

Micah Skidmore in Law.com Insurance Coverage Law Center: One Month After Astroworld Tragedy

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PRACTICES Insurance Recovery, Litigation, Class Action Defense, Construction Litigation

Haynes Boone Partner [Micah Skidmore](#) shared his insights in a *Law.com* Insurance Coverage Law Center (ICLC) article about insurance coverage issues resulting from the deadly Astroworld Festival in Houston.

Here is an excerpt:

It's been one month since the Astroworld Festival tragedy, and the victims' families are still waiting for answers. We talked with Micah Skidmore, partner with Haynes Boone in Dallas, on the multiple potential insurance coverage issues facing the involved parties following the tragedy and the associated lawsuits.

ICLC: What are the potential insurance coverage issues facing the involved parties following the tragedy and the associated lawsuits?

“The relevant coverage for the Astroworld tragedy is commercial general liability (CGL) insurance, which provides a duty to defend and indemnify insureds against suits for “bodily injury,” among other things. There are already dozens of lawsuits alleging hundreds of millions of dollars in claims against Travis Scott and the Astroworld organizers and operators for the injuries sustained by concertgoers on November 5. Because CGL insurance expressly covers “bodily injury” claims, and the claims at issue are “bodily injury” claims, there should not be substantial coverage issues raised in response to the pending Astroworld suits. CGL policies do include an exclusion for “bodily injury” that is “expected or intended” from the standpoint of the insured. Some lawsuits may allege intentional and reckless conduct by the insureds, which may prompt some insurers to raise this exclusion in an attempt to avoid the substantial cost of defending years of litigation over the Nov. 5 occurrence. But while the insurer’s duty to defend is determined by the allegations against the insureds, the obligation to pay damages is determined by the actual facts, and the exclusion is triggered, not by intentional conduct per se, but intent to cause the specific bodily injury at issue. This is a very significant burden of proof for insurers to meet. Absent some extraordinary evidence developing in these cases, it is unlikely that the “expected or intended injury” exclusion will provide a basis for insurers to avoid a duty to indemnify their insureds.”

ICLC: What is the likelihood of litigation between policyholders and insurers.

“For the reasons stated above, some potential exists for insurers to dispute an obligation to pay defense costs, depending on the allegations against the insured, even to the point of litigation. But given the substantial damages claimed against the insureds (relative to available policy limits) and the difficulty of factually establishing that any insured actually expected or intended injury to any concertgoer, it is unlikely that the obligation to indemnify insureds for these claims will be litigated, particularly while the underlying liability cases are pending. Given the number of potential defendant parties involved, there may, however, be litigated disputes over priority of coverage, coverage for inter-defendant indemnity claims, the number of occurrences and related issues.”

ICLC: Do you have any perspective or thoughts on whether the tragedy could set a precedent for the nature of insurance policies for future largescale events?

“The Astroworld tragedy and the ensuing litigation will undoubtedly be datapoints and talking points for insureds, brokers and underwriters placing future policies for similar events. Questions will be asked about security, crowd management and exit safety for future insureds. Some insurers may not underwrite this risk going forward, and others will adjust limits or include exclusions designed to mitigate this kind of loss.”

To read the full article, click [here](#).