



## Alerts

### U.S. District Court Finds that the Factual Origin of an Injury—Not the Theory of Liability—Controls the Coverage Analysis

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*Insurance Coverage Alert*

In *Maryland Cas. Co. v. Fla. Atl. Orthopedics, P.L., et al.*, Case No. 10-CV-80203, 2011 WL 1085184 (S.D. Fla. Feb. 24, 2011), a patient underwent a surgery at an ambulatory surgical center and shortly thereafter became unresponsive. Paramedics arrived and transported the patient to the hospital. In transporting the patient from the ambulatory center, which was on the second floor, the emergency medical technicians were required to take her down the stairs because the elevator was too small for a stretcher. The patient died at the hospital a few days later. Her estate and survivors sued the ambulatory center for medical negligence, negligent hiring and premises liability.

The insurer sought a declaration that it had no duty to defend or indemnify the ambulatory center based on exclusions for claims “arising out of” services furnished by health care providers and for professional services. Defendants argued that the premises liability count was not excluded because it was unrelated to the underlying allegations of negligent medical care and treatment. Specifically, they argued that the inadequate physical dimensions of the elevator did not implicate the requirements in the exclusions that the injury arise out of medical, surgical or health treatment.

In granting summary judgment in favor of the insurer, the court held that the medical negligence and negligent hiring claims were excluded because “[h]iring medical staff and implementing appropriate emergency procedures is an intricate part of the provision of medical services, which is excluded from coverage under the policy.” With regard to the premises liability count, the court noted that it incorporated all of the other counts for medical negligence and also alleged that the woman incurred complications from “an elective surgical procedure . . . ultimately causing her death.” Moreover, the court held that “the transportation of patients in the case of an emergency is undoubtedly an integral part of the provision of medical services, particularly when those medical services include surgery.” It held that defendants could not separate the surgery and the act of transporting someone to the hospital because of complications that occurred during the surgery. The court concluded that the alleged factual origin of the injury was medical malpractice during surgery. Accordingly, although an insurer “would have a duty to defend an ordinary premises liability claim,” it has no such duty “when the alleged factual origin of the bodily injury was something otherwise excluded under the policy.”

Notably, the court did not merely focus on the factual allegations in the premises liability count. On the surface, allegations that an injured person was harmed because an elevator was too small to effectively transport him or her to a hospital for treatment are allegations that would be covered under most standard CGL policies. The court here, however, ruled that the injuries arose out of medical or surgical treatment and noted that the theory of liability in the complaint could not transform uncovered damages into covered claims.

#### Practice Note

Although a claimant can assert theories of liability that would seemingly trigger coverage under a CGL policy, it is not the label assigned to the claim that matters, but the factual allegations regarding the origin of the injury. Insurers and counsel should check exclusions diligently for words and phrases such as “arising out of” or “because of,” which may indicate that the origin of an injury is the focal point.



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