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No Coverage in Perpetuity: Rejecting Emotional Distress as a Trigger for Post-Abuse Policy Periods

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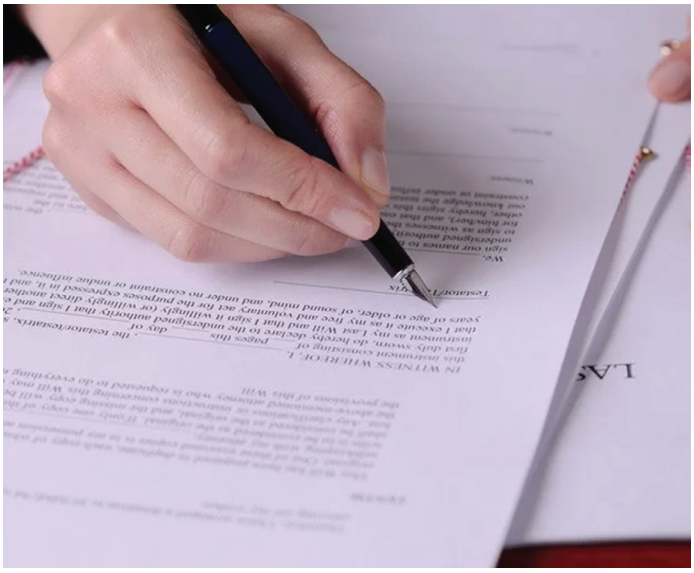
The New York Child Victims Act (CVA) opened a window for victims of childhood sexual abuse to bring civil claims even if the statute of limitations had long expired. The CVA generated a wave of litigation in New York, with thousands of claims filed against schools, religious institutions, and other organizations.

In many cases, decades had elapsed since the abuse occurred, and the defendant institutions may not have records of insurance coverage in effect during the time period of alleged abuse. In an effort to obtain or expand available insurance, some policyholders have pursued novel theories of coverage. Under one theory, policyholders have argued that liability policies purchased after the abuse occurred can be triggered by claims alleging ongoing emotional distress from past abuse.

In pursuing coverage under policies issued after the abuse occurred, policyholders seek to leverage doctrines traditionally employed in the asbestos context, where courts have found that policy periods postdating a claimant's exposure to asbestos can be triggered. Applying this framework to the abuse context, policyholders have argued that even if the abuse occurred years ago, symptoms such as mental anguish and distress that manifest in later periods can trigger post-abuse policies.



Abusive Insurance Arrangements

This argument, if successful, has the potential to significantly alter insurers' exposure by increasing the number of policies that any particular claim may trigger. While the argument has not yet been squarely addressed in the abuse context in published New York case

law, decisions from outside the jurisdiction, applying general insurance principles, indicate that New York courts will not find that policies postdating abuse can be triggered by ongoing emotional distress.

In general terms, commercial general liability (CGL) policies provide coverage for "bodily injury" that occurs during the policy period and is caused by an "occurrence." An "occurrence" is typically defined as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions." Under an occurrence-based policy, a threshold question is often whether the bodily injury took place during the policy period.

New York applies the "injury-in-fact" standard to the trigger inquiry, such that a policy is triggered only where there is "actual damage or injury during the policy period." See *Continental Cas. Co. v. Employers Ins. Co. of Wausau,* 60 A.D.3d 128, 148 (1st Dep't 2008). In practice, in many personal injury cases, the time of the injury is undisputed. For example, for a slip-and-fall, it is generally agreed that the bodily injury occurred at the time of the fall. See, e.g., *Jericho Atrium Assoc. v. Travelers Prop. Cas. Co. of Am.*, 106 A.D.3d 879 (2d Dep't 2013).

Not all injuries, however, necessarily occur at only one discrete point in time. In the toxic tort context, policyholders have introduced evidence that in the years after a claimant's exposure to asbestos, a "progressive disease" like cancer continues to cause cellular mutations. Courts have found such evidence sufficient to establish "injuries-in-fact" beginning from exposure to asbestos up through "death or the date of filing the claim, whichever occurs earlier." See, e.g., *Danaher Corp. v. Travelers Indem. Co.*, 414 F. Supp. 3d 436, 457 (S.D.N.Y. 2019).

