

Insurer Not Obligated to Litigate Coverage Where Policy Soon to Be Exhausted

November 2006

The U.S. District Court for the District of Minnesota has rejected a policyholder's efforts to force an insurer to litigate coverage disputes even though its policy soon would be exhausted. *United Health Group, Inc. v. Lexington Ins. Co.*, 2006 WL 2620620 (D. Minn. Sept. 12, 2006).

The insurer issued a two-year managed care professional liability policy with a \$60 million limit. During that period, the policyholder faced frequent suits, and, even though the insurer denied coverage for at least 35 claims, the insurer paid numerous other claims, leaving no more than \$2.3 million of the policy limits remaining. Although the policyholder and insurer disagreed about the exact amount paid by the insurer, the insurer stipulated that it would pay the remainder of its policy limit for outstanding claims as soon as that amount was determined.

The policyholder, however, contended that the insurer was obligated to litigate coverage for the 35 denied claims even though the policy would soon be exhausted. According to the court, the policyholder sought to compel litigation in the hope that the judicial declarations regarding coverage would force the policyholder's excess insurers to reconsider their coverage denials for the same claims. In support of its argument, the policyholder asserted that the policy provision requiring the insurer to advance defense costs "as incurred" meant: (1) the insurer had to advance costs for all claims, even those that clearly fell outside the scope of coverage (thereby forcing the insurer to seek repayment for all non-covered claims after a judicial determination); (2) the insurer was obligated to advance defense expenses "the moment" they were incurred (meaning, for example, that the policy could not be exhausted by virtue of paying billed defense invoices if there remained unbilled [and thus unpaid] defense expenses that were incurred earlier in time); and (3) even after the policy limits were exhausted, the policyholder could force the insurer to litigate how to attribute the payments to each claim.

The court rejected the policyholder's contentions as "strained (to put it charitably)" and generating "an interpretation that, in the real world, would make it difficult for insurance companies to function." The court also concluded that it would have no jurisdiction over any of the to-be-litigated coverage disputes because they would not present cases or controversies under either the U.S. Constitution or the Declaratory Judgment Act. Accordingly, the court denied the policyholder's summary judgment motion, stayed all proceedings unrelated to determining the remaining policy proceeds and indicated that it would dismiss all remaining

claims as moot once the insurer's remaining obligation under the policy was satisfied.