

THOUGHT LEADERSHIP

News

## FIFTH CIRCUIT MAKES ERIE GUESS ON MEANING OF “NARCOTIC” AND FINDS “DUE TO” STANDARD REQUIRES SHOWING OF PROXIMATE CAUSE

Newsbrief

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Recently, the Fifth Circuit applied Texas law in analyzing the meaning of the term “narcotic” in an insurance contract and found that its ordinary and generally-accepted meaning should be applied. And, again interpreting Texas law, the court found that an exclusion precluding coverage in part for loss “due to” being under the influence of a narcotic, required a “proximate cause” analysis. In *Crosey v. Humana Insurance Company*, No. 15-50559, 2016 WL 2984434 (5<sup>th</sup> Cir. May 23, 2016), the insured had a stroke while under the influence of ecstasy and was hospitalized as a result. The insurance policy had an exclusion which precluded coverage in part for “Loss due to being...under the influence of any narcotic unless administered under the advice of a health care practitioner.” The insurer investigated and denied the claim as excluded and the insured sued alleging breach of contract and, prompt payment and unfair insurance practices under the Texas Insurance Code. The district court granted summary judgment in favor of the insurer and this appeal followed.

On appeal, the Fifth Circuit observed that term “narcotic” was not defined in the policy and neither the Texas Supreme Court, nor the Fifth Circuit had defined the term as found in insurance contracts. So they were required to make an *Erie* guess as to the definition of the term. Applying Texas law, the court agreed with the district court that “the ordinary and generally-accepted meaning” should be applied. And the drug ecstasy fell within that definition. The court then focused on the causation standard to be applied to loss “due to” an excluded cause. The court found that the Texas Supreme Court had examined the term and, while not specifically assigning a standard, observed that “due to” called for “a more direct causal nexus than “but for” causation.” The Fifth Circuit then examined another Fifth Circuit case interpreting an intoxication exclusion with the phrase “as a result of” as requiring a showing of “substantial” or “significant” cause, but not the only cause for the exclusion to apply. Interpreting the two cases together, the court held “that ‘due to’ requires a showing of proximate cause.” And finding that the insurer in this case met its burden, summary judgment in favor of the insurer was affirmed.