While this doctrine was originally applied to asbestos-related diseases, policyholders have attempted to expand the doctrine to other forms of injury. See *Alterra Am. Ins. Co. v. NFL,* 2025 N.Y. Misc. LEXIS 2521, at *14–16 (Sup. Ct. N.Y. Cnty. Apr. 14, 2025) (considering an argument that football-related head trauma caused "cellular-level injuries" in years after players retired from football).

In the sexual abuse context, policyholders have attempted to invoke the "progressive disease" metaphor to argue that the emotional injuries flowing from past abuse constitute "bodily injury" occurring in policy periods following the abuse. The Georgia Court of Appeals, however, recently rejected this argument in *Phila. Indem. Ins. Co. v. Eubanks,* 378 Ga. App. 837 (Ga. Ct. App. 2026), which arose from a lawsuit concerning the abuse of multiple students at a school between 1974 and 1994. The school settled with the former students via consent judgment and assigned its insurance claims to the former students.

The trial court then awarded judgment for the former students in the amount of $345 million against multiple insurers of the school with policy periods ranging from 1975 to 2021. The trial court found that the former students' emotional injuries were continuing throughout the post-abuse policy periods, thereby triggering coverage during those policy periods. Notably, the trial court did not cite any scientific evidence to support the finding of injuries occurring during the post-abuse policy periods (as distinct from mental trauma caused by a previous injury).

The Georgia Court of Appeals reversed the judgment, holding that a policy's requirement that bodily injury "occur" during the policy period means the injury must "come into existence" during that period, and "the fact that the mental anguish from the abuse continued into

[subsequent policy periods] does not result in bodily injury occurring during [those subsequent] policy period[s]."

The court further reasoned that accepting the policyholder interpretation would mean that "once an insured suffered an injury, the insured would be able to claim coverage under any future insurance policies in perpetuity," a result the court indicated would be contrary to general principles of insurance.

While the Eubanks plaintiffs have petitioned the Georgia Supreme Court for review, the Georgia Court of Appeals' decision is consistent with law from other courts that have declined to find coverage for emotional distress caused by abuse prior to the inception of a liability policy. In addition to relying on policy language requiring that injuries "occur" during the policy period, courts rejecting such claims have cited general principles of casualty insurance, which is generally underwritten based on risk of future injuries, rather than ongoing effects of injuries prior to the policy's inception. See *Servants of Paraclete, Inc. v. Great Am. Ins. Co.*, 857 F. Supp. 822, 834 (D.N.M. 1994) ("[A]n insured cannot reasonably expect a policy to cover injury originating years before the policy's inception.

Insurance premiums undoubtedly do not reflect such risks and the Court can only speculate as to the enormous increase in premiums were such pre-policy injury causing events to be covered."); *Bishop of Charleston v. Century Indem. Co.,* 225 F. Supp. 3d 554, 566 (D.S.C. 2016) ("The [insureds] position, apparently, is that any policy purchased at any time after an act of sexual abuse provides full coverage for the life of the victim. Were that the law, insurers would need to charge premiums for each period sufficient to cover decades of potential liability."); *Catholic Bishop of Northern Alaska v. Continental Ins. Co.,* 2010 WL 10095655, at *13–14 (D. Alaska July 30, 2010) (finding that coverage for sexual abuse under primary and umbrella policies is only triggered if the abuse occurred during the policy period).

While New York courts have not yet squarely addressed policyholder arguments that post-abuse policies can be triggered, the Court of Appeals has distinguished "asbestos fibers in the air, or lead-based paint on the walls" from sexual abuse. See *Roman Catholic Diocese of Brooklyn v. National Union Fire Ins. Co. of Pittsburgh, Pa.*, 21 N.Y.3d 139, 151 (N.Y. 2013). Given the weight of authority from other jurisdictions and the Court of Appeals' prior distinctions between sexual abuse and asbestos exposure, New York courts should reject arguments that ongoing emotional distress from past abuse triggers policies issued after the abuse occurred.

Moreover, the implications of accepting the policyholder position could extend well beyond the sexual abuse context: any physical injury that produces lasting emotional distress could, under that incorrect logic, trigger decades of insurance policies. As the *Eubanks* court and others have recognized, accepting such an interpretation could effectively create coverage in perpetuity for past physical injuries, a result at odds with the nature of occurrence-based liability insurance.

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