applied to bystanders, and established the elements that a bystander must now prove to recover. See also Siemieniec v. Lutheran General Hosp., 117 Ill. 2d 230 (1987). A bystander is someone who is not directly involved in the incident caused by a defendant's negligence, but who is so close to the incident that he or she is subjected to a high risk of physical impact emanating from the incident itself. Corgan, 143 Ill. 2d at 305-306.

### **a. Direct Victims**

#### **i. Basic Law**

A direct victim may recover damages for negligent infliction of emotional distress if he or she can prove that the defendant was negligent. Corgan, 143 Ill. 2d at 306. To

prove negligence, a direct victim must establish duty, breach, causation, and damages. Corgan, 143 Ill. 2d at 306; Parks v. Kowancki, 193 Ill. 2d 164 (2000). (See also Chapter II, Section A, regarding negligence.)

## **ii. Analysis**

A direct victim must prove four elements before he or she can recover damages for negligent infliction of emotional distress.

First, a direct victim must prove that the defendant owed him or her a duty of care. In determining whether to impose a duty, a court will look at various policy considerations, including the likelihood of harm, the gravity of the injury, the burden of guarding against the injury, and the relationship between the parties. Corgan, 143 Ill. 2d at 306. (See also Chapter II, Section A, regarding duty.)

Second, a direct victim must prove that the defendant breached the duty of care. (See Chapter II, Section A, regarding breach.)

Third, a direct victim must prove that the defendant's negligence was a proximate cause of a physical injury or illness. (See Chapter II, Section A, regarding proximate cause.)

Finally, a direct victim must prove that he or she suffered damages. A direct victim does not need to prove that the emotional distress manifested itself in a physical symptom such as an injury or illness. Corgan, 143 Ill. 2d at 312. A direct victim only needs to prove that he or she suffered an immediate or instinctive emotional response which was severe or extreme, a long lasting traumatic neurosis which was severe and extreme, or both. Corgan, 143 Ill. 2d at 311.

## **b. Bystanders**

### **i. Basic Law**

A bystander may recover damages for negligent infliction of emotional distress if he or she can prove:

- 1) that he or she was in the zone of physical danger;
- 2) that he or she reasonably feared for his or her own safety because of the defendant's negligence; and
- 3) that he or she suffered a physical injury or illness as a result of the emotional distress caused by the defendant's negligence.

Rickey, 98 Ill. 2d at 555. See also Rekosh v. Parks, 316 Ill. App. 3d 58 (2000).

### **ii. Analysis**

A bystander must prove three elements before he or she can recover damages. Collectively, these three elements are referred to as the "zone-of-physical-danger rule." Rickey, 98 Ill. 2d at 555.

First, a bystander must prove that he or she was in the "zone-of-physical-danger." In other words, a bystander must have been in such close proximity to the incident caused by the defendant's negligence - involving a direct victim - that the bystander was subjected to a high risk of physical impact from the incident itself. Rickey, 98 Ill. 2d at 555; Rekosh, 316 Ill. App. 3d at 63.

Second, a bystander must prove that he or she reasonably feared for his or her own safety because of the defendant's negligence.

Third, the bystander must prove that he or she suffered a physical injury or illness as a result of the emotional distress caused by the defendant's negligence. A bystander need not have to suffer a physical impact or injury at the time of the negligent act, but must prove that he or she suffered a physical injury or illness which was a result

of the emotional distress caused by the defendant's negligence. Rickey, 98 Ill. 2d at 555; see also Pasquale v. Speed Products Engineering, 166 Ill. 2d 337 (1995) (declining to reexamine the established rule that a physical harm is required to state a bystander's cause of action).

### **3. Coverage Note: Emotional Distress and "Bodily Injury" or "Personal Injury"**

Certain homeowners policies expressly exclude the following from the definition of the term "bodily injury": "emotional distress, mental anguish, humiliation, mental distress, mental injury, or any similar injury unless it arises out of actual physical injury to some person." Certain homeowners policies do not define the phrase "personal injury."

General liability policies often define "bodily injury" as "bodily injury, sickness or disease sustained by a person, including death resulting from the bodily injury, sickness or disease at any time." Those policies also often define "personal injury" as:

Injury other than bodily injury arising out of one or more of the following offenses:

false arrest, detention or imprisonment; malicious prosecution; wrongful eviction from, wrongful entry into, or invasion of the right of occupancy of a room, dwelling or premises that a person occupies, by or on behalf of its owner, landlord or lessor; oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or oral or written publication of material that violates a person's right of privacy.

In light of those definitions of "bodily injury" and "personal injury," two Illinois Appellate Court cases which have determined whether mental anguish, emotional distress, and psychological injury constitute "bodily injury" or "personal injury" are of particular significance.

In University of Illinois v. Continental Casualty Co., 234 Ill. App. 3d 340 (1992), the subject policy excluded coverage for “bodily injury.” The insured argued that the phrase “bodily injury,” as defined in the subject policy, did not include mental anguish and emotional distress and that the defendant insurance company had to provide coverage for claims of mental anguish and emotional distress against the insured. Conversely, the insurance company argued that the phrase “bodily injury,” as defined in the subject policy, included mental anguish and emotional distress, and that it did not have to provide coverage for the claims.

The Illinois Appellate Court agreed with the insured university and held that the phrase “bodily injury,” as defined in the subject policy, did not include mental anguish and emotional distress. Instead, the court concluded that “bodily injury,” as defined in the subject policy, was restricted to “actual physical injury.” The court reasoned that a defined term should not be broadened to include mental anguish and emotional distress and that, absent a more specific exclusion, the insurance company had to provide coverage for the claims of mental anguish and emotional distress. See also Dixon Distributing Co. v. Hanover Ins. Co., 161 Ill. 2d 433 (1994) (without clearly articulated arguments or authority the court declined to adopt a public policy against insuring for damages resulting from intentional misconduct – retaliatory discharge).

In Illinois State Medical Ins. Services, Inc. v. Cichon, 258 Ill. App. 3d 803 (1994), the subject policy provided coverage for “personal injury.” The insurer argued that the phrase “personal injury,” as defined in the policy, did not include psychological injury, and that it owed no coverage for claims of psychological injury against the insured. The insured argued that the phrase “personal injury,” as defined in the policy, included psychological injury, and that the insurer owed coverage for the claims.

The Illinois Appellate Court, in a decision ostensibly inconsistent with the holding in University of Illinois, 234 Ill. App. 3d 340, agreed with the insured defendant and held that the phrase “personal injury,” as defined in the subject policy, included psychological injury. Accordingly, the court held that the insurer owed coverage for the claims of psychological injury.