

Professional Services Exclusion Leaves Pharmacy's Coverage Order Unfilled

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Coordinating various insurance products to avoid coverage gaps can be a complex undertaking as exposures are shifted from one policy to another across different insurers, policy forms, and coverages. One recent case, [*Singh, Rx, PLLC, et al. v. Selective Insurance Company of South Carolina, et al., No. 24-1678*](#), left a pharmacy without coverage when a professional services exclusion barred coverage that was not covered under a separate professional liability policy geared at covering those risks. The case is a reminder of the importance of understanding insurance policy exclusions, particularly in the context of professional services, and especially where the excluded risks are not covered by other policies.

Factual Background

SRX's coverage dispute arose when a pharmaceutical manufacturer sued a specialty care pharmacy for allegedly distributing counterfeit HIV medication. The lawsuit included multiple claims, including trademark infringement and unfair competition, which prompted the pharmacy to seek defense and indemnification from its general liability and professional liability insurers.

The general liability insurance policy covered business liabilities arising out of bodily injury, property damage, or personal and advertising injury. However, the policy explicitly excluded claims related to the performance of professional services, including the practice of pharmacy. The professional liability policy covered professional liability due to a medical incident and liability for personal injury claims. But coverage was limited to claims made by a natural person. The underlying claim involved professional services and was brought by a company (not an individual). Both insurers denied coverage based on the exclusions and limitations in their respective policies.

The Sixth Circuit

The Michigan district court and the United States Court of Appeals for the Sixth Circuit agreed with the insurers' denials, granting summary judgment and affirming that the claims made by the pharmaceutical manufacturer fell outside the coverage of the policies. For their analysis under the general liability policy's professional services exclusion, the courts relied on Michigan law, which

defines professional services as acts “involving specialized skill of a predominately intellectual nature.” The Sixth Circuit explained that Michigan courts have interpreted professional services exclusions broadly to encompass “acts reasonably related to the overall provision of professional services.”

In this case, the Sixth Circuit determined that even routine tasks associated with pharmacy practice required a level of expertise that placed them under the umbrella of professional services. For example, according to the court, buying and selling medications constitute actions that “implicate a pharmacist’s specialized knowledge, because pharmacists need to select the right drugs to target specific conditions.” The court reasoned that the alleged injury was the pharmacy’s failure to perform its professional duty to prescribe the right medicine to treat HIV and, as a result, held that the general liability policy’s professional services exclusion barred coverage.

Unfortunately for the policyholder, the professional liability policy did not cover the lawsuit either. That policy contained a limiting endorsement modifying the definition of “claim” to mean only “a demand for money or services alleging injury or damage” brought “by a *natural person*.” Because the lawsuit was brought by a pharmaceutical manufacturer—a corporate entity and not a natural person—the “claim” definition was not met.

The Sixth Circuit rejected the policyholder’s arguments that the limited endorsement conflicted with definitions of “claim” elsewhere in the policy and that the endorsement rendered coverage illusory. Accordingly, the court held that the professional liability insurer had no duty to defend or indemnify the claims.

Conclusion

This case underscores the importance for all companies, especially those providing specialized services, to understand not only what kinds of liability policies they have but whether those policies are tailