

**THE EVOLUTION OF EMOTIONAL DISTRESS CLAIMS:
ARE EMOTIONAL DAMAGES CONSIDERED “BODILY INJURY?”**

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I. Introduction

Claims for emotional distress have become commonplace in Indiana lawsuits premised on the occurrence of traumatic events of various sorts. Over the last seventeen (17) years there has been an evolution in Indiana appellate court decisions regarding whether a plaintiff can recover for emotional distress experienced as a result of a tortfeasor’s negligence under the “bodily injury” provision of an insurance policy. The relatively harsh, line-in-the-sand position taken by appellate courts prior to 1991 has evolved to a point where courts recognize the damaging emotional effects a loss can have on a loved one’s close family members. All the while, the courts have been very cautious not to extend the ambit of emotional distress claims to include meritless or spurious requests for damages. In essence, appellate courts have been asked to determine whether particular claims of emotional distress qualify as a bargained-for risk of a defendant – be that a third-party or an insurance company in the first-party setting.

Prior to the early 1990s, the rule applied by the Indiana appellate courts was known as the Impact Rule. This rule required that a plaintiff’s emotional injuries be the direct result of their own physical injuries. In 1991, the Indiana Supreme Court modified this rule in *Shaumber v. Henderson*² when it created the Modified Impact Rule. Throughout the 90s and early 2000s, Indiana appellate court decisions continued to evolve in their attempt to balance valid emotional distress claims with the bargained-for risks of defendants. Ultimately, in February, 2008, the Indiana Supreme Court issued rulings in three cases – *State Farm v. Jakupko*³, *Elliott v. Allstate*⁴, and *State Farm v. D.L.B.*⁵ – clarifying whether a physical injury was required in order for an emotional distress claim to be recoverable. Ultimately, the Supreme Court promulgated a rule that practitioners can apply when faced with emotional distress claims in either first-party or third-party settings. Like many areas of the law, it is important to understand where we have been in the evolution of emotional distress claims in Indiana in order to understand where we are and where we are going.

II. The Modified Impact Rule of *Shaumber*

The Indiana Supreme Court case of *Shaumber v. Henderson* was the first step in the evolution of emotional distress claims in Indiana. In *Shaumber*, an automobile driven by John Henderson collided with an automobile driven by Gail Shaumber in which Gail’s daughter, Katherine, suffered physical injuries and Gail’s son, Zachary, was killed. Gail and Katherine filed a complaint against Mr. Henderson seeking recovery for their physical and emotional injuries. In discovery, the Shaubers indicated that they sought recovery for mental anguish experienced as a result of Zachary’s death, but not as a result of *their own* injuries.

A motion for partial summary judgment was filed by the Shaubers’ insurance carrier who had been granted leave to intervene in the underlying lawsuit. The motion for partial summary judgment alleged that Indiana did not permit recovery for negligent infliction of emotional distress under the factual circumstances present in the Shaubers’ case. Namely, emotional distress damages were not available if the basis of the emotional distress was something other than the plaintiff’s own injuries. The trial court granted the motion for

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² 579 N.E.2d 542 (Ind. 1991).

³ 881 N.E.2d 654 (Ind. 2008).

⁴ 881 N.E.2d 662 (Ind. 2008).

⁵ 881 N.E.2d 665 (Ind. 2008).

partial summary judgment, and the appellate court affirmed. The Indiana Supreme Court reversed the entry of partial summary judgment on the issue of emotional distress.

In its holding, the Indiana Supreme Court discussed the long-standing and well-established rule that damages for mental distress or emotional trauma could be recovered only when the distress was accompanied by and resulted from a physical injury caused by an impact to the person seeking recovery.⁶ This rule was commonly known as the Impact Rule. Under the Impact Rule, the mental injury suffered by the plaintiff must have been the natural and direct result of the plaintiff's own physical injury.⁷ When applying the Impact Rule in Indiana, three (3) elements had been required: (1) an impact on the plaintiff, (2) which caused physical injury to the plaintiff, and (3) which physical injury, in turn, caused emotional distress.⁸

In response to the motion for partial summary judgment, the Shaumbers urged the court to abandon the Impact Rule and permit recovery for negligent infliction of emotional distress under the circumstances presented in their case. The Shaumbers claimed that the policy reasons advanced for continuation of the Impact Rule were no longer valid, including: (1) fear that a flood of litigation would result if emotional distress claims of this nature were allowed; (2) concern that fraudulent claims would be made and rewarded; and (3) difficulties in proving a causal connection between the negligent conduct and the emotional distress.

