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Volume 9, issue 3

THE BASSETT BULLETIN™

EXPOSURE OF PASSENGERS TO DISEASE IS NOT “USE OF AN AUTO” UNDER POLICY

The Texas Supreme Court recently considered the issue of whether the transmission of a communicable disease from the driver of a motor vehicle to a passenger is a covered loss under a commercial auto policy. *Lancer Ins. Company v. Perez*, 345 S.W. 3d 50 (Tex. 2011).

It determined that the exposure of passengers to the disease was not a risk covered by the auto policy, since the injury resulted from causes other than the “use” of the covered vehicle.

FACTS OF THE CASE

Garcia Holiday Tours contracted with the Alice Independent School District to provide a bus and driver for an upcoming field trip. The driver was coughing during the trip and, upon their return, was hospitalized for Tuberculosis.

The passengers were tested for the disease and several tested positive. The infected passengers then filed suit against the driver and bus company alleging negligence. The bus company notified their insurance carrier, Lance Insurance Company (Lancer), who refused to defend the claim. It argued it was not covered under the policy.

The bus company went to trial. The jury found the Defendants liable and awarded the passengers over \$5 million in damages. After the judgment in the underlying tort suit, the Defendants sued Lancer asserting contractual claims and seeking a declaration of coverage.

The passengers and Lancer filed Motions for Summary Judgment asking the trial court to rule on whether there was coverage under the policy. The trial court granted the passengers' motion and denied Lancer's. The Court of Appeals reversed, finding there was no conclusive proof the infections had occurred on the bus. Lancer then appealed to the Texas Supreme Court.

THE SUPREME COURT'S DECISION

The Texas Supreme Court's analysis of the issue began with a discussion of a three part test it has recommended as "helpful" in deciding coverage questions: (1) the accident must have arisen out of the inherent nature of the automobile, (2) the accident must have arisen within the natural territorial limits of an automobile, and (3) **the automobile must not merely contribute to cause the condition which produces the injury, but must itself produce the injury.** *Mid-Century Insurance Co. of Texas v. Lindsey*, 997 S.W.2d 153 (Tex. 1999).

The Texas Supreme Court came to the conclusion that the bus in the present case was not instrumental in producing the passengers' injuries as it was the mere physical location of the alleged exposure, which could have occurred anywhere. It reasoned that the exposure could have occurred in a number of enclosed spaces, such as a classroom or theatre. What really caused the disease was the infected person, not the act of using the vehicle.

Therefore, the Texas Supreme Court held that the exposure to the passengers of the disease was not covered by Lancer's policy since the injuries were not caused by the "use" of the vehicle. On this basis, it reversed the Court of Appeals' decision and rendered judgment in favor of the insurance carrier.

WHAT DOES THIS MEAN?

This opinion is good news for insurance companies that write commercial auto policies. It limits liability for the spread of communicable diseases. It is not good news for companies that transport groups of people in enclosed spaces. To protect themselves from potential liability, these companies may want to consider implementing a policy that requires medical evaluation for employees that appear to be ill.

Another way for a company to protect itself in this situation is to have a general liability insurance policy or umbrella policy that covers this type of claim. However, this might be difficult (and costly) to find.

It is important to note that the Texas Supreme Court limited its decision to the commercial auto policy at issue in this case and did not address other types of insurance policies.



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