

# Proceeds of Adelphia's D&O Policies Are Not Property of the Bankruptcy Estate; Rescission Action Not Subject to Automatic Stay

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An Illinois intermediate appellate court, applying Illinois law, has held that an automobile exclusion in a policy providing professional liability coverage to a day care center did not bar coverage for a claim arising out of the death of an infant who was left in a van because the death resulted from the day care center's nonvehicular conduct. *Mount Vernon Fire Ins. Co. v. Heaven's Little Hands Day Care*, 2003 WL 21998618 (Ill. App. Ct. Aug. 22, 2003).

The policyholder, a day care center, was sued for the wrongful death of an infant after an employee allegedly left the infant in a van when he was unloading the other children. The policyholder tendered the claim to its insurer under the professional liability coverage part of its general liability policy, which provided coverage for "all sums which [the policyholder] shall become legally obligated to pay as damages because of liability arising out of any negligent act, error or omission in rendering or failure to render professional services." The coverage part contained an exclusion for "liability arising out of the ownership, maintenance, operation, use, loading or unloading of any vehicle, watercraft or aircraft." The insurer filed a declaratory judgment seeking a determination that it had no duty to defend or indemnify the policyholder based on the vehicle exclusion.

The appellate court held that the vehicle exclusion did not bar coverage for the day care center's claim. The court reasoned that the van was the mere "situs" of the accident and that no causal relationship existed between the infant's death and the use, loading or unloading of the van. In so ruling, the court stated that "leaving an infant in an automobile used to transport him to a day-care facility is not a normal or reasonable consequence of the use of the vehicle," and therefore the infant's death "resulted from nonvehicular conduct on the part of [the policyholders] and its employees."

For more information, please contact us at 202.719.7130.