The Indiana Supreme Court held that the rationale for the Impact Rule was no longer valid, but clearly noted that it did not abolish the rule in its entirety.⁹ The Court stated:

When, as here, a plaintiff sustains a direct impact by the negligence of another and, by virtue of that direct involvement, sustains an emotional trauma which is serious in nature and of a kind and extent normally expected to occur in a reasonable person, we hold that such a plaintiff is entitled to maintain an action to recover for that emotional trauma without regard to whether the emotional trauma arises out of or accompanies any physical injury to the plaintiff.¹⁰

The rule promulgated by the *Shaumber* Court is known as the Modified Impact Rule.

III. Is Emotional Distress Considered Sickness?

The Modified Impact Rule was first challenged in Indiana appellate courts in *Wayne Township Board of School Commissioners v. Indiana Insurance Company*, which was handed down in May, 1995.¹¹ In *Wayne Township*, the principal of an elementary school sexually molested a student while in the principal's office. The principal was convicted of child molestation under the Indiana Criminal Code. The child filed suit against the principal and the school district alleging that, as a direct and proximate result of the negligence of the defendant Wayne Township and the actions of the defendant principal, the plaintiff suffered severe emotional and psychological trauma and distress requiring extensive counseling. The plaintiff also alleged that she had inflicted injury upon herself and had incurred medical expenses as a result of the principal's actions, and would carry the emotional scars of the molestation for the remainder of her life. At the time of the incident, the principal and the school were insured under a comprehensive general liability ("CGL") insurance policy issued by Indiana Insurance. An educational errors and omissions policy was also applicable. Both insurers denied coverage, and the school sought a declaratory judgment seeking defense and coverage of all the claims brought against it.

⁶ *Shaumber* at 454.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 455-456.

¹⁰ *Id.* at 456.

¹¹ 650 N.E.2d 1205 (Ind. Ct. App. 1995).

The Indiana Court of Appeals analyzed the CGL policy and found that an “occurrence” was not present as defined by the Indiana Insurance policy for the conduct of the principal.¹² “Occurrence” was defined by the policy as:

An accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.¹³

The Court of Appeals found that the principal’s conduct was not accidental, but rather was intentional since he had been criminally convicted of molestation.¹⁴ Therefore, as a matter of law, the principal’s actions were not an “occurrence” as defined by the Indiana Insurance policy as they were not accidental.¹⁵

However, with respect to the plaintiff’s claims against the school, the Court of Appeals found that there was no intentional conduct by the school district itself.¹⁶ Therefore, the plaintiff’s claims constituted an “occurrence” as defined by the Indiana Insurance policy.¹⁷ The Court went on to determine whether the plaintiff suffered “bodily injury” as defined by the policy. The Indiana Insurance policy stated:

“Bodily injury” means bodily injury, sickness or disease sustained during the policy period, including death at any time resulting therefrom.¹⁸

The Court reiterated that Indiana law recognizes that emotional injuries that do not arise from bodily contact are not “bodily injury” as contemplated by CGL policies.¹⁹ The Court held that the term “bodily injury” did not include emotional damage that did not arise from a bodily touching.²⁰ However, bodily touching is an inherent aspect of child molestation, and therefore, the Court found that the resulting emotional injury suffered by the plaintiff from the molestation constituted “bodily injury” under the CGL policy.²¹ The Court went on to hold that the plaintiff’s claims of self-inflicted physical injury also constituted “bodily injury” under the Indiana Insurance policy as those injuries also resulted from the child molestation.²²

IV. Direct Impact v. Direct Involvement

The Indiana Supreme Court further extended the Modified Impact Rule in the case of *Conder v. Wood*.²³ In *Conder*, plaintiff Priscilla Wood and her co-worker and friend, Patricia Brittain, were walking down the street when a truck driven by Mr. Conder in the course and scope of his employment attempted to make a right turn into the path of Ms. Wood and Ms. Brittain who had the right-of-way. Ms. Wood saw the truck prior to its turn, and jumped out of the way. Unfortunately, Ms. Brittain was unable to react as quickly, and the right front wheel of the truck struck Ms. Brittain throwing her to the pavement. As the truck continued to roll forward, Ms. Wood began pounding on the panels of the truck’s trailer as it passed to alert Mr. Conder that he was about to run over Ms. Brittain. The truck came to a stop just before the rear wheels ran over Ms. Brittain’s head, however, Ms. Brittain died at the scene from her injuries.

