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Client Alert

PSRB Obtains Coverage For Two Brown Recluse Spider Infestations

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Imagine finding out that the small brown spiders you've noticed crawling on your walls are highly venomous brown recluse spiders. To make matters worse, imagine learning that these spiders, due to their reclusive nature and their ability to exist for long periods without nourishment, are notoriously difficult to eradicate. Then contemplate your homeowners' insurer's denial of your coverage claim, even for alternative living expenses while you scramble for options to keep your family safe, based on an exclusion for harm caused by "insects." As your fifth grader undoubtedly can confirm, spiders are not insects, they are arachnids.



Two PSRB clients, one in Anderson, Indiana and one in Chicago, Illinois found themselves in this situation. In both cases, hundreds of spiders were caught on glue traps placed in the homes. The brown recluse spiders, which hunt for prey rather than trapping it in webs, were present on walls and other surfaces at night and even during the day. Such severe brown recluse spider infestations are rare, but they happen, even in the Midwest. The bite of a brown recluse spider can cause significant medical complications because the venom of these spiders contains a substance that can cause tissue loss. Small children unable or unwilling to take basic precautions such as avoiding the spiders or shaking out shoes and clothing before putting them on, and persons who are medically vulnerable for various reasons, are particularly at risk.

PSRB has successfully recovered hundreds of thousands of dollars from our clients' homeowners' insurers for these severe infestations by the notorious brown recluse spider. The coverage proceeds paid by these insurers compensated our clients for their alternative living costs, spider eradication costs and other damages.

Insurance companies often rely on stock defenses for such claims—defenses we have defeated. The most common defense insurers assert is the “insect exclusion.” Insurers deny spider infestation claims on the basis that spiders are insects and that their policies do not cover losses caused by insects. However, spiders are not insects. Spiders have eight legs and two body parts, while insects have six legs and three body parts. Children’s books, dictionaries, encyclopedias, and scientific journals establish this fact. Ambiguous terms in insurance policies are construed in favor of policyholders and coverage under most states’ law, including Indiana law. But in the case of using an “insect” exclusion to deny a loss arising from a spider infestation, this coverage enhancing rule is not even required.

Another common defense policyholders face is proving a “direct physical loss” due to the infestation. Insurers claim that under this policy term there must be some physical damage to the structure. Brown recluse spiders do not damage building components in the way that termites, for example, do. However, a physical loss is not the same as damage. Policies often only require a loss of the use of the home. Courts across the country have found that a loss of the use of one’s property constitutes a “direct physical loss.”

We have had success in and out of court. In *Cook v. Allstate Insurance Company*, Cause No. 48D02-0611-PL-01156 (Madison Superior Court, Indiana, Nov. 30, 2007) we won these issues, as well as others on summary judgment. The Court found that coverage was available under the homeowners’ policy at issue but reserved the issue of how much damages were owed under the policy for trial. The *Cook* case also involved a bad faith claim arising from, among other things, Allstate’s failure to conduct an adequate investigation of the claim, its unfounded assertion that the spider infestation was the policyholder’s fault and its reliance on a position (that spiders are not insects) that its expert’s publication refuted. We were able to resolve coverage for the Illinois infestation without filing coverage litigation.

If you need more information or have a similar circumstance in which you need assistance, please do not hesitate to contact Greg Gotwald and Donna Marron of PSRB. We represented the two families described above and assisted these families in securing the coverage proceeds they needed to get their lives back on track.