

## Do You See Dead People?

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Some of the most unnerving claims an adjuster can experience are those concerning dead bodies, and the editors at Fire, Casualty, & Surety have recently had many questions regarding the deceased and what to do with them. Particularly, is there coverage under the homeowner's policy for cleanup for both the dwelling and personal property? Are dead bodies pollutants? And what about self-inflicted situations? Are they excluded as intentional acts?

Let's start with the pollution exclusion and coverage for the dwelling. At first glance, the exclusion seems fairly straightforward. It reads, "The discharge, dispersal, seepage, migration, release, or escape of pollutants, unless such action is caused by a peril insured against under Coverage C, is excluded." The policy then defines "pollutant" as any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. Waste is further defined as materials to be recycled or reclaimed.

But does this definition apply to a dead body and bodily fluids? The policy wording specifies chemicals, chemical by-products, or the result of some manufacturing operation. Dead bodies aren't manufactured, nor are they chemical byproducts.

Let's look at the wording again. The policy definition begins by stating that pollution can be a solid, liquid, or gas, which is all encompassing. The next few words, however, are important as they pertain directly to the solids, liquids, or gases: "...or thermal irritant or contaminant...." An irritant is something that inflames the skin on contact. While bodily fluids in a house may be unnerving, they cannot be classified as irritants because they do not create inflammation when they come into contact with the skin. A contaminant is a little different, though. According to Merriam Webster Online, to contaminate is to soil, stain, corrupt, or infect by contact or association; to make inferior or impure by admixture.

Bodily fluids certainly could soil a floor or carpet, but would it make it inferior by admixture? The policy gives examples of pollutants, listing smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. All of these are byproducts of manufacturing processes. The argument can be made that smoke and soot are the result of a natural process -- the burning of combustible objects. In relation to the pollution exclusion, they need to be viewed in context. The context of the pollution exclusion involves substances created by a manufacturing process. A Google search for pollution definitions returns much the same type of interpretation:

- Undesirable state of the natural environment by contamination with harmful substances as a result of human activities.
- The release of harmful environmental substances resulting from human activity.

- Impurities and waste in the environment.
- A harmful change in the natural environment caused by human activities (oil spills, exhaust emissions, overuse of pesticides).

The remains of a body from a self-inflicted injury or a decomposed body that is discovered days or weeks after death does not fit any of these pollution definitions. If the policy intent had been to exclude biological emanations, language to that effect easily could have been added. Therefore, a dead body and its fluids are not pollutants. Granted, with growing concern about pandemic flu and other viruses policies may be changed in the future, but for now, the policy language does not exclude human remains as pollutants. So there is coverage for the dwelling.

But what about the personal property? That coverage is on a named-perils basis, and death or suicide is not a named peril. However, there are named perils that fit with deliberate or accidental causes of death. An insured deliberately or accidentally shoots himself. "Shooting" is not a named peril, but "explosion" is. A bullet being shot can be described in terms of an explosion, thus providing the explosion cause-of-loss for personal property.

But what about other causes of death? An overdose of pills or the slashing of wrists are not named perils, so while cleanup of the dwelling would be covered, cleanup of the personal property would not. However, personal property is covered for accidental discharge or overflow from a plumbing device and damage from an artificially generated electrical current. If an insured drowns in the tub and the water overflows, there is coverage for damage to personal property. Likewise, if the insured is electrocuted while sticking a fork in a toaster, any damage to property caused by the artificially generated current of the toaster coursing through the insured and damaging property would be covered.

That brings us to the intentional loss exclusion. Any loss arising out of any act an insured commits with the intent to cause a loss is excluded. The operative wording here is "intent to cause a loss." A suicidal insured certainly intends to commit bodily harm, but does he also intend to create a loss to the personal property? The answer is usually "no." There are plenty of ways to cause a loss to property without terminating your own life; that is quite an extreme way to cause property damage. The intent of a suicidal insured is to put an end to his life. Therefore, even though the suicide is a deliberate and intentional act, it is not an intentional act in terms of creating a loss to property. Therefore, the intentional loss exclusion does not apply.

As discussed, dead bodies and their effluences are not considered pollutants, so coverage exists for the cleanup and removal of remains from a dwelling. Regarding property coverage that is on a named-peril basis, the actual cause of loss is the deciding element for coverage.

So if you see dead people, remember that in many instances, there is insurance coverage for their cleanup.

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