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News

## SUPREME COURT OF TEXAS HOLDS INSURER HAS NO DUTY TO DEFEND ORGAN DONATION CHARITY AGAINST CLAIMS FOR MENTAL ANGUISH AND LOSS OF TISSUES

Newsbrief

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In *Evanston Ins. Co. v. Legacy of Life, Inc.*, a case of first impression, the Texas Supreme Court considered two certified questions from the Fifth Circuit Court of Appeals: (1) whether an insurance policy provision for coverage of “personal injury” includes coverage for mental anguish and (2) whether a provision for coverage of “property damage,” includes coverage for loss of use of tissues, organs, bones, and body parts.” *Evanston Ins. Co. v. Legacy of Life, Inc.*, — S.W.3d —, 2012 WL 2476935, No. 11–0519 (Tex. June 29, 2012).

In the underlying suit, the plaintiff, Debra Alvarez, alleged that while her mother was terminally ill, she consented to an organ donation charity’s harvesting of some of her mother’s organs and tissues after her mother’s death because the charity was a non-profit corporation. The charity, Legacy of Life, Inc., instead transferred the tissues to a for-profit company, which sold the tissues to hospitals at a profit. Alvarez alleged that Legacy caused her mental anguish and deprived her and estate of use of property through wrongfully profiting from sale of her deceased mother’s tissues. Legacy subsequently sought coverage under its general liability insurance issued by its insurer, Evanston Insurance Company. Evanston denied coverage on the basis that the conduct alleged was outside the scope of the insurance policy’s coverage.

Evanston brought action against Legacy seeking declaration that insurer had no duty to defend it in underlying lawsuit. The United States District Court for the Western District of Texas denied Evanston’s motion for summary judgment and granted summary judgment to Legacy as to insurer’s duty to defend. Evanston appealed.

The Fifth Circuit certified the following questions for consideration by Supreme Court of Texas: (1) “Does the insurance policy provision for coverage of ‘personal injury,’ defined therein as ‘bodily injury, sickness, or disease including death resulting therefrom sustained by any person,’ include coverage for mental anguish, unrelated to physical damage to or disease of the plaintiff’s body?” (2) “Does the insurance policy provision for coverage of ‘property damage,’ defined therein as ‘physical injury to or destruction of tangible property, including consequential loss of use thereof, or loss of use of tangible property which has not been physically injured or destroyed,’ include coverage for the underlying plaintiff’s loss of use of her deceased mother’s tissues, organs, bones, and body parts?”

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The Texas Supreme Court answered both questions in the negative. On the first issue, the Court held that because the term “bodily” modified “injury, sickness, and disease” in the policy’s definition, a physical manifestation was required for sickness or disease to be covered. Since no physical injuries were alleged, the claim alleged against Legacy did not trigger Evanston’s duty to defend under the personal injury component of its policy. As to the second question, the court turned to its holding in *Burnett v. Surratt*, in which it held that tissues are quasi property of the next of kin but they are not the property of the next of kin. *Burnett*, 67 S.W.2d 1041, 1042 (Tex. Civ. App.—Dallas 1934, writ ref’d). Therefore, Court held that the loss of use of tangible property did not include the loss of use of the mother’s tissues by Alvarez or her mother’s estate.

Justice Eva Guzman delivered the opinion of the Court.