

# Court Rejects Argument that EPL Policy Unambiguously Precludes Coverage for Bodily Injury

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The United States District Court for the Western District of Tennessee, applying Tennessee law, has rejected an insurer's argument that the bodily injury exclusion in a hospital's EPL policy unambiguously precludes coverage for bodily injury to a patient resulting from malpractice by an allegedly improperly credentialed doctor. *Methodist Healthcare v. Am. Int'l Specialty Line Ins. Co.*, 2004 WL 632814 (W.D. Tenn. Mar. 30, 2004).

The insurer issued an EPL policy to a medical services corporation. The policy contained a bodily injury exclusion, which provided that the insurer "shall not be liable to make any payment for Loss in connection with a Claim made against the Insured...for bodily injury, sickness, disease [or] death of any person." The policy also excluded claims arising out of the insured's "performance...or failure to perform...medical or other professional services." An exception to that exclusion stated that the exclusion would not "operate to limit coverage for...matters arising out of peer review or credentialing processes." The hospital also had professional liability coverage with a second insurer, and the EPL insurer's policy contained an "other insurance" clause stating that "[t]his policy shall be specifically excess of any other policy pursuant to which any other insurer has a duty to defend a Claim."

In August 2000, the mother of a child born at one of the hospital's facilities filed a suit in Tennessee state court against the insured hospital and a delivery room doctor, alleging that her daughter suffered severe injuries due to the doctor's malpractice. The hospital's professional liability insurer defended the hospital, and the court eventually dismissed the suit against the hospital and granted a default judgment against the doctor. In October 2001, the mother filed a second suit against the hospital, alleging that the hospital was negligent in credentialing the delivery doctor and allowing him to practice at its facilities. The professional liability insurer defended the hospital in that suit without a reservation of rights. The EPL insurer denied coverage for this second suit based on the policy's exclusion for claims involving bodily injury. Coverage litigation ensued, and the EPL insurer moved for summary judgment based on the unambiguous language in the policy precluding coverage for bodily injury, as well as the other insurance provision.

The court disagreed with the insurer and held that the bodily injury exclusion was susceptible to two reasonable interpretations, thereby rendering it ambiguous. The court acknowledged that the bodily injury exclusion, standing alone, appeared to defeat coverage since the mother's suit arose out of alleged bodily injury to her newborn daughter. The court reasoned, however, that the exception to the exclusion for providing medical services expressly included all claims for defects in credentialing medical professionals "regardless of whether they relate to bodily injury or not." The court therefore found that a reasonable interpretation of the policy would be that it afforded coverage for the suit.

The court also rejected the EPL insurer's argument that coverage was unavailable in light of the policy's "other insurance" provision and the fact that the professional liability carrier was defending the action. The court stated in conclusory fashion that this argument was "internally inconsistent" with an endorsement providing that the insurer had "both the right and duty to defend...any Claim against any Insured alleging a Wrongful Act."

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