

Oregon Department of Consumer and Business Services Division of Financial Regulation, Bulletin No. DFR 2022-2

To: All property and casualty insurers

Date: May 3, 2022

RE: Guidance on policy language used in intentional acts exclusions

Purpose

The purpose of this bulletin is to provide property and casualty insurers with guidance on policy language used to exclude coverage of intentional acts.

Authority

- ORS 742.005¹

Background

Exclusions for intentional acts are common among various types of property and casualty insurance policies. These exclusions preclude recovery for losses purposefully caused by the insured and have long been approved by the Division of Financial Regulation.

Recently, the division has received policy filings applying new, more expansive language to intentional acts exclusions. For example, some recently filed exclusions have provided that “coverage does not apply to bodily injury or property damage, which is expected or intended by ***an insured, even if the resulting bodily injury or property damage is of a different kind, quality or degree than initially expected or intended; or is sustained by a different person, entity or property than initially expected or intended.***” (emphasis added)

¹ ORS 742.005 provides, in relevant part:

“The Director of the Department of Consumer and Business Services shall disapprove any form requiring the director’s approval: ...

“(2) If the director finds it contains any provision, ... or has any label, description of its contents, title, heading, backing or other indication of its provisions, which is unintelligible, uncertain, ambiguous or abstruse, or likely to mislead a person to whom the policy is offered, delivered or issued;

“(3) If, in the director’s judgment, its use would be prejudicial to the interests of the insurer’s policyholders;

“(4) If the director finds it contains provisions which are unjust, unfair or inequitable”

Discussion

Exclusionary language that applies to losses beyond what the insured intended encompasses not only intentional acts but could exclude coverage of negligence or unintended acts or harms. This is not how intentional acts exclusions have been interpreted by Oregon courts.

The Oregon Supreme Court has interpreted intentional act exclusions to apply only when the insured intended or purposefully caused the specific injury or harm that resulted from the act, as opposed to merely intending the act.² This interpretation has held even despite differences in the policy language with examples that include “caused by accident,” “damage neither expected nor intended,” and other language.

Vague language within an intentional acts exclusion, such as “even if different than expected or intended,” could place unintended or negligent behavior within the exclusion. Such language thus is “unintelligible, uncertain, ambiguous or abstruse” and may not be approved under ORS 742.005(2).

Similarly, when policy language is labeled as an “intentional acts exclusion,” but also excludes unintended or negligent behavior, it misleads the insurance-buying public about the coverage that the policy actually provides. Such labelling cannot be approved under ORS 742.005(2), according to which a form may not have “any label, description of its contents, title, heading, backing or other indication of its provisions” that is likely to mislead.

The scope of intentional acts exclusions also may be misleading depending on whether the exclusionary language applies to acts committed by “the insured,” as opposed to “an insured” or “any insured.” Such language might preclude a policyholder who was not involved in the intentional act from recovering for a loss caused by the act of a co-insured. For example, if a homeowner is the named insured on a policy and is the victim of an arson committed by a resident family member, the broader exclusionary language would prevent the homeowner from recovering. While it may be reasonable for corporate entities to exercise control over employees and take on the liability of their co-insureds, policy language in personal lines policies that prevents a policyholder who was not involved in the intentional act from recovering for losses due to acts committed against them would be inequitable and prejudicial to the policyholder. Such policy language cannot be approved under ORS 742.005(2) through (4).

Guidance

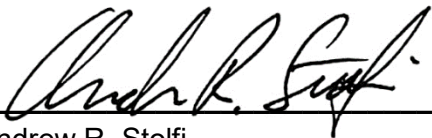
In all property and casualty insurance policies, intentional acts exclusions are allowable, but should not encompass losses due to negligence or unintended acts or harm. Exclusionary language, such as those that apply to “losses of a different kind, quality or degree than initially expected or intended” or to losses that are “sustained by a different person, entity, or property than initially expected or intended,” will be disapproved. Language conveying that an exclusion applies whether or not the insured had the requisite intent will also be disapproved. Currently approved exclusionary language without this type of expansive language may continue to be used.

² See *Ledford v. Gutoski*, 319 Or. 397, 401-02, 877 P.2d 80 (1994); 295 Or.App. 819, 834-835, 437 P.3d. 287 (2019) There the Court said “Despite variations in the language of the policies, this court has interpreted various policy provisions excluding insurance coverage for intentionally-caused injuries similarly.” If the policy language doesn’t specifically say otherwise, the Court will conclude that “Injuries resulting from intentional acts are excluded from insurance coverage when the insured intended to cause the particular injury or harm, as opposed to merely intending the act.”

In personal lines property and casualty insurance, policy language may not preclude a co-insured who did not purposefully participate in the intentional act from recovering for losses due to acts committed against them that would be covered by the policy. Policies that do not clearly limit intentional acts exclusions to acts of “the insured,” such as those with language applying the exclusion to “an insured” or “any insured,” must contain additional language clarifying that the exclusion does not apply to a named co-insured who does not cause, does not contribute to, and is not aware of the intentional act before it is committed.

This bulletin addresses the division’s expectations with regard to policy language used to exclude coverage of intentional acts. It is not intended to be interpreted as prescribing how any such policy language should be applied to any particular set of underlying facts.

This bulletin is effective upon issuance. All forms must remove or change vague language in an intentional acts exclusion as specified in this bulletin and be refiled within 60 days of the effective date.



Andrew R. Stolfi
Insurance Commissioner and Director
Department of Consumer and Business Services

May 2, 2022

Date