Appeals Court Affirms No Duty to Defend

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Affirming the Suffolk Superior Court's dismissal of claims against an insurer, the Appeals Court recently held in Thomas W. Eagar v. Safety Insurance Company that claims against an individual for refusing to be deposed in an underlying personal injury lawsuit were not claims seeking damages because of "bodily injury," nor were they claims because of negligence.

In Eagar, the insured sought reimbursement of legal fees incurred in contesting a deposition subpoena and responding to related filings in federal litigation in Illinois. In support of such claim, the insured pointed to a proposed (but unfiled) Supplemental Complaint in the underlying federal litigation, which purported to bring claims against him for negligence due to his refusal to be deposed. Safety disclaimed coverage, asserting that a duty to defend was triggered only by a claim or suit seeking damages because of "bodily injury" caused by an "occurrence" (as required by its Homeowners policy) or because of negligence (as required by its Umbrella policy) and that any damages claimed against the insured were due to his intentional refusal to submit to deposition rather than to any underlying negligence. The insured filed suit against Safety for breach of contract, violations of G.L. c. 93A, and declaratory judgment.

Safety, represented by Peter L. Bosse and Tanya T. Austin of Boyle | Shaughnessy Law, moved to dismiss all counts, arguing as a matter of law that its duty to defend under the policies had not been triggered. While the Superior Court allowed Safety's Motion to Dismiss based primarily on the conclusion that neither the deposition subpoena nor the unfiled Supplemental Complaint constituted a "claim or suit" so as to trigger any duty to defend, the Appeals Court affirmed the decision based on the Superior Court's secondary conclusion—that a claim based on the insured's intentional refusal to appear for deposition was not a claim for damages because of "bodily injury" (regardless of whether the underlying tort suit involved bodily injury), nor were such damages caused by an "occurrence" or "negligence," regardless of the Supplemental Complaint's characterization of the insured's intentional conduct as negligent.

In so doing, the Appeals Court refused to expand its interpretation of the term "because of" to encompass "but for" causation, and further reinforced longstanding Massachusetts law that it is the facts underlying the legal claims against an insured that control, rather than the specific theories of liability alleged by the plaintiff.