

Doctor Knows Best: Medical and Legal Perspectives on PTSD

The medical community recognizes Post-Traumatic Stress Disorder (PTSD) as a physical disease as well as a psychological disorder that changes brain structure and function. Symptoms of PTSD are well-documented and include



By
Gary Newland

emotional symptoms such as irritability and emotional numbness as well as physical symptoms such as nausea, weight loss, and chest pains. On the other hand, the judicial system does not generally

recognize PTSD as a physical disease. Courts in fact look to the nature of the injured person's symptoms (i.e., emotional or physical).

The question of whether PTSD is a physical injury or emotional injury or both often comes up in lawsuits involving the Warsaw Convention. The Warsaw Convention¹ is an international treaty which sets out relationships and liability for all international airline travel.² Under the Warsaw Convention, the carrier is liable for the death, wounding, or any other "bodily injury" suffered by a passenger while onboard an aircraft.³

The question of whether PTSD is a physical injury or emotional injury or both also arises when the injured seek compensation under their own Uninsured Motorist/Under Insured Motorist (UM/UIM) provisions of their automobile insurance.

UM/UIM commonly provides coverage for "bodily injury" only arising out of an automobile accident caused by someone without insurance or with insufficient insurance.

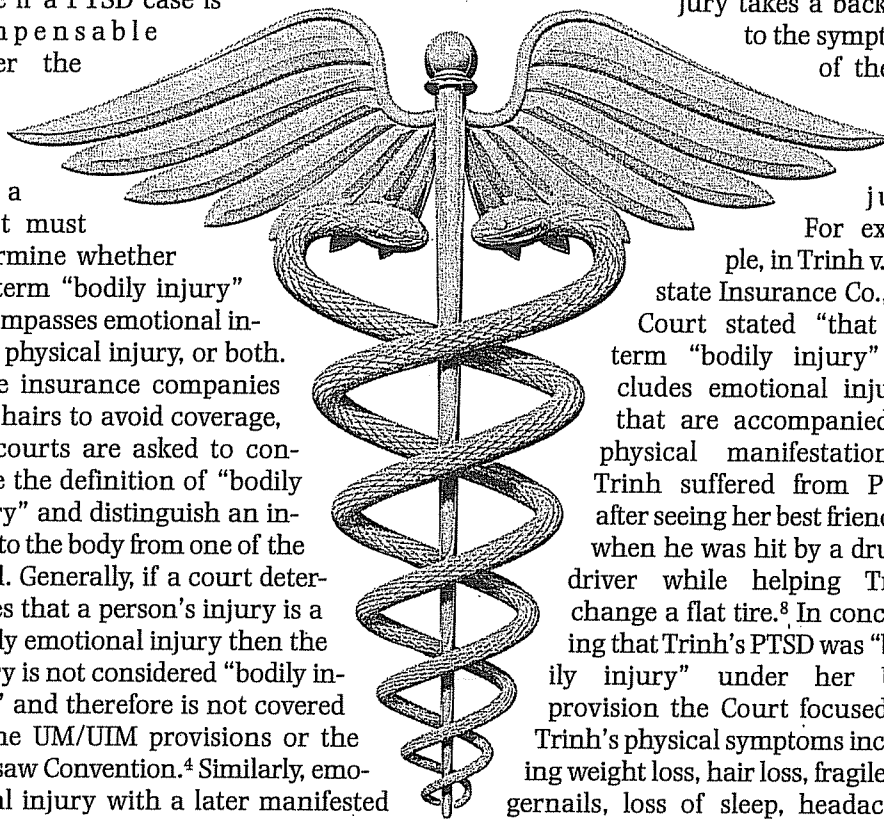
With respect to the Warsaw Convention and UM/UIM claims, the ultimate issue is whether coverage exists to compensate the injured party. To determine if a PTSD case is compensable under the

law, a court must determine whether the term "bodily injury" encompasses emotional injury, physical injury, or both. Since insurance companies split hairs to avoid coverage, the courts are asked to construe the definition of "bodily injury" and distinguish an injury to the body from one of the mind. Generally, if a court determines that a person's injury is a purely emotional injury then the injury is not considered "bodily injury" and therefore is not covered by the UM/UIM provisions or the Warsaw Convention.⁴ Similarly, emotional injury with a later manifested physical injury may not be considered "bodily injury."⁵ Emotional injury accompanied by physical injury, however, can be a "bodily injury" and the injured person may be compensated for both the emotional and physical aspects of the injury.⁶

Please keep in mind for purposes of this article we are analyzing the law as it ap-

plies only under UM/UIM of many auto policies and Warsaw Convention. The application and interpretation of the law can be different as it is applied under the Worker's Compensation Act, personal injury, and medical malpractice.

