



#### LOSS CLAIM

## TECHNICAL PROCEDURES MANUAL

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## 1. General

- a. The avoved purpose of awards in personal injury cases is to compensate victims of negligence for financial losses as well as for pain and suffering. When, however, a defendant is guilty of misconduct worse than ordinary negligence, he may incur an additional liability, i.e. for punitive damages, to discourage any future replication of his misconduct and to make an example of him. The award would tend to serve as a strong deterrent to others. East American courts will allow juries to award punitive damages in two types of cases.
  - (1) Against defendants guilty of outrageous or oppressive intentional misconduct.
  - (2) Against those guilty of reckless or wanton disregard of the safety or rights of others.
- b. Punitive damages nav be properly considered and awarded in all states except Louisians, Markachuketts, Nebraska and Washington. These states entirely reject court recognition of punitive damages.
- c. Corporate entities may be held liable for punitive damages for their employees' torts under one of the following patterns.
  - (1) Under the vicarious liability rule, the corporation may be subjected to liability for punitive damages whenever its coplayers consit outrageous torts within the scope of their employment.
  - (2) Under the complicity rule, the corporate officers may be held lieble for punitive damages only when these superior officers either order, participate in or ratify outrageous misconduct.

# 2. Liability Insurance Coverage for Punitive Damages

a. Whether an award of punitive damages against an insured is covered by a liability policy, has been attracting increased interest on the part of courts, attorneys and liability insurance companies in recent years. Litigation in this area has been pursued in several states with resulting decisions both providing for and against coverage.

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- b. Those states which do allow coverage for punitive damages do so by an interpretation of the language of the insuring agreement of the policy, which usually agrees "to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages. . " because of the hazards insured against. This language would seem broad enough on its face to include all forms of damages for which the insured shall become legally obligated to pay, whether compensatory or punitive.
- c. In 1962 the landmark decision in Northwestern National Casualty Insurance Co. ve. NcNutly was handed down by the Fifth Circuit Court of Appeals, applying Virginia and Florida law. McNutly holds that there are very strong public policy reasons for not allowing socially irresponsible automobile drivers to escape the element of personal puntaheent in punitive damages when they are guilty of reckless slaughter on the highway. Such a driver should not be able to shift the burden of liability for punitive damages to an insurance company. The court supplessized that by punitive damages it was referring to damages awarded in order to punish the defendant for irresponsible conduct and to deter similar misconduct.
- d. The California Insurance Code provides that an insurar is not liable for damages resulting from a willful act of its insured.
- e. Defore making a final decision on coverage for punitive damages the most recent case law should be researched. Recent legislation, if any, in this area should also be reviewed.
- f. It is the responsibility of the claim head to research the law involving coverage for punitive damages for his specific jurisdiction, and to dissuminate the results of this research to all technical people.
- g. To keep abreast of new developments in the law, the material reference to in paragraph 21 must be periodically updated.
  - for Position on Coverage for Punitive Damages
- a. Our payment or non-payment of claims for punitive damages is related to the law of the specific jurisdiction in which an action for punitive damages is commenced.
- b. Our policy is to protect our insured's interest for claims for punitive damages provided.
  - (1) No statute or court decision has determined coverage to be unlawful or against public policy. In such jurisdictions, it is our general policy not to initiate actions for Declaratory Judgment to clarify the law.

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- (2) They are swarded in connection with an occurrence otherwise covered by the policy.
- (3) There is no policy exclusion for punitive damages.
- c. It is no longer necessary to reserve our rights in jurisdictions where the law is unsettled. It should be recognized that some states may permit coverage for punitive damages based on vicarious liability whereas a direct liability may not be covered.
- d. Where the policy is written in a jurisdiction which allows coverage for punitive damages but the accident occurs in a jurisdiction which does not allow such coverage, it is suggested that the lex loci rule be followed, i.e. the law of the place of occurrence would prevail.
- e. The situation described in paragraph 3d above and any other unusual situations involving coverage for punitive damages should be brought to the attention of the Home Office.

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