

Other Decisions of Note

November 2004

Ambiguity in Policy's "Each Person Limit" Construed in Favor of Coverage for Each Claim Brought by Each Plaintiff

A Louisiana court of appeals has affirmed a trial court's determination that the term "injury" in the professional liability coverage part of a combined policy providing both professional and general liability coverage encompassed both physical and mental injuries. *Hardie et al. v. Prof'l. Physical Rehab. Hosp., LLC*, 2004 WL 2181402 (La. Ct. App. Sept. 29, 2004). In so holding, the appellate court rejected the insurer's argument that the undefined term "injury" in the professional liability coverage portion of the policy should be interpreted in the same manner as the general liability coverage portion's defined term "bodily injury." According to the court, the insurer should have used the term "bodily injury" if that were the definition it intended and, since it did not do so, a broader interpretation of the term "injury" was required.

Mississippi Court Applies Exclusion for Wage Claim

Mississippi's high court has held that an exclusion in a school board's professional liability policy for wage claims precluded coverage for a suit by former employees alleging that the school failed to compensate them for overtime worked in contravention of the Fair Labor Standards Act (FLSA) and seeking back wages, statutory penalties and attorneys' fees. *Noxubee County Sch. Dist. v. United Nat'l Ins. Co.*, 2004 WL 2187615 (Miss. Sept. 30, 2004). The policy that the insurer issued to the school board provided coverage for "wrongful acts or wrongful employment acts in the performance of duties on behalf of the [school board]." The policy contained an exclusion providing that the insurer "shall not make any payment relative to, nor defend any suit in connection with any Claims made against an Insured...for back wages, overtime, or future wages (even if designated as liquidated damages); or arising from collective bargaining agreements." The Mississippi high court affirmed the trial court's grant of summary judgment in favor of the insurer, explaining that the exclusion clearly and unambiguously precluded coverage for the employee's suits seeking back overtime pay. Additionally, the court held that the policy excluded coverage for statutory penalties and attorneys fees permitted under the FLSA because such damages were "in connection with" or "relative to" the overtime wage claims.

Ohio High Court Upholds Policy Provision Limiting Derivative Claims to Single Limit of Liability

The Supreme Court of Ohio has upheld a policy provision in a doctor's professional liability policy subjecting derivative claims to the policy's "Each Person" limit of liability, rejecting the claimants' contention that the spouse and child of the injured patient were entitled to separate per-person limits on their loss of consortium

claims. *Thomson v. OHIC Ins. Co.*, 814 N.E.2d. 824 (Ohio 2004). The policy at issue was a professional services liability insurance policy with limits of \$1 million for "Each Person" and \$3 million in the aggregate. The policy also contained a provision that expressly required any derivative claims to share in the \$1 million "Each Person" limit. The court held that the plain language of the policy controlled and the derivative claims collectively were subject to a single \$1 million limit.

Louisiana Court Holds Claims-Made Medical Malpractice Policy Does Not Violate Public Policy

A Louisiana appellate court has held that an insurer may deny coverage under a claims-made medical malpractice policy where the policyholder committed the wrongful act during the policy period, but the claim was made after the policy period had expired. *Burns v. CLD, Inc.*, 2004 WL 2388730 (La. Ct. App. Oct. 27, 2004). In so ruling, the court rejected the policyholder's argument that Louisiana law does not permit an insurer to deny coverage for a claim made within one year of the occurrence of medical malpractice because the limitation conflicted with the applicable statute of limitations. The court rejected that argument, explaining that the Louisiana Supreme Court has held that claims-made policies do not violate public policy and that "insurers may by unambiguous and clear notice provisions limit their liability and impose such reasonable conditions as they wish upon the obligations they assume by their contract."

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