¹² *Id.* at 1208.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 1209

¹⁷ *Id.*

¹⁸ *Id.* at 1210.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 1211.

²³ 716 N.E.2d 432 (Ind. 1999).

Ms. Wood and her husband filed a complaint for damages against Mr. Conder and his employer seeking recovery for both physical and emotional injuries to Ms. Wood. Physically, Ms. Wood claimed injury to her left arm including bruises. She also claimed emotional and psychological trauma, including stress-related headaches, insomnia, and personality changes. Mr. Wood claimed loss of consortium. At trial, Mr. Conder and his employer moved for summary judgment which was denied. The Court of Appeals reversed the trial court and found that, because Ms. Wood had not suffered any direct physical impact from Mr. Conder's negligence, she was precluded under the Modified Impact Rule from recovering for her emotional distress damages.

The Indiana Supreme Court held that Ms. Wood clearly sustained an "impact" as she pounded on Mr. Conder's truck in her effort to prevent it from running over Ms. Brittain.²⁴ The Supreme Court found that it was also evident that Ms. Wood suffered mental and emotional trauma as a result of her direct involvement in Mr. Conder's negligent conduct.²⁵ Accordingly, the Court held that the Woods' allegations met the requirements for the application of the Modified Impact Rule, and the defendants were not entitled to summary judgment.²⁶ The Court recognized the diminished significance of contemporaneous physical injuries in identifying legitimate claims of emotional trauma.²⁷ The Court modified the "direct impact" test to more of a "direct involvement" test.²⁸ When examined from a "direct involvement" perspective, the Court found that it mattered little how much physical impact actually occurred between Ms. Wood and Mr. Conder's truck as long as the impact arose from Ms. Wood's "direct involvement" in Mr. Conder's negligent conduct.²⁹

While Indiana appellate courts had been chipping away at *Shaumber* ever since it was first handed down, the Supreme Court of Indiana officially overruled it in *Groves v. Taylor* on June 7, 2000.³⁰ The Court found that "direct impact" was no longer necessary to distinguish between legitimate and spurious claims.³¹ The Court held that there were clearly situations where the plaintiff was sufficiently directly involved in the incident to logically give rise to the type of emotional trauma necessary to distinguish legitimate claims from spurious claims.³²

In overturning *Shaumber*, the Indiana Supreme Court looked to the Wisconsin Supreme Court case of *Bowen v. Lumbermens Mutual Casualty Company*.³³ In *Bowen*, the Wisconsin Supreme Court identified two concerns of recognizing negligent infliction of emotional distress claims: (1) establishing the authenticity of the claim, and (2) insuring fairness of the financial burden placed upon a defendant whose conduct was negligent.³⁴ The Wisconsin Supreme Court identified three (3) factors to insure a genuine emotional claim: (1) that the victim was seriously injured, (2) that the plaintiff had a substantial personal relationship to the injured party, and (3) that the plaintiff witnessed an extraordinary event.³⁵ Looking at these factors, the Indiana Supreme Court held that where the "direct impact" test was not met, a bystander could nevertheless establish "direct involvement" by proving that the plaintiff actually witnessed or came on the scene soon after the death or severe injury of a loved one with a relationship to the plaintiff analogous to a spouse, parent, child, grandparent, grandchild, or sibling caused by the defendant's negligent or otherwise tortious conduct.³⁶ Applying this test to the facts at issue, the Supreme Court held that MaryBeth Groves had a valid claim for emotional distress after

²⁴ *Id.* at 435.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ 729 N.E.2d 569 (Ind. 2000).

³¹ *Id.* at 572.

