Aggregate Coverage Argument Falls Apart with Policy Language

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by Don R. Sampen

In a case of first impression, the 1st District Appellate Court recently held that an aggregate limit for a products-completed operations hazard in a municipality's public liability policy, did not apply to a claim against the municipality for failure to render appropriate emergency professional medical services.

The insured, the city of Park Ridge, and its excess carrier, High-Level Excess Liability Pool, were represented by SmithAmundsen LLC. Dentons LLP represented the insurer, Clarendon American Insurance Co. The case is *City of Park Ridge v. Clarendon American Insurance Co*., 2017 IL App (1st) 170453 (Oct. 18).

The claimant, Jo Ann Abruzzo, filed a survival and wrongful death action against Park Ridge arising from the death of her teenage son due to a drug overdose.

The boy's father had summoned Park Ridge paramedics initially when the son had been found unresponsive. The son regained consciousness without the paramedics providing any assessment, diagnosis or treatment.

Subsequently, however, the paramedics were summoned a second time when the boy again was found unresponsive. This time he was transported to a hospital where he was diagnosed as brain dead.

Abruzzo's lawsuit claimed that the paramedics were negligent in not providing any medical assistance on their first visit. She eventually obtained a jury verdict against the city for an amount in excess of $5 million.

Park Ridge tendered to Clarendon as part of an attempt to resolve the judgment. Clarendon provided primary liability coverage for Park Ridge. Its policy contained a $2 million occurrence limit applicable to "occurrences," including bodily injury and certain other "wrongful acts."

The Clarendon policy also contained a $2 million aggregate limit applicable to, among other things, the "products-completed operations hazard." The "products-completed operations hazard" included coverage for bodily injuries arising out of completed work, but did not cover "work that has not yet been completed or abandoned."

Clarendon agreed to provide coverage under its policy. But it took the position that its maximum exposure was the $2 million aggregate limit under the products-completed operations hazard, less an amount that it earlier had paid out on behalf of Park Ridge for an unrelated claim, in the approximate amount of $350,000.

Park Ridge, on the other hand, claimed that the full $2 million occurrence limit for bodily injuries should apply, not the reduced aggregate limit for the products-completed operations hazard.

With the assistance of its excess insurer, High-Level Excess Pool, it eventually resolved the underlying judgment and brought this action seeking application of the full occurrence to the claim.

Upon cross-motions for summary judgment, the trial court held for Clarendon. Park Ridge and its excess carrier filed this appeal.

Analysis

In an opinion by Justice Terrence J. Lavin, the 1st District reversed. The panel found in favor of Park Ridge on two grounds.

The first had to do with Clarendon's argument that the paramedics' "work" on the teenage son had been "completed" when they first left the residence, and that the aggregate "products-completed operations hazard" aggregate limit, as reduced by an earlier payment, therefore applied.

Lavin noted that this approach was the one taken by the trial court. But it was wrong because it ignored policy language covering the paramedics' failure to provide any treatment. In particular, he said that in coverage that was not subject to the aggregate limit, Clarendon was to pay up to $2 million per occurrence for "incidental medical malpractice," which included the failure to provide medical services by any qualified medical practitioner. Since the paramedics' alleged conduct qualified under this definition, the $2 million occurrence limit applied.

Second, while acknowledging that Illinois courts had not previously addressed this issue, Lavin found that the "products-completed operations hazard" did not apply at all to professional services, including services provided by paramedics.

In support, he relied on out-of-state case law holding that the hazard applied only to construction operations and defective workmanship, and not to professional services.

Hence, no aggregate limit applied to the failure of treatment by emergency medical personnel.

The court reversed with instructions for entry of summary judgment for Park Ridge and its excess carrier on remand.

Key Point

According the 1st District Appellate Court, a products-completed operations hazard and any aggregate limit applicable to such hazard, does not apply to damages arising from alleged negligent professional services.