

No Coverage under Physician's Professional Liability Policy for Employees' Sexual Harassment Claims

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The United States Court of Appeals for the Sixth Circuit recently affirmed a lower court's ruling that, under Kentucky law, a physician's professional liability insurance policy does not cover claims brought by his former employees for sexual harassment. *DiBeneditto v. Medical Protective Co.*, No. 9906525, 2001 U.S. App. LEXIS 2497 (6th Cir. Feb. 8, 2001). (Please note that this decision was not recommended for full-text publication. Sixth Circuit Rule 28(g) may limit citation to specific situations.)

A Kentucky physician brought this action against his insurer seeking coverage under a professional liability policy for underlying suits brought against him by two former employees alleging sexual harassment and related causes of action. The applicable policy provided coverage for "any claim for damages . . . based on professional services rendered. . . ." The policy also had a "business enterprise exclusion" that barred coverage for "any liability growing out of the ownership, operation or supervision of the Insured or an employee of the Insured of . . . any business enterprise. . . ." The lower court ruled that the sexual harassment claims were not covered under the policy for two reasons. First, the lower court concluded that the physician's alleged conduct did not constitute "professional services." Second, the lower court determined that the "business enterprise exclusion" barred coverage. The physician appealed.

Upon review, the Sixth Circuit focused on the meaning of "professional services" as used in the policy. The court noted that, under Kentucky law, "the term 'professional services' is properly defined as requiring an exercise of judgment or training." Thus, the court concluded that the physician's conduct at issue did not relate to the rendering of professional services "because it bore no connection to his education and training as a physician." The Sixth Circuit did not reach the issue of whether coverage was barred under the "business enterprise exclusion."