

ALERT

District Court: Lodestar-Multiplied Attorney Fee Award Not "Multiplied Damages" Because Exception Clause Ambiguous

May 14, 2012

The United States District Court for the Northern District of Illinois has held that the portion of an attorney fee award calculated by multiplying a base lodestar amount is not precluded from coverage by a carve out for "multiplied damages" in definition of "loss" because the provision is ambiguous as applied. *Carolina Cas. Ins. Co. v. Merge Healthcare Inc.*, 2012 WL 1532266 (N.D. Ill. Apr. 30, 2012).

The insurer filed a declaratory judgment action seeking a determination as to the availability of coverage for the named insured with respect to an award of enhanced attorneys' fees in an underlying shareholders action. The court in the underlying shareholders action calculated the fee award by determining a lodestar amount based on hours worked times a reasonable rate. The court then multiplied that amount by five to account for the circumstances of the case, increasing the fee award from \$630,000 to \$3.15 million.

In the coverage litigation, the insurer sought to limit its obligation to the base \$630,000 fee award, arguing that the multiplied portion of the attorney fee calculation was not covered loss. The policy defined loss as "damages, judgments, settlements and Costs of Defense; however, Loss shall not include . . . the multiplied portion of multiplied damages."

According to the court, the carve out was ambiguous because it "could refer simply to the double, treble, or other multiplied damages certain statutes apply to actual damages determined by the fact

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finder." The court then examined extrinsic evidence introduced by the policyholder, including expert testimony and a letter by the insurer in which it acknowledged coverage for fees "regardless of whether or not the fees are calculated as a percentage of the bump-up amount." The court noted that the insurer presented no applicable legal authority, nor any other evidence supporting its interpretation of the provision. The court thus granted summary judgment to the policyholder on its request for a declaration as to coverage. However, the court rejected the policyholder's claim for bad faith damages, holding that the insurer's position was not so unreasonable as to amount to bad faith.

The opinion is available [here](#).