Because of courts' focus on separating emotional injury from physical injury, the medical diagnosis of the injury takes a backseat to the symptoms of the in-



jury. For example, in *Trinh v. Allstate Insurance Co.*, the Court stated "that the term 'bodily injury' includes emotional injuries that are accompanied by physical manifestations."⁷ *Trinh* suffered from PTSD after seeing her best friend die when he was hit by a drunk-driver while helping *Trinh* change a flat tire.⁸ In concluding that *Trinh's* PTSD was "bodily injury" under her UIM provision the Court focused on *Trinh's* physical symptoms including weight loss, hair loss, fragile fingernails, loss of sleep, headaches, stomach pains, and muscle aches.⁹

A few courts have acknowledged that PTSD itself can be a physical injury based on neurological changes associated with the disease.¹⁰ The District Court for the Eastern District of Arkansas has affirmatively stated that in light of the evidence at trial and expert testimony, "PTSD is a

¹ Convention for the Unification of Certain Rules Relating to International Carriage by Air, Oct. 12, 1929 ("Warsaw Convention").

² *Id.* at art. 1.

³ *Id.* at art. 17.

⁴ *E.g.*, *Dailey v. Allstate Ins. Co.*, 135 Wash.2d 777, 786 (1998).

⁵ *E.g.*, *In re Air Crash At Little Rock, Arkansas*, On June 1, 1999, 291 F.3d 503, 512 (8th Cir. 2002).

⁶ *E.g.*, *Kufalk v. Hart*, 636 F.Supp. 309, 311-12 (N.D. Ill. 1986).

⁷ *Trinh v. Allstate Ins. Co.*, 109 Wash. App. 927, 936 (2002).

⁸ *Id.* at 928.

⁹ *Id.* at 936.

¹⁰ *E.g.*, *Ligeti v. British Airways*, No. 00-2936, 2001 WL 1356238, at *5 (S.D.N.Y. Nov. 5, 2001).

biological/physical as well as a psychological injury.”¹¹ Unfortunately, the Arkansas District Court was reversed on that point by the Court of Appeals for the Eighth Circuit.¹² This overruled district court case is the closest the legal profession has come to recognizing PTSD as a physical disease.

As we know, the law is continually evolving and at times appears archaic. The

law’s inability to reflect the current reality of medical and psychological diagnosis and treatment is perhaps no more evident than when it comes to PTSD and other psychological injuries where there may be no physical trauma evident.

Gary A. Newland, Partner; Newland, Newland & Newland, 121 S. Wilke Rd #101, Arlington Hts., IL 60005; Other offices:

Libertyville, Chicago, Crystal Lake; 847/797-8000. Gary is an Illinois Trial Lawyer dedicated to protecting the rights of those with psychological as well as physical injuries.

Special thanks to Jonathan Pope, Law Clerk; Newland, Newland & Newland, 121 S. Wilke Rd #101, Arlington Hts., IL 60005.

¹¹ In re Air Crash At Little Rock, Arkansas, On June 1, 1999, 118 F. Supp. 2d 916, 925 (E.D. Ark. 2000).

¹² In re Air Crash At Little Rock, Arkansas, On June 1, 1999, 291 F.3d 503, 511–12 (8th Cir. 2002).

Feel Confident that your Public (Legal) Notices are publishing with



SUN-TIMES MEDIA

Serving Counties of

Cook • DeKalb • Du Page • Grundy • Kane • Kendall • Lake • McHenry • Will

John G. Bieschke • Account Manager, Public (Legal) Notices

2383 N. Delany Road | Waukegan, IL 60087
 Phone: 847.599.6933 • Fax: 847.599.6901
 jbieschke@pioneerlocal.com

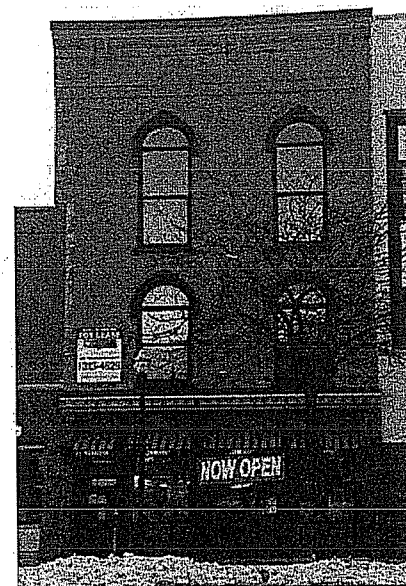


Market Down? How about One Year’s Free Rent?

Newly Built out Space! All Quality Finishes, Private Offices, Reception area, and much more!

11 N. Genesee St., Waukegan, IL
 500 Feet From the
 County Building!

It’s True.... We’ll offer one year’s free rent to a qualified tenant! We’re looking for an aggressive new firm, or an established growing enterprise that needs quality space, and is looking long term!



Call 847-625-1900
Ask for Michael L.