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ALERT

Despite Insurer's Breach of Duty to Defend, State Insurance Guaranty Association Can Deny Coverage Under Unambiguous Professional Services Exclusion

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Applying Connecticut law, the Appellate Court of Connecticut has held that an exclusion for injury arising solely out of the rendering of professional services by individual physicians unambiguously barred coverage for a medical malpractice action. *Conn. Ins. Guar. Assoc. v. Drown*, 37 A.3d 820 (Conn. App. Ct. 2012). The court also held that a state insurance guaranty association, which became statutorily liable for the claim by virtue of insurer insolvency, was not estopped from denying coverage based on the insolvent insurer's breach of the duty to defend.

In May 2000, claimants filed a medical malpractice action against a medical association and two physicians. The medical association reported the claim under its professional liability policy, which covered professional services by persons acting as board or committee members, and the insurer provided a defense without reserving rights. Thereafter, in 2006, the insurer denied coverage under the policy's professional services exclusion, and defense counsel failed to participate in a pretrial mediation, resulting in a default judgment against the medical association. Ultimately, the medical association executed a settlement agreement with the claimants in the amount of the $2 million policy limit. Then, in 2008, a bankruptcy court declared the insurer insolvent and ordered its liquidation. The Connecticut Insurance Guaranty Association (the "guaranty association") therefore became statutorily liable for claims covered under the medical association's policy and filed suit, seeking a judicial declaration of the rights and obligations of the parties with

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respect to the underlying action.

The court held that the professional services exclusion of the policy unambiguously barred coverage for the medical malpractice action. The exclusion provided that the policy did not cover "injury arising solely out of acts or omissions in the rendering or failure to render professional services by individual physicians or nurse anesthetists, or by any paramedical for whom a premium charge is shown on the declarations page." The court held that the use of a comma, the repeated use of the disjunctive "or," and the repeated use of "by," as well as the last antecedent rule of contract interpretation, grammatically separated the exclusion such that the phrase "for whom a premium charge is shown on the declarations page" only modified the "paramedical" category. The court also held that the initial coverage grant for "injury arising out of the rendering of or failure to render . . . professional services by any person for whose acts or omissions the corporation/partnership insured is legally responsible" was broader than the exclusion, and thus that coverage was not illusory. The court explained that the exclusion would not apply if, for example, the injury arose partially out of the acts or omissions of a physician, and partially out of the acts or omissions of a non-scheduled paramedical.

In addition, the court held that the guaranty association was not estopped from denying coverage due to the insolvent insurer's breach of the duty to defend. The court explained that the plain language and purpose of the guaranty act was to provide a limited form of protection to policyholders and claimants in the event of insurer insolvency for claims arising out of the policy. The expansion of this liability, according to the court, would strain the statute beyond its intended purpose of benefiting consumers by increasing premiums paid by policyholders.

The opinion is available here.