

Second Circuit Court of Appeals Denies Pure Mental Injury Coverage Under “Bodily Injury” Definition



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On February 8, 2018, the United States Court of Appeals for the Second Circuit affirmed a District Court decision holding that, under New York law, the definition of “bodily injury” does not include purely mental injury. Village of Old Westbury v. America Alternative Insurance Corp., 2018 U.S. App. LEXIS 3177 (2d Cir. 2018).

In Westbury, the plaintiff argued on appeal that the term “bodily injury,” as defined in the Commercial General Liability Insurance policy of defendant American Alternative Insurance Corporation (“AAIC”), could include pure emotional distress injury where no physical injury or contact was involved. Plaintiff asserted that the motion court failed to apply Lavanant v. General Accident Insurance Co., 79 N.Y.2d 623 (1992) in ruling in favor of AAIC. In Lavanant, the New York Court of Appeals addressed whether “coverage for ‘bodily injury’ includes emotional distress resulting from the insured’s negligent conduct, where no physical injury or contact is involved.” Id. at 623. The Lavanant Court held that pure emotional distress was covered because the policy defined “bodily injury” to mean “bodily injury, sickness or disease.” Id. at 630.

The Second Circuit distinguished Lavanant based on the language in the AAIC policy, which defined “bodily injury” to mean: “[b]odily injury, sickness or disease. This includes mental anguish, mental injury, shock, fright, or death *resulting from bodily injury, sickness or disease.*” (emphasis added). The Second Circuit held that the limiting language “would be superfluous if ‘bodily injury’ included purely mental injuries that were not directly caused by an independent physical bodily injury.”

The Second Circuit decision confirms that modification of the Insurance Service Office definition of “bodily injury” can be enforceable to limit coverage where there is no physical injury.

If you have any questions about the Court of Appeals’ decision in Westbury, please contact Justin N. Kinney or Nicholas J. Guarino.



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