

Negligent Infliction of Emotional Distress: Is physical injury required?

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Since the Indiana Supreme Court modified the “impact rule” for negligent infliction of emotional distress claims in 1991 in *Shuamber v. Henderson*, 579 N.E.2d 452 (Ind. 1991), case law has quickly developed in this area. In November, 2006, and January, 2007, the Court of Appeals decided two cases where plaintiffs asserted negligent infliction of emotional distress claims. Both cases addressed whether physical manifestations of a plaintiff’s emotional injury were necessary to succeed in their claims. In the first case, *State Farm Mutual Automobile Insurance Company v. Jakupko*, 856 N.E.2d 778 (Ind. Ct. App. 2006), the plaintiffs’ claims of negligent infliction of emotional distress were accompanied by physical injuries relating to those claims. In the second case, *Elliott v. Allstate Insurance Company*, 859 N.E.2d 696, (Ind. Ct. App. 2007), one plaintiff sustained physical manifestations of their emotional injury and the other did not. On April 12, 2007, the Indiana Supreme Court granted transfer in both cases.

Prior to *Shuamber*, Indiana adhered to the so-called “impact rule” which required that a plaintiff’s mental injury naturally and directly result from the plaintiff’s physical injury. This rule was known as the “impact rule” because of the requirement that some physical impact occur to the plaintiff before recovery for mental trauma would be permitted. The *Shaumber* Court softened the “impact rule” and held, “[W]hen a plaintiff sustains a direct impact by the negligence of another and, by virtue of that direct involvement sustains an emotional trauma which is serious in nature and of a kind and extent normally expected to occur in a reasonable person, we hold that such a plaintiff is entitled to maintain an action to recover for that emotional trauma without regard to whether the emotional trauma arises out of or accompanies any physical injury to the plaintiff.” *Id.* at 456.

In November, 2006, in *Jakupko*, the Indiana Court of Appeals examined the issue of whether negligent infliction of emotional distress claims required physical manifestations of injury. *Jakupko* involved an automobile accident wherein Mr. Jakupko was driving with his wife and two sons as passengers. Each of the Jakupkos sustained injuries in the accident with Mr. Jakupko sustaining the most serious injuries resulting in quadriplegia and permanent mental deficits. According to the plaintiffs, after witnessing Mr. Jakupko’s injuries, Mrs. Jakupko and her sons suffered emotional distress including physical manifestations of those injuries such as uncontrollable crying, loss of appetite, sleeplessness, diminished concentration and fatigue.

The Jakupkos settled with the tortfeasor’s insurance carrier and proceeded with an underinsured motorist (UIM) claim against their own insurer, State Farm. The Jakupkos argued that their negligent infliction of emotional distress claims were separate and distinct injuries for each plaintiff thereby entitling them to the aggregate “each accident” limit of \$300,000 (\$100,000 for “each person”) under their UIM policy. State Farm argued that the Jakupkos’ claims were not separate claims as the “each person” coverage of the UIM policy only applied to “bodily injury” sustained as a result of the accident, and emotional distress from witnessing another’s injuries was not “bodily injury” as defined by the policy. “Bodily injury” was defined by the State Farm policy as, “bodily injury to a person and sickness, disease or death which results from it.”

After consulting case law from other jurisdictions, the Court of Appeals held that the Jakupkos’ claims of emotional distress were accompanied by physical manifestations which constituted “bodily injury” under the State Farm policy. *Jakupko* at 784. The Court went on to hold that the Jakupkos’ emotional distress injuries resulted from their direct involvement in the accident and were not the result of Mr. Jakupko’s injuries. *Id.* at 785-86. Therefore, because the Jakupkos were each directly involved in the accident and each sustained separate “bodily injuries” as defined by the policy, their negligent infliction of emotional distress claims were not confined to a single cap, but instead were entitled to separate “each person” limits under the UIM policy. *Id.* at 786.

In *Elliott*, two plaintiffs asserted negligent infliction of emotional distress claims; one plaintiff had physical manifestations of injury while the other did not. The Court of Appeals found that both plaintiffs had sustained compensable bodily injuries under the Allstate UIM policy despite one plaintiff having no physical manifestation of injury. The Court stated, “[A]n individual’s mental health is an essential component to the overall operation of the physical structure of his body. As such, we are unable to separate the person’s nerves and tensions from his physique.” *Elliott* at 705. The Court went on to state, “[C]learly, emotional trauma can be as disabling to the body as a visible wound.” *Id.*

However, the *Elliott* Court did point out that the Allstate policy expanded the definition of “bodily injury” to include more than mere physical harm. The Court noted that the challenge was to create a rule that acknowledged the shock of seeing a victim shortly after an accident without extending a defendant’s liability to every relative who grieves for the victim. Additionally, the Court noted that its decision was limited to a plaintiff’s emotional distress that was susceptible to medical diagnosis and could be proven through medical evidence.

In conclusion, while we await the Indiana Supreme Court’s ruling on these two cases, defense counsel would be wise to conduct discovery designed to determine whether a plaintiff’s claim for negligent infliction of emotional distress is supported by physical injuries provable through medical evidence.

This article was first published in the Defense Trial Counsel of Indiana’s section of the *Indiana Lawyer* in August, 2007. Reprinted with permission of the Defense Trial Counsel of Indiana.