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NEWSLETTER

Connecticut Supreme Court: Losses Caused by Different Sets of Negligent Acts with Common Precipitating Factor Are Not "Related"

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The Connecticut Supreme Court has held that losses suffered by multiple patients of a nursing home were not "related" for purposes of determining the number of applicable limits of liability under a professional liability policy, despite their common origin in a single fire. *Lexington Insurance Co. v. Lexington Healthcare Group, Inc.*, 2013 WL 2482997 (Conn. June 18, 2013). The court also determined that an endorsement to the policy applied a $1 million limit of liability for each insured location—rather than a $10 million limit of liability—and that a $250,000 self-insured retention applied to each loss, but was not subtracted from the $500,000 per-incident limit of liability.

More than a dozen nursing home patients or their heirs instituted litigation for injuries stemming from a fire caused by another patient. Certain of the claims involved the nursing home's decision to admit the patient who caused the fire and thereafter to supervise and treat her properly. Additional claims concerned general safety and emergency failures, such as inadequate staffing, training and fire prevention equipment, while still other claims made specific allegations of negligence, such as staff members' failures to respond properly to the fire by closing particular doors and windows.

The nursing home's professional liability policy afforded coverage subject to a $500,000 limit of liability for each "medical incident" and provided that claims arising from "continuous, related, or repeated medical incidents shall be treated as arising out of one medical incident." The insurer contended that all of the claims by the injured patients or their representatives stemmed from the same root cause—the admission of the patient who started the fire and the alleged failure to supervise her—and therefore should be treated as arising out of one medical incident, leading to coverage litigation.

The court first indicated that the term "related" must be interpreted in context. Because each of the injured parties was differently situated in proximity to the fire, access to an exit and personal health and mobility issues, the particular array of negligent shortcomings that led to his or her injury or death necessarily varied. According to the court, the claims were "as dissimilar as they are alike." Accordingly, the court held that it is "far from clear" that the policy's use of the undefined term "related" was intended to aggregate multiple losses suffered by multiple people "each caused by a unique constellation of negligent acts, errors and

omissions, simply because they shared a common precipitating factor." The court then held that a separate per-medical-incident limit of liability applied to each injured person's claim.

The court also held that the policy contained, by endorsement, an aggregate limit of liability of $10 million, but only a $1 million limit of liability for each insured location. The court determined that the trial court had improperly equated the phrases "aggregate limit" and "aggregate policy limit." The latter, according to the court, clearly referred to the overall limit for the policy, including both general and professional liability coverage at multiple locations. An endorsement imposing an "aggregate policy limit" did not replace separate policy language setting an "aggregate limit" of liability for particular locations.

In addition, the court rejected arguments by individual defendants that the insurer should "drop down" and pay amounts within the $250,000 per-medical-incident retention because the nursing home insured was insolvent. The court found no language to this effect in the policy and refused to imply it. According to the court, the policy clearly provided that the insurer was liable only for damages in excess of its self-insured retentions.

The court reversed, however, the trial court's conclusion that the $250,000 retention was subtracted from the $500,000 limit of liability, leaving the insurer with a total of $250,000 of exposure per medical incident. The policy provided that the limits of liability "will be reduced by the payment of damages and expenses paid within the self insured retention." The court determined that this language was ambiguous and construed it in favor of the insured "so as not to reduce the coverage limits clearly provided in the declarations." Accordingly, the court found that satisfaction of the policy's retention did not reduce the limit of liability.