³² *Id.*

³³ 517 N.W.2d 432 (Wis. 1994).

³⁴ *Id.*

³⁵ *Id.* at 572, 573.

³⁶ *Id.* at 573.

hearing her brother get hit by a car and immediately witnessing the aftermath of the impact and her brother's subsequent death.

In March, 2003, the Indiana Court of Appeals precluded the parents of a 19 year old who was killed in an automobile accident from recovering for their loss of love and companionship under their UIM policy in the case of *Armstrong v. Federated Mutual Insurance Company*.³⁷ The Court cited *Wayne Township* for the basis that a physical impact was required in order for there to be a recoverable claim for emotional distress under the particular UM/UIM policy language involved.³⁸ The lack of physical impact precluded the parents from recovering for the emotional loss associated with the death of their daughter.³⁹

V. Strict construction of the policy v. common law

The Seventh Circuit Court of Appeals first examined Indiana's application of the "bodily injury" provision of an insurance policy in the case of *Allstate Insurance Company v. Tozer* in 2004.⁴⁰ *Tozer* involved a third-party claim by two (2) siblings who were minorly injured in an automobile accident, but sustained severe emotional damages as a result of witnessing their brother's injuries and death. The siblings brought emotional distress claims against the driver of the vehicle. Allstate insured the vehicle and brought a declaratory judgment action in federal court to determine whether the siblings claims were subject to the "each person" limit of liability. The siblings argued that their emotional distress damages constituted separate bodily injuries thereby entitling them to separate limits of liability under the policy.

Allstate's policy provided, "Allstate will pay damages which an insured person is legally obligated to pay because of . . . bodily injury."⁴¹ "Bodily injury" was defined by the Allstate policy as, "physical harm to the body, sickness, disease, or death."⁴² Allstate limited its liability to \$100,000 for "each person" up to a maximum of \$300,000 for "each accident."⁴³ These policy limits were defined as follows:

The limits shown on the Policy Declarations are the maximum we will pay for any single accident involving an insured auto. The limit stated for each person for bodily injury is our total limit of liability for all damages because of bodily injury sustained by one person, *including all damages sustained by anyone else as a result of that bodily injury*. Subject to the limit for each person, the limit stated for each accident is our total limit of liability for all damages for bodily injury.⁴⁴

The plaintiffs' complaint clearly stated that the siblings' emotional distress claims were a result of witnessing their brother's injuries and death and **not** a result of their own minor injuries. The Seventh Circuit held that the siblings' claims were subject to the \$100,000 cap applicable to their deceased brother's injuries.⁴⁵ The Court found that the siblings' injuries did not account for separate "bodily injuries" under Allstate's policy.⁴⁶ The Court went on to hold that Allstate's definition of "bodily injury" did not include emotional distress at least where the distress was not caused by direct physical trauma.⁴⁷ The Seventh Circuit granted summary judgment in favor of Allstate.⁴⁸

³⁷ 785 N.E.2d 284, 293 (Ind. Ct. App. 2003)

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ 392 F.3d 950 (7th Cir., 2004).

⁴¹ *Id.* at 953.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.* (emphasis in original holding.)

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 956.

In *Tozer*, the appellate court chose not to examine Indiana public policy concerns or common law, but rather looked to the strict construction of the insurance contract itself in order to support its holding. Following *Tozer*, there was a conflict in the way in which emotional distress claims were being examined by the courts. The *Tozer* ruling was favorable for the insurer in that it limited the ability for injured parties to recover for emotional distress to the “each person” limit of the policy. However, other Indiana appellate court rulings⁴⁹ had allowed recovery for emotional distress damages up to the “each accident” limit of liability. In February, 2008, the Indiana Supreme Court clarified this conflicting case law.

VI. The Indiana Supreme Court Refines Its Position

On February 28, 2008, the Indiana Supreme Court issued opinions in three cases containing emotional distress claims and requiring the application of the “bodily injury” provision of UM and/or UIM policies: *State Farm v. Jakupko*, *Elliott v. Allstate*, and *State Farm v. D.L.B.*

In *Jakupko*, Richard Jakupko was involved in an automobile accident with an underinsured driver in July, 2002. Richard’s wife and two (2) sons were passengers in the automobile at the time of the accident. Richard suffered severe injuries including quadriplegia and a closed head injury resulting in permanent mental deficits. Mrs. Jakupko and her sons also sustained bodily injuries and each suffered emotional distress from being in the accident and witnessing Richard’s injuries.

