wiley

ALERT

Negligence Lawsuits Following Nursing Home Fire Do Not Arise from "Related Medical Incidents," Per-Incident Limit Applies Separately to Each Lawsuit

February 5, 2014

The Supreme Court of Connecticut has held that the alleged acts, errors, or omissions underlying lawsuits brought by the representatives of the victims of a nursing home fire do not constitute "related medical incidents" such that a single per-medical-incident limit of liability would apply. The court also ruled that coverage was limited to the $1 million aggregate limit of the operative policy's professional liability coverage part, rather than the $10 million aggregate policy limit cited by the insured. *Lexington Ins. Co. v. Lexington Healthcare Grp., Inc.*, 2014 WL 223664 (Conn. Jan. 28, 2014).

In 2003, several residents of a nursing home died or were injured when another resident set the nursing home on fire. Representatives of the victims subsequently filed 13 lawsuits naming as defendants the nursing home, the owner and lessor of the property, the lessee of the property, and the operator of the nursing home. Some of the actions related to the decision to admit and the supervision of the patient who started the fire; others concerned "general safety and emergency failures." Following a dispute over the amount of coverage available under the professional liability coverage part of a policy issued to the lessee of the property, the insurer filed a declaratory judgment action. Ruling on cross-motions for summary judgment, the trial court held that "the acts, errors or omissions underlying each [patient's] injuries or death constituted separate medical incidents and did not collectively comprise related medical incidents" for the purposes of applying the policy's per-medical-

Practice Areas

D&O and Financial Institution Liability

E&O for Lawyers, Accountants and Other Professionals

Insurance

Professional Liability Defense

incident limit of liability. The trial court also held that the policy's $10 million "aggregate policy limit," and not its $1 million "aggregate limit" for professional liability claims, applied.

On appeal, the Connecticut Supreme Court affirmed the trial court's ruling regarding the application of the per-incident limit of liability to related medical incidents, holding that the acts, errors, and omissions underlying the claims "are not 'related' within the meaning of the policy." The court rejected the insurer's contention that the term "related," although undefined in the policy, was unambiguous in light of other courts' rulings: "one court's determination that the term related was unambiguous, in the specific context of the case that was before it, is not dispositive of whether the term is clear in the context of a wholly different matter." The court noted that while other courts have interpreted the term to "cover[] a broad range of connections," they also have suggested that "at some point a line must be drawn to prevent aggregation of events whose connections to each other are simply too weak." Thus, according to the court, the term "may be ambiguous if the facts fall on the margins of a broad reading."

As to the present case, the court was "not convinced that the various acts, errors and omissions alleged by each [underlying plaintiff] . . . fit comfortably within the realm of connections contemplated by the parties to the policy when they agreed to aggregated related medical incidents." In particular, the court noted that "[a]lthough some allegations pertain to negligent supervision . . . , others aver a wide variety of different safety and response failures" and that "the particular array of negligent shortcomings that ultimately led to [each patient's] injury or death necessarily varied." Further, the court stated that "to the extent similar acts, errors or omissions appear across multiple complaints, they nevertheless are alleged to have caused multiple, distinct loses to different individuals." Accordingly, the court concluded that the various actions at issue did not arise from related medical incidents.

The Connecticut Supreme Court then considered the potential applicable limits and concluded that only $1 million of professional liability coverage was available for all of the individual claims. Overruling the trial court, the supreme court held that the endorsement to the policy providing for a $10 million "aggregate policy limit" did not alter the $1 million "aggregate limit" of the policy's professional liability coverage part. Noting that, "[t]ypically, when different terms are employed within the same writing, different meanings are intended," the court refused to conflate "aggregate limit" and "aggregate policy limit" and read the endorsement to provide that $10 million was "the maximum amount of insurance available under the entire policy when claims for both general liability and professional liability coverage, at all insured locations, are combined."

Lastly, the court held that the insurer was not required to "drop down" and provide coverage within the limit of the policy's self-insured retention amount due to the insolvency of the insured.

The opinion can be found here.