



By
Alan Rutkin

Insurance policies typically limit coverage to damages “for” or “because of” covered injuries. This language begs the question of the required linkage between the damages and the injuries. What if the covered injury occurs, but the damages are not “for” or “because of” this covered injury? A helpful analysis of this issue was provided in a June 2011, 5th U.S. Circuit Court of Appeals case, *Preau v. St. Paul Fire & Marine Insurance Co.*

In *Preau*, a medical practice suspected that one of its doctors

The medical practice sought insurance coverage for its liability to the hospital, arguing that the judgment against it was damages “for” bodily injury and thus covered under the former employer’s policy.

But was it?

The court found that the suit against the former employer was for “economic injuries inflicted as a result of ... misrepresentation.... The economic damages ... for ... tortuous misrepresentation are distinct from the damages ... any party might seek for her bodily injuries.” That is, the hospital’s settlement payment to the plaintiff was for the serious harm that the patient suffered.

The medical practice’s payment to the hospital, however, was different from the hospital’s payment to the patient.

The hospital was suing to recover an economic loss caused by the inaccurate letter of recommendation. The medical practice was making a payment because of an economic loss.

The court’s analysis was very careful. The court found that it did not matter that the amount of damages that the medical practice owed the hospital was the same as the amount of damages that the hospital owed to the injured patient. And the court distinguished cases in which the policyholder was found liable on a contribution basis.

The ultimate lesson in conducting these analyses is to focus on the liability against the policyholder; as opposed to other liabilities. When considering whether damages are because of covered injuries, it is critical to focus on why the policyholder was liable.

The fact that the policyholder’s liability may relate to a covered injury is not enough; the policyholder’s liability must be “for” or “because of” a covered injury.

Poor Judgment, Uninsured Loss

A letter of recommendation for a troubled doctor becomes an \$8.2 million mistake.

Liability must be ‘for’ or ‘because of’ a covered injury.

was abusing narcotics. The group ultimately fired that doctor after he failed to answer a page while on duty and admitted to taking Valium. Sixty-eight days later, the practice wrote a letter of recommendation for the doctor: “He is an excellent anesthesiologist. ... I recommend him highly.”

The drug use was not revealed. And a hospital hired the doctor.

Approximately a year later, this doctor was practicing while impaired, made an error, and seriously harmed a patient. The hospital, the doctor’s new employer, paid \$7.5 million to settle the suit and incurred \$750,000 in legal fees. The hospital then sued the former employer—the medical practice that previously sent the inaccurate letter of recommendation—and the hospital was awarded \$8.2 million (its settlement and litigation cost).

Alan Rutkin, a Best’s Review columnist, is a partner at Rivkin Radler in Uniondale, N.Y. He may be reached at alan.rutkin@rivkin.com.