

TRINITY V. COWAN: MENTAL ANGUISH IS NOT “BODILY INJURY” AND AN INTENTIONAL TORT IS NOT AN “ACCIDENT”

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A. Introduction and Underlying Facts

In an important insurance coverage case -- *Trinity Universal Insurance Co. v. Cowan*, 945 S.W.2d 819, 821 (Tex. 1997) -- the Texas Supreme Court held that absent an allegation of physical manifestation, a claim of mental anguish alone is not a “bodily injury” as defined in a liability policy. Purely emotional injuries, such as those pled by the claimant, Nicole Cowan, simply do not constitute “bodily injury.” *Id.* at 820, 823. The court also held that the insured’s actions in duplicating intimate photos of Cowan and showing them to his friends was not an “accident” within the meaning of the policy because the injury to the claimant, the invasion of her privacy, was of a type that “ordinarily follow[ed]” the insured’s conduct and the injuries could have been “reasonably anticipated.” *Id.* at 828. Additionally, *Trinity* concluded that “an insured’s intentional tort that results in unintended injuries” is not an “occurrence.” *Id.* at 820.

The Texas Supreme Court's decision in *Trinity* reversed an ill-considered opinion of the Austin Court of Appeals that created uncertainty as to an insurer's defense obligations. In a patent misapplication of Texas law, the court of appeals held that Gregory Gage's intentional acts of improperly removing intimate photographs of Cowan from an HEB photo-lab and displaying the photographs to his friends constituted an "occurrence" under the homeowner's policy in question. Cowan sued the clerk for invasion of privacy and negligence and sought recovery for, among other things, mental anguish damages. Gage's homeowners carrier denied a defense and Gage assigned his claims against the insurer to Cowan. At a brief evidentiary hearing on the underlying claim, Gage did not appear and judgment was rendered for Cowan in the amount of \$250,000. *Id.* at 821.

Cowan did not allege any physical manifestations of mental anguish in her pleadings, but at the underlying hearing the (unopposed) evidence established that she had suffered from headaches, stomachaches, and loss of sleep as a result of her emotional distress. 906 S.W.2d 124, 130. In discussing the meaning of "bodily injury" under the homeowner's policy, the court of appeals held that an allegation of mental anguish or emotional distress is sufficient to support evidence and damages for the accompanying physical manifestations. *Id.* (citations omitted.) The court also stated that an allegation of mental anguish implicitly raises a claim for the resulting physical manifestations. *Id.* at 131. Thus the court disregarded the fact that the petition in the underlying action did not allege physical manifestations and found that such allegations had been alleged by implication. Despite these observations, the court of appeals specifically acknowledged that "[n]o Texas court has determined whether pure mental anguish constitutes bodily injury" and emphasized that "we need not decide this issue." *Id.* at 130 n. 4.

B. Purely Mental Anguish Is Not "Bodily Injury."

The Texas Supreme Court rejected arguments in support of coverage. *Trinity* specifically holds that "pure mental anguish" alone is not "bodily injury" under a homeowner's policy. 945 S.W.2d at 820. ("We conclude that, absent an allegation of physical manifestation of mental anguish, a claim of mental anguish is not a "bodily injury" as defined in the policy . . ."); *Id.* at 823 (holding that recovery of purely mental anguish damages in Texas tort law does not mean there is necessarily insurance coverage). The decision emphasizes that "bodily injury . . . does not include purely emotional injuries, such as those alleged by Cowan, and unambiguously requires an injury to the physical structure of the human body." *Id.* at 823. The commonly understood meaning of "bodily," implies "a physical, and not purely mental, emotional or spiritual harm."

C. An Allegation of Mental Anguish Does Not Implicitly Raise a Claim for "Bodily Injury."

The Texas Supreme Court also rejected the argument that "an allegation of mental anguish implicitly raises a claim for the resulting physical manifestations." *Trinity*, 906 S.W.2d at 131 (emphasis added). In finding "coverage by implication," the court of appeals unreasonably expanded the definition of "bodily injury" in the standard Texas homeowner's policy. The Texas Supreme Court would not "read facts into the pleadings" when assessing an insurer's duty to defend under the complaint allegation rule. 945 S.W.2d at 825. As a result, the court refused to

presume the existence of a claim for physical manifestations of mental anguish when none was pled. *Id.* at 826 (“a claim for physical manifestations of mental anguish is not implicitly raised by a pleading of mental anguish”). Because Cowan did not plead any physical manifestations of her alleged mental injuries, she did not plead a “bodily injury” such that the insurer’s duty to defend was triggered. *Id.* The court did not address the question of whether Cowan’s “headaches, stomachaches, and sleeplessness” would have been “bodily injury” if pled. *Id.* at n.5.

The court of appeals’ holding that the underlying petition alleged claims both for mental anguish and -- implicitly -- for the unpleaded accompanying physical manifestations threatened to erase the bright-line “eight-corners” or “complaint allegation” rule. This rule allows insurers to evaluate claims against insureds and arrive at reliable and predictable coverage decisions. By reading an unalleged element of recovery into the four corners of the underlying petition, the court of appeals ignored the fact that the petition could not have put the insurer on notice that a claim for “physical manifestations” was being alleged against its insured. The decision thus presented problems for any reasonable insurer denying a defense based on the absence of any allegations of physical injury or manifestations that might otherwise trigger coverage.