The Jakupkos sought compensation under their UIM policy with State Farm which had limits of \$100,000 “each person”/\$300,000 “each accident.” State Farm paid Richard Jakupko \$100,000 pursuant to this provision, but denied Mrs. Jakupko and her sons’ request for the remaining \$200,000 for their emotional distress claims. State Farm argued that the emotional distress damages claimed by Mrs. Jakupko and her sons were caused by Richard’s injuries and were included in the “each person” limit of liability for Richard’s bodily injury claim. The trial court and the Court of Appeals found in favor of the Jakupkos, and State Farm sought transfer to the Indiana Supreme Court.

The crux of this case was whether Mrs. Jakupko and her children’s claims were included within Mr. Jakupko’s “each person” limitation on liability, or whether Mrs. Jakupko and the children were entitled to their own limit of liability. The coverage provision of State Farm’s policy stated:

We will pay damages for bodily injury an insured is legally entitled to collect from the owner or driver of an underinsured motor vehicle. The bodily injury must be caused by accident arising out of the operation, maintenance or use of an underinsured motor vehicle.⁵⁰

The liability limits provisions of the policy stated:

The amount of coverage is shown on the declarations page under “Limits of Liability – W – Each Person Each Accident.” Under “Each Person” is the amount of coverage for all damages due to bodily injury to one person. “Bodily injury to one person” includes all injury and damages to others resulting from this bodily injury. Under “Each Accident” is the total amount of coverage, subject to the amount shown under “Each Person” for all damages due to bodily injury to two or more persons in the same accident.⁵¹

⁴⁹ *State Farm v. Jakupko*, 856 N.E.2d 778 (Ind. Ct. App. 2006) holding that the Jakupko’s emotional distress claims, since accompanied by physical manifestations of their injuries, constituted “bodily injury” under the policy, and therefore, the Jakupkos were entitled recover up to the “each accident” limit of liability.

⁵⁰ *Jakupko* at 656. (emphasis omitted)

⁵¹ *Id.* (emphasis omitted)

Bodily injury was defined as, “bodily injury to a person and sickness, disease or death which results from it.”⁵²

The Jakupkos argued that their emotional damages constituted “sickness” as identified in the “bodily injury” definition. They argued that, because they each suffered a separate injury (and, thus, a separate “sickness” and “bodily injury”) distinct from Mr. Jakupko’s injuries, they were each entitled to their own \$100,000 “each person” coverage limitation, up to the \$300,000 “each accident” limitation. State Farm countered with the argument that emotional distress was not “sickness” within the meaning of their policy and, therefore, the \$100,000 “each person” limitation was applicable to the Jakupkos.

The Indiana Supreme Court looked to the decisions in *Wayne Township, Medley v. Frye*,⁵³ *Tozer*, and *Armstrong v. Federated Mutual Insurance Company* for guidance. In reexamining *Wayne Township*, the Court noted that “bodily injury” was not limited to actual physical injury to the body.⁵⁴ The definition of “bodily injury” in *Wayne Township* extended beyond physical injury to include sickness and disease. Similarly, the definition of “bodily injury” in *Jakupko* also extended beyond mere physical injury. Therefore, the Court held that the emotional distress suffered by Mrs. Jakupko and her sons were separate and distinct “bodily injuries” within the meaning of State Farm’s policy.⁵⁵

The Court went on to hold that, since this case involved a UIM policy subject to Indiana’s statutory requirements governing UM/UIM policies, subjecting the Jakupkos’ claims to Mr. Jakupko’s “each person” liability limit would contravene the statute. The statute required that each automobile insurance policy provide “coverage for the protection of persons insured under the policy who are legally entitled to recover damages from owners or operators of uninsured or underinsured motor vehicles because of bodily injury, sickness or disease.”⁵⁶ The Jakupkos would be legally entitled to recover damages for their emotional distress from the tortfeasor. However, the liability limits provision of State Farm’s policy effectively reduced the amount of damages Mrs. Jakupko and her sons could recover to only the amount Mr. Jakupko was entitled to recover. This language from the State Farm policy attempted to limit the Jakupkos’ claims to Mr. Jakupko’s “each person” limit which improperly contravened Indiana’s UIM statute. Thus, the Court held that the Jakupkos were each entitled to a separate “each person” limit of \$100,000 subject to the “each accident” limit of \$300,000.⁵⁷

