

Knowing a Nexus When You See It In Texas: Bus Driver's TB Transmission to Passengers Not Covered Under Auto Policy

Insurance Law Update

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Texas Supreme Court

In a case of first impression, the Texas Supreme Court held that a bus driver's transmission of tuberculosis (TB) to his passengers was not an accident resulting from the use of the tour bus so as to trigger coverage under the tour bus company's business owner's policy. The court concluded, as Justice Potter Stewart might have said, that it knows a nexus between injury and use of a vehicle when it sees it, and there isn't one between TB transmission and a bus.

In *Lancer Ins. Co. v. García Holiday Tours*, ___ S.W.3d ___, 2011 WL 2586878 (Tex. July 1, 2011), high school band members were collectively awarded more than \$5 million in a lawsuit in which they alleged they contracted TB due to confinement on a García Holiday Tours bus with an infected driver. The existence of business auto liability coverage for García turned on whether the disease transmission "resulted from" "use" of the bus. Lancer denied coverage, contending the nexus between the injuries and the use of the bus was insufficient to invoke coverage. In the ensuing coverage litigation, the Texas Supreme Court agreed with Lancer.

The passengers argued their injuries "resulted from" use of the bus because (1) the closed bus environment forced passengers to breathe bacteria expelled by the driver; and (2) the bus' air conditioning system recirculated contaminated air throughout the trip.

The Texas Supreme Court did not base its analysis on any distinction between the nexus mandated by Lancer's policy language requiring that the bodily injury "result from" use of the bus, as opposed to policies requiring only that the injury "arise from" use of a vehicle, noting, "we see no significant distinction between the two phrases." Instead, the court's inquiry focused on whether the bus itself actually caused the injury. The court concluded that because the bus did not generate or magnify the potency of the bacteria, and because exposure could have occurred in any other enclosed, air-conditioned location, "[t]he bus itself was not a substantial factor in causing the passenger's injuries." Consistent with a growing trend in which published judicial opinions have cited medical texts rather than expert testimony in deciding the question of causation, the Texas Supreme Court cited two medical treatises and to the Center for Disease Control's current website to support its opinion.

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