

No Duty to Defend Absent a Claim for Injury Under Policy

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In an unreported decision, a New Jersey appellate court has dismissed two insureds' complaint for declaratory judgment, holding that a professional liability insurer was not required to defend the insureds, a doctor and the corporation for which she practiced from claims brought by the state board of medical examiners and two automobile insurance companies. *Cherry Hill Pain & Rehab. Inst., LLC v. Princeton Ins. Co.*, 2006 WL 630490 (N.J. Super. Ct. App. Div. Mar. 15, 2006).

This coverage dispute involved an administrative proceeding brought against the insured physician alleging false and deceptive billing practices and two suits filed by patients' insurers against both the physician and the corporation for which she worked, also alleging the submission of false and misleading medical bills. The insurer denied coverage and refused to provide a defense for the administrative proceeding and lawsuits.

The professional liability policy at issue required the insurer to "pay on behalf of [the insureds] 'damages' and 'defense expense' for 'claims' for 'injury' . . . caused by the rendering or failure to render 'professional services.'" The policy defined "claim" as "any demand received by [the insureds] seeking 'damages'" and defined "damages" as "the amount of money . . . for which [the insureds] may be held legally liable for injury," defining "injury" as "sickness, disease, or death." The policy carved out from the definition of "damages" any "fines, penalties, . . . or the restitution of fees, profits, or charges for services rendered."

The court concluded that the insurer had no duty to defend the insureds because neither the administrative agency nor the patients' insurers had sought damages as a result of "sickness, disease, or death," and, thus, "none of the parties in the suits for which [the insureds] demand a defense present a 'claim' for 'injury' as those terms are defined in the policy." Moreover, the money sought by the administrative agency and the patients' insurers fell directly into the amounts carved out from the "damages" definition. Therefore, because it was clear that the insurer would not be required to indemnify the insureds even if the suits against them were successful, it was not obligated to provide a defense for those claims.

The court also rejected the insureds' reliance on a policy exclusion that provided that although the policy would not provide coverage for "criminal, fraudulent, or intentional acts," the insurer would provide a defense to the insured "until it is determined through the appropriate legal process that an 'insured' . . . has committed such act." While the insureds argued they were thus entitled to a defense until such determination, the court

emphasized that "this exclusion only applies to actions which result in the type of injury for which [the insurer] must indemnify [the insured]," and, as the court had noted previously, this was not such a case.