In *Elliott*, Amanda Elliott was severely injured in an automobile accident with a uninsured driver. Amanda’s sister, Amber, and Amanda’s son, Austin, were passengers in Amanda’s automobile and suffered emotional distress from witnessing Amanda’s injuries. Amanda had a UM policy with Allstate with limits of \$25,000 “each person”/\$50,000 “each accident.” Amanda settled her claim with Allstate for \$25,000, and Amber and Austin sought to recover an additional \$25,000 in UM benefits for their emotional distress. Allstate took the position that it had satisfied its obligations under the policy when it paid the limits for Amanda’s injuries. The Court held that “bodily injury” as defined by the Allstate policy included emotional distress.⁵⁸ Similar to *Jakupko*, the Court held that the Allstate policy contradicted Indiana’s UM/UIM statute by improperly limiting the amount of damages that could be recovered under the policy.⁵⁹ Therefore, the Court held that Amber and Austin were entitled to a separate “each person” limit of \$25,000 subject to the “each accident” limit of \$50,000.⁶⁰

⁵² *Id.* (emphasis omitted)

⁵³ 660 N.E.2d 1079 (Ind. Ct. App. 1996). In *Medley*, the plaintiff sought coverage for a claim of loss of consortium under the “bodily injury” provision of the tortfeasor’s policy. The Indiana Court of Appeals held that the policy at issue clearly excluded loss of services from the definition of “bodily injury.” Therefore, loss of consortium was not a separate and distinct recoverable loss.

⁵⁴ *Jakupko* at 657.

⁵⁵ *Id.* at 658.

⁵⁶ *Id.* at 661.

⁵⁷ *Id.* at 662.

⁵⁸ *Elliott* at 664.

⁵⁹ *Id.*

⁶⁰ *Id.* at 665.

However, in *State Farm v. D.L.B.* the Court showed that it was not willing to extend emotional distress claims for injuries that did not involve bodily touching. *D.L.B.* involved a bicycle/automobile accident wherein six (6) year old Seth Baker was struck and killed by Herbert Wallace. Seth's four (4) year old cousin, D.L.B., was riding bicycles with him, but was not physically injured in the accident. Nevertheless, D.L.B. suffered post-traumatic stress disorder as a result of witnessing Seth's fatal injuries. Wallace was insured by State Farm with policy limits of \$100,000 "each person"/\$300,000 "each accident." State Farm paid \$100,000 to Seth's parents, but denied a claim brought by D.L.B.'s mother on behalf of D.L.B. As the *Jakupko* Court noted, in order for an emotional injury to be considered a "bodily injury," the emotional injury must arise from a bodily touching.⁶¹ D.L.B. argued that, although he did not suffer a direct impact or a physical injury in the accident, his emotional distress was accompanied by physical manifestations of his injury. The Court held that the physical manifestations were not the result of an impact, force or harm to D.L.B.'s body, and therefore did not fall within the ambit of *Wayne Township* and *Jakupko*.⁶² The Court found that D.L.B.'s situation was closer to the parents in the *Armstrong* case who were not directly involved in the accident.⁶³ Since D.L.B. did not suffer "bodily injury" within the meaning of the policy, he was not entitled to damages under Wallace's State Farm policy.⁶⁴

VII. Conclusion

The law in Indiana has now been clarified by our Supreme Court. An emotional distress claim must arise out of a bodily touching in order for it to be considered a sickness and for the claim to fall within the definition of "bodily injury." If no bodily touching exists, there is no valid emotional distress claim. The Supreme Court has promulgated a rule that addresses the delicate balance of awarding valid emotional distress claims while insuring that a defendant is only asked to pay for bargained-for damages.

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⁶¹ *D.L.B.* at 666.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*