

Overbilling Does Not Constitute “Printing Services” under Printers E&O Policy

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A federal district court in Missouri, applying Missouri law, has held that allegations that a printing company, insured under a printers E&O policy, overbilled for services did not involve "printing services." *Jerome Group, Inc. v. Cincinnati Ins. Co.*, No. 4:01CV0479 TCM (E.D. Mo. May 9, 2003).

The insurer issued an E&O printers policy to a printing company. The policy provided coverage for "sums that the insured becomes legally obligated to pay as damages caused by any negligent act, error or omission of the insured or any other person for whose acts the insured is legally liable arising out of the rendering or failing to render 'printing services.'"

The printing company entered into a contract to scan and index medical records for storage on CD-ROMs. Because the company did not have the capability to perform the work in-house, it contracted with a third-party to do the actual work. The party that had purchased the printing services subsequently performed an audit and found that it had been overbilled for the scanning and indexing. After the policyholder and the company that purchased the services entered into a settlement, the policyholder initiated litigation seeking coverage under its E&O policy.

The district court held that coverage was unavailable under the policy. The court noted that it could not find any authority in Missouri or the Eighth Circuit defining the term "professional services," and it adopted the reasoning of the First Circuit in *Medical Records Associates Inc. v. American Empire Surplus Lines Insurance Co.*, 142 F.3d 512, 513 (1st Cir. 1998). In that case, the First Circuit had explained that professional services "embrace[] those activities that distinguish a particular occupation from other occupations evidenced by the need for specialized learning or training and from the ordinary activities of life and business." The district court explained that, even if the scanning and indexing required special expertise, the act of billing for those services did not, and the underlying dispute involved only billing issues. The court reasoned that this point was reinforced by the fact that a third party, rather than the policyholder company, had performed the printing services. Thus, "[t]his billing is an effect of [the third party's] services and is not the printing services themselves."

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