

# Underlying Claimants Are Not Entitled to Separate Per Person Limits Arising from one Occurrence

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An Ohio appellate court has held that (1) the spouse and child of a patient injured as a result of medical malpractice are not entitled to separate per-person limits of coverage under a professional liability policy for their loss of consortium claims, and (2) the limits applicable to the patient's bodily injury claim also applied to any wrongful death claim even though the injury occurred during one policy period and death during a subsequent policy period. *Thomson v. OHIC Ins. Co.*, Nos. CA 2002-03-055, CA 2002-03-064, 2002 WL 31682204 (Ohio App. Ct. Dec. 2, 2002).

The insurer provided yearly, claims-made professional liability policies to a physician and his medical corporation. The policies provided coverage of \$1 million for "Each Person," up to a total limit of \$3 million. Under the terms of the policy "[a]ny derivative 'claims' share in the Each Person Limit." The policy further provided that "[i]f a 'claim' is first reported to us during the policy period...that 'claim' will be considered a single 'claim' under this policy, regardless of whether the 'professional services' were provided during more than one policy period and the 'claim' will be subject exclusively to the Limits of Coverage of the current policy."

The physician treated a patient who then suffered a massive stroke during one policy period and died during a subsequent policy period. The patient brought a medical malpractice action against the physician, and the patient's wife and son brought loss-of-consortium claims against the physician. Coverage litigation ensued over the amount of coverage available.

The patient's wife and son argued that they were entitled to separate per-person limits for their loss of consortium claims. The appellate court rejected that argument, holding that, under the policy's terms, a single "Each Person Limit" applied to all of the claims. The wife and son contended that this provision of the policy was unenforceable pursuant to prior decisions by the Ohio Supreme Court. However, the appellate court pointed out that those prior decisions had been overturned by the Ohio legislature, which had enacted a law

providing that "[a]ny liability policy of insurance including, but not limited to, automobile liability or motor vehicle liability insurance" may include an "Each Person Limit" and that "[a]ny such policy limit shall be enforceable." Ohio Revised Code, R.C. 3937.44. The court rejected the argument that the statute applied only to automobile accidents, relying on the "including, but not limited to," language in the statute. The court also rejected the argument that "accident" does not include medical malpractice, reasoning that "accident" in a liability insurance policy refers to "unintended and unexpected happenings," which was what occurred in this case.

The court also rejected the family's contention that the policy provided new limits for the death of the patient, which occurred in a subsequent policy period to the period in which the patient and his family brought their claims for injury and loss of consortium. The court reasoned that the policy language clearly provided that all of the claims would be treated as a single claim subject to a single limit, and that there was not "a convincing rationale for ignoring the plain, unambiguous terms of the policy."

For more information, please contact one of WRF's Professional Liability Attorneys at 202.719.7130.