

PTSD May Be Covered As “Bodily Injury” If It Resulted From Physical Injuries, Pennsylvania Appeals Court Holds

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It has long been the rule in Pennsylvania that a mental or psychological injury generally does not constitute “bodily injury,” as defined in most standard insurance policies, unless that mental or psychological injury results from a physical injury. *Zerr v. Erie Insurance Exchange*, 667 A.2d 237, 240 (Pa. Super. Ct. 1995). While the issue often has arisen in the context of auto policies, the rule also has been applied in the context of CGL policies. See, e.g., *Steadfast Insurance Company v. Tomei*, 151 A.3d 1159, 2016 Pa. Super. Unpub. LEXIS 1864 (Pa. Super. Ct. 2016) (holding that “underlying plaintiffs’ claims for emotional distress, humiliation and embarrassment did not qualify as claims for ‘bodily injury’ under CGL policy, because the plaintiffs “did not allege any antecedent physical injury or impact, to themselves or anyone else”).

Earlier this week, in a published decision, the Pennsylvania Superior Court applied the *Zerr* rule in holding that summary judgment for an auto insurance company was wrongly granted where “a genuine issue of a material fact” existed about “whether [the plaintiff’s] PTSD and other mental injury was caused by her bodily harm sustained in [an auto] accident.” *Evans v. Travelers Insurance Company*, 2019 PA Super 353, 2019 Pa. Super. LEXIS 1195 (Dec. 4, 2019). As discussed below, the Superior Court cited to substantial evidence showing that the plaintiff sustained **physical injuries** as well as PTSD, which could lead to a finding of covered “bodily injury” under Pennsylvania law.

In *Evans*, it was “undisputed” that, as a result of an auto accident, the plaintiff sustained “injuries to her neck and thoracic spine with radiculopathy,” and head injuries that included ‘concussion, closed head injury, post-concussion syndrome, vertigo, posttraumatic vascular headac[h]es, post-traumatic vestibuloneuritis, and/or post-traumatic stress disorder (PTSD).” 2019 Pa. Super. LEXIS 1195, at *3. The plaintiff sought coverage under her first-party auto insurance policy for all of her injuries, including the PTSD. The insurer disclaimed coverage on the basis that the “PTSD does not constitute ‘bodily injury’ as defined by the endorsement.” The endorsement defined “bodily injury” as “accidental bodily harm to a person and that person’s resulting illness, disease, or death.” Id. at *3. The plaintiff sued her insurer. The trial court granted the insurer summary judgment on the “bodily injury” issue, concluding that the plaintiff “failed to produce evidence that her mental injuries resulted from her physical injuries, which is essential to the cause of action.”

The Superior Court reversed the trial court’s ruling, observing that “in addition to her diagnosis of PTSD, Evans reported numerous physical manifestations of her emotional distress, including: persistent headaches, dizziness, balance issues, fogging of her mental processes, extreme exhaustion, nightmares, flashbacks, and panic attacks.” Id. at *11-12. Further observing that the plaintiff “sustained physical injury to her head and neck as a result of the violent collision,” the Superior Court concluded the case squared with the court’s prior ruling in *Zerr*; that “the law states with certainty that no recovery is possible . . . for mental injury which is not the result of a bodily injury.” Id. at *10-12.

In conclusion, while recognizing the continuing vitality of *Zerr*, the Superior Court emphasized the fact-specific nature of the analysis in determining whether emotional/psychological injuries qualify as “bodily injury.” Because the claim in *Evans* had “evidence to support [the plaintiff’s] claim that her PTSD resulted from not only from experiencing the traumatic collision but also from her physical injuries which caused Evans continuous physical pain, affected her physical and emotional well-being, and required extensive medical testing, treatment, and rehabilitation over a period of several years,” the Superior Court rejected the trial court’s ruling that the plaintiff’s PTSD could not constitute “bodily injury” under the policy. Id. at *13.

While this case involved an auto policy, carriers should expect that Pennsylvania courts will apply this reasoning to CGL policies which contain the same definition of "bodily injury."

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