

Beware of “quirky” wordings

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Following the sexual assault of a patient at a Miami mental health ward, the patient and her husband sued the Hospital for negligence. The hospital sought cover for defence costs from its liability insurers, Evanston Insurance Co.

Branded as ‘quirky’ by judges, the liability section included the following professional services exclusion:

‘based upon, arising out of, or in any way involving an act, error or omission in the performance of services of a professional nature rendered or that should have been rendered.’

The policy also included an excess layer cover.

Insurers sought to decline cover on the basis that ‘services of a professional nature’ was much broader than ‘professional services’, meaning that the clause excluded medical services.

The courts concluded that the wording was ambiguous and that the clause was open to interpretation. The courts reiterated that ambiguous policy wordings will generally be interpreted in favour of the insured. It concluded:

‘the professional services exclusion [does not bar] coverage for Westchester’s lawsuit... Evanston owes Westchester a duty to defend the hospital in its litigation against the [claimants] under the GL coverage part.”

Referencing Evanston Insurance Co.’s argument regarding professional services and services of a professional nature, Judge Stanley Marcus wrote:

‘Some relationship between the two must exist for the policy provision not to be rendered illusory.’

As a result, it followed that cover under the excess layer policy was also engaged.

Considerations for underwriters

This case reiterates the application of the contra proferentem principle (i.e. that ambiguities in standard term contracts are interpreted against the party that drafted), which applies in most jurisdictions. This case also reiterates the risk of ‘quirky’ wordings.

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