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Insurance Coverage Decisions: Issued Today - Impact Tomorrow



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Pennsylvania Federal Court: Emotional Injury is Not "Bodily Injury"

On Tuesday the Middle District of Pennsylvania addressed coverage under a liability policy for an underlying claim against an insured for sexual assault of a co-worker. At issue was whether the underlying complaint alleged "bodily injury."

The court held in *Babalola v. Donegal Mutual Insurance* that allegations of emotional and mental harm do not satisfy a liability policy's definition of "bodily injury." The term was defined as "bodily harm, sickness or disease, including required care, loss of services and death that results." Most notably the court also concluded that allegations of physical manifestation of mental or emotional harm fail to qualify as "bodily injury."

Among other things, the alleged victim asserted in her complaint that she had seen her family physician and a psychiatrist to help her cope with and manage the mental and emotional trauma suffered because of the attacks. She also alleged that she required consultation and treatment by a cardiologist due to a heart condition that developed as a result of the attacks and has suffered other physical manifestations of the emotional trauma caused by the insured. The alleged victim also asserted an offensive touching.

Nonetheless, the court held that there were no allegations of "bodily injury," and, thus, liability coverage was not triggered.

While this conclusion is consistent with prior Pennsylvania decisions on the issue, not all states are in accord with *Babalola* when it comes to coverage for physical manifestation of mental or emotional harm.

Indeed, just last month the Montana Supreme Court reached the opposite conclusion as *Babalola* in *Allstate Insurance Co. v. Wagner-Ellsworth*. In doing so, the *Wagner-Ellsworth* Court cited to a Washington Court of Appeals decision which stated that "many courts have held that allegations of physically-manifested emotional distress fall within 'bodily injury' coverage in the insurance context." *Wagner-Ellsworth*, 2008 Mont. LEXIS 382, **25, quoting *Trinh v. Allstate Ins. Co.*, 37 P.3d 1259, 1262 (Wash App. 2002).

A copy of *Babalola v. Donegal Mutual Insurance* is attached.

Please let me know if you have any comments or questions.

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