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3 Unexpected Risks Covered By Homeowners Insurance

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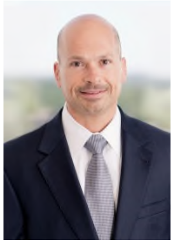


People often think of homeowners insurance as covering only damage to their home or tangible property within their home, like furniture. However, the coverage actually is much broader than that and can apply to unusual losses or events that occur outside the home. This article discusses three such risks — cyberbullying, hazing and cryptocurrency.

Cyberbullying

In early December, a federal court in Pennsylvania illustrated how standard homeowners insurance can apply to cover the defense of alleged cyberbullying, a risk that is rapidly proliferating among children of all ages. The case, *State Farm Fire & Casualty Co. v. Motta*, involved an underlying cyberbullying incident that allegedly resulted in a teenager's death. A male high schooler purportedly sent cruel and demeaning texts to a female classmate. The young woman later died by suicide. Her parents sued the young man and his parents, who in turn sought coverage for the lawsuit from their homeowners insurer, State Farm.

State Farm refused to defend the claims and sued its policyholder in Pennsylvania federal court, asking the court to rule there was no coverage. The court rejected State Farm's request and ruled in favor of coverage. According to the court, the suit against the male high schooler alleged an "occurrence" within the meaning of the policy. While the young man intended to send the text message, the court could not conclude conclusively that death by suicide was a foreseeable consequence. Thus, the allegations in the suit against the young man triggered the potential for coverage thereby requiring the insurer to defend the suit. Whether coverage is ultimately available for any judgment that might result will turn on the specific facts and findings on which the judgment is based.

Hazing

Civil litigation stemming from hazing incidents is not uncommon. The financial exposures posed by such claims may be covered by traditional homeowners insurance.

A March 2017 federal court decision demonstrates how acts of hazing can trigger coverage, even if those acts occurred far away from the home. That case, *Allstate Insurance Co. v. Ingraham*, involved a lawsuit alleging that a student was involved in hazing freshman swimmers on the University of Virginia's men's swim team. The student sought coverage under his parents' homeowners policy even though he did not live in his parents' home at the time of the incident. The insurer, Allstate, sued, seeking a determination of coverage under the policy.

Allstate contended that it had no duty to defend because the allegations against the student arose out of "intentional hazing" so that there was no "accident" under the policy. The court rejected that argument, finding Allstate's characterization of the underlying allegations and the applicable law too narrow. The court found the underlying allegations were not solely based on intentional conduct and, in any case, intentional conduct that produced an unintended injury constituted an "accident" under the policy. Thus, Allstate had to defend the suit against the student.

As another example, a recent New York case involved whether a homeowners policy covered hazing allegations against a college student. In that case, *Adirondack Insurance Exchange v. Hewu*, A college student died at a house in the Pennsylvania Poconos that fraternity members rented for the weekend. The student's family sued several fraternity members for wrongful death. One of those students, Julio Hewu, requested coverage under his parents' homeowners insurance policy. The insurer denied the request.

In court, the insurer asked the judge for an early ruling that it owed no coverage for the wrongful death suit. The judge found that unclear allegations in the suit made it impossible to determine at that time whether the insurer had to defend the suit against Hewu.

Cryptocurrency

Another area where coverage has been found under standard homeowners insurance policies concerns cryptocurrencies such as bitcoin.

In October 2018, an Ohio court found coverage under a homeowners policy for the loss of thousands of dollars of bitcoin.[1] The claim arose from the theft of some $19,000 in bitcoin from James Kimmelman's online account. Kimmelman submitted the loss to his homeowners insurer, Wayne Mutual. The insurer paid Kimmelman $200 in response to the claim and denied coverage for the balance, citing to the policy's $200 sublimit for money losses. Kimmelman challenged the claim determination contending that the bitcoin was personal property, like a backpack or other tangible asset. When the insurer refused to pay, Kimmelman sued for coverage.

The court ruled in Kimmelman's favor, basing its decision on Internal Revenue Service Notice 2014-21. According to that notice, which described "how existing general tax principles apply to transactions using virtual currency," virtual currencies like bitcoin have no legal tender status in any jurisdiction and, therefore, for federal tax purposes are to be regarded as "property." Noting that the IRS notice was the only authoritative statement on point, the court concluded that the stolen cryptocurrency was "property," and not "money" for purposes of determining which sublimit would apply under the Wayne Mutual insurance policy. Thus, the insurer had to pay for the entire amount of lost bitcoin.

These decisions demonstrate the broad nature of homeowners insurance and how it may have application in losses and events occurring far beyond the confines of the insured premises, including claims relating to the negligent acts of individuals that legally reside in the home and the loss of intangible property, like cryptocurrency. Policyholders should be mindful, therefore, that when faced with a claim that arises on a personal (nonbusiness) level, even where the claim arises from acts that occur away from the home, consider notifying your homeowners insurer. The claim may just be covered.

Notes

[1] *Kimmelman v. Wayne Insurance Group*

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