In finding “bodily injury” when it was not pled, the court of appeals inappropriately re-wrote Nicole Cowan’s petition in the underlying lawsuit to assert a claim for damages that Cowan elected not to assert. Any rule assessing the duty to defend based on the supposed implication of allegations essentially requires insurers to be clairvoyant in evaluating lawsuits against insureds. The purpose of the eight-corners rule, on the other hand, is to minimize just such uncertainty -- for both insurer and insured -- in assessing coverage. *See Feed Store, Inc. v. Reliance Insurance Co.*, 774 S.W.2d 73, 75 (Tex. App.--Houston [14th Dist] 1989, writ denied). The Texas Supreme Court recognized and reinforced this important goal with its holding that “bodily injury” cannot be alleged by “implication.”

D. Nicole Cowan Did Not Allege an “Occurrence” as Defined in a Standard Liability Policy.

The court of appeals’ opinion in *Trinity* would have expanded liability coverage in a fundamental way. Most standard liability policy forms promulgated in Texas limit coverage to damage caused by an “occurrence,” which generally is defined as an “accident.” The “accident” requirement is absolutely essential to the pricing of many policies and the adjustment of claims in this state. The court of appeals erroneously extended coverage to deliberate conduct by an insured where the effect of that conduct was “reasonably foreseeable.” This anomalous and unprecedented ruling would have unjustifiably expanded liability coverage and repudiated the reasonable expectations of both insurers and insureds.

E. The Court of Appeals Ignored Texas Supreme Court Precedent on the “Occurrence” Requirement.

The facts giving rise to the actionable conduct in *Trinity* all related to deliberate invasions of Nicole Cowan’s privacy by Gregory Gage. If Gage had not duplicated and exhibited intimate photographs of Cowan, she would not have sustained any injury. In finding that Gage’s conduct did not amount to an “occurrence” under the policy, the Texas Supreme Court quoted *Republic*

National Life Ins. Co. v. Heyward, 536 S.W.2d 549 (Tex. 1976) (holding that an effect that “cannot be reasonably anticipated from the use of [the means that produced it], an effect which the actor did not intend to produce and which *he cannot be charged with the design of producing*, is produced by accidental means”) (emphasis in original). The court also cited *Argonaut Southwest Insurance Co. v. Maupin*, 500 S.W.2d 633 (Tex. 1973) in support of its holding that there was no “occurrence” alleged. *See Id.* at 827.

In holding that “an occurrence takes place where the resulting injury or damage was unexpected or unintended, regardless of whether the policyholder’s acts were intentional,” the court of appeals ignored the Texas Supreme Court’s *Maupin* decision. *Maupin* held that when the insured’s acts are voluntary and intentional and the injury is the natural result of the act, the result or injury was not caused by “accident” within the meaning of the “occurrence” definition, even though the injury may have been unexpected, unforeseen and unintended. The insured in *Maupin* removed landfill from residential property pursuant to an agreement with the tenant in possession of the property. The owner of the property, however, sued the insured for trespass and the unauthorized removal of the landfill. 500 S.W.2d at 634. The insurer refused to defend and the insured later sued to establish insurance coverage. *Id.* at 633.

Reversing the judgment finding coverage, the Texas Supreme Court noted that the removal of the landfill by the insured was “intentional and deliberate” and that the insureds “did exactly what they intended to do.” *Maupin*, 500 S.W.2d at 635. Because the insureds’ acts were voluntary and intentional, the insureds’ mistake as to the ownership of the property was not covered. *Maupin* therefore held that “[t]he damage was not an accident or occurrence within the meaning of this policy.” *Id.* *Trinity* specifically affirms the continuing validity of *Maupin*.

As in *Maupin*, the invasion of Nicole Cowan’s privacy did not occur by “accident.” Gage did exactly what he intended to do when he purposefully copied the photographs and showed them to his friends. 945 S.W.2d at 828. Whether Gage expected or intended Cowan to learn of his actions was “of no consequence” in assessing whether there was an “accident” under the policy. *Id.* Gage’s conduct was not an “accident” because the injury to Cowan, the invasion of her privacy, was of a type that “ordinarily follow[ed]” from such conduct. *Id.*

E. *Trinity* Adopts an Objective Standard for Determining Whether or Not There Has Been an “Occurrence.”

Trinity adopts an objective standard for determining whether or not there has been an “accident” within the meaning of a standard liability policy. When an insured’s conduct is voluntary and intentional -- when he does exactly what he intends to do -- and the resulting injuries “ordinarily follow” such conduct and could have been “reasonably anticipated,” there is no “accident.” In articulating this definition of “occurrence,” *Trinity* rejected the insurer’s assertion that there can be no “accident” when “an actor intended to engage in the conduct that gave rise to the injury” *Id.* at 828. The court was obviously concerned about rendering “insurance coverage illusory for many of the things for which insureds commonly purchase insurance.”

F. Conclusion

The important holdings of *Trinity* may be summarized as follows:

- Purely mental anguish is not “bodily injury” within the meaning of a standard liability policy.
- Allegations of mental anguish and emotional injuries alone do not assert “bodily injury” by implication, and do not invoke an insurer’s duty to defend under a standard liability policy.
- An intentional tort that results in unintended injuries is not an “accident” or “occurrence” under a standard liability policy.
- There can be no “accident” or “occurrence” when an insured does exactly what he intends to do and the effect of the insured’s conduct is of a type that “ordinarily follows” and could have been “reasonably anticipated.”
- *Trinity* adopts an objective standard of whether or not there has been an “accident” or “occurrence” for purposes of liability coverage. Under the definition of “occurrence” in current liability policies, an “accident” is not viewed from the standpoint of the insured, nor is the insured’s subjective intent to injure relevant.