

HOW RUDE!

HOW WILL COURTS INTERPRET NEW AGGRESSION EXCLUSION?



From time to time we use this blog to discuss new developments regarding insurance coverage. Of course, almost every insurance coverage issue starts with the language of the insurance policy.

Thus, it is noteworthy to us ‘coverage geeks’ when an insurer introduces a new exclusion to its policy form.

The “Aggression Exclusion”

We recently came across an example of this when a national insurer introduced an “aggression exclusion” to its homeowners liability coverage form. That exclusion states that the policy “will not cover injury arising out of any aggressive activity, harassment, or bullying, committed by the insured by any means.”

In some ways, exclusions barring coverage

for injuries caused by aggressive behavior are not new. In fact, several carriers have employed cyber-bullying exclusions for some time, which act to bar coverage for damages a victim might seek to impose upon his or her online tormentor. These exclusions, however, are limited to the use of technology to bully and harass and thus have more predictable, limited applicability.

It seems to us that the “aggression exclusion” could be used to deny coverage for claims involving many types of conduct where coverage might have otherwise applied. After all, the exclusion aims to ban coverage

for injuries “arising out of any aggressive activity.”

So, what is deemed aggressive?

The phrase “aggressive activity” is not defined or further limited by the policy language. Turning to a standard dictionary for guidance (as courts often do), reveals that the phrase could mean “behaving in an angry or rude way” or “to argue with someone.” Moreover, courts have interpreted the phrase “arising out of” broadly, so that the exclusion could apply to any injury that had any causal relationship with the aggressive activity.

With this in mind, would the exclusion bar coverage for injury claims springing from the types of arguments that sometimes occur between reasonable people? How about a claim alleging that the insured was rude and obscene, causing the plaintiff to suffer debilitating emotional distress? How does the exclusion relate to the “self-defense” exception to the intentional acts exclusion?

What does it all mean?

Since the focus of the exclusion is on the type of conduct of the insured, rather than on the insured’s intent to cause harm, the potential exists where coverage could be denied for claims alleging injuries that the insured had neither an intent to cause nor a reasonable expectation would occur. It is, of course, possible that an insured could be rude and have an argument, while having no intention of harming anyone.

As with most questions of this type, time will tell. Courts will undoubtedly see disputes over the scope of this exclusion and it will be interesting to see how it is interpreted. In addition, it will be interesting to see if other insurers adopt this type of exclusion in their policies.

> Todd Smith, Godfrey and Kahn

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