

ALERT

Billing Activities Are Not Professional Services

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An Oregon federal court has held that allegations of wrongful billing practices do not constitute wrongful acts under a business liability policy because billing activities are not professional services. *Bennett v. U.S. Liab. Ins. Grp.*, 2014 WL 1660654 (D. Or. Apr. 25, 2014).

The policyholder was sued for inappropriate billing and fee collection practices and sought coverage under a business liability policy. The insurer denied coverage on the basis that the complaint did not allege conduct within the policy's definition of "Wrongful Act" because the lawsuit did not concern the rendering of "Professional Services," which are defined as "services rendered to others for a fee solely in the conduct of the Insured's profession" The policy also limited coverage "to claims arising 'solely in the performance of Professional Services as a Training Specialist/Seminar Conductor for others for a fee.'"

The court agreed with the insurer, finding that neither the policy's definition of "Professional Services" nor its specific definition of the policyholder's professional services as "Training Specialist/Seminar Conductor for others for a fee . . . encompass[ed] the inappropriate billing actions alleged in [the] underlying lawsuit." Specifically, the court rejected the policyholder's argument that because the policy's definition of her professional services expressly included the phrase "for a fee" that the parties intended the policy to cover billing and fee disputes. Instead, it determined that "for a fee" added nothing to the definition of "Professional Service" but "merely modifie[d] the type of 'Training Specialist/Seminar Conductor' services that are covered by the policy." The court noted that persuasive authority supported "its conclusion that 'professional services' do not include billing actions." The court also rejected the policyholder's argument that the policy's incorporation of exclusions relating to billing disputes

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implied coverage for billing activities because the lawsuit has to trigger the policy's insuring agreement before the exclusions have any application.

The opinion is available [here](#).