



Insurer Owes Duty to Defend Claim of Intentional Infliction of Emotional Distress, Says the Idaho Federal District Court

October, 2014

In *Harn v. Scottsdale Ins. Co.*, No. 12-00633, 2014 WL 4702235 (D. Idaho 2014), the U.S. District Court of Idaho issued a decision that an insurer owed a duty to defend its insured in a lawsuit alleging the insured intentionally inflicted emotional distress on the underlying plaintiff. What caught our eye was the way the court interpreted the liability policy to find policy terms ambiguous, and thus concluded that the complaint alleged "bodily injury" caused by an "occurrence."

Ms. Harn is paralyzed and confined to a reclining wheelchair/gurney as a result of an automobile accident involving a drunk driver. She attends events to demonstrate for the public the dangers and consequences of driving while under the influence of alcohol. Ms. Harn attended the Western Idaho State Fair with her husband to volunteer at the Mothers Against Drunk Driving fair booth. Based on customer complaints that Ms. Harn was "too graphic," the insured (lessor of the expo building) ordered her to leave the premises. Ms. Harn sued the insured, claiming intentional infliction of emotional distress. The insurer denied the insured's tender, concluding that among other reasons the insured's alleged conduct did not meet the policy definitions of "occurrence" and "bodily injury."

The court started from the familiar position that whether an insurance policy is ambiguous is a question of law for the court to decide, and if ambiguity exists the contract is construed most strongly against the insurer and in favor of the insured. Turning to the applicable policy provisions, the court considered whether emotional distress constituted "bodily injury."

The policy defined "bodily injury" to mean "bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time." The insurer argued that because the underlying complaint alleged emotional distress, but no resulting physical manifestations, the alleged conduct did not fall within the definition of "bodily injury." The court concluded that because the insurance policy does not provide a definition of "sickness," the "bodily injury" definition was ambiguous and could be read to include emotional distress even if unaccompanied by physical manifestations.

The court then considered whether the alleged emotional distress was the result of an "occurrence." The insurer argued that the underlying complaint made a claim for intentional infliction of emotional distress, which meant that there was no "occurrence." The court reasoned that "the fact that certain conduct may have been allegedly intentional—or, even, reckless—does not *ipso facto* mean that a related accident (or 'occurrence' under the Policy) could not have taken place, owing to such conduct." The court noted that, in the context of a general liability policy, the term "accident" has been construed by prior Idaho courts to be "an unexpected event that is the result of unintentional conduct or an intentional act which results in unexpected consequences." (Emphasis added). Thus, the *Harn* court found that, for purposes of determining whether there was a duty to defend, it was possible that the insured's intentional act resulted in unexpected consequences. Accordingly, the underlying complaint alleged an "occurrence."

The court also considered whether the alleged emotional distress was expected or intended and therefore excluded. That question turned on whether the underlying complaint alleged that the insured expected or intended for Ms. Harn to suffer emotional distress. The court noted that under Idaho law, "recklessly-caused injuries are not excluded under the Policy's 'Expected or Intended Injury' exclusion." The court held that it was unclear from the allegations of the



Complaint whether the alleged emotional distress was either expected or intended, and therefore the insurer owed a duty to defend.

Finally, the court concluded the Complaint also triggered a duty to defend under Coverage B because the policy was ambiguous as to whether Ms. Harn's alleged emotional distress arose out of "[t]he wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling, or premises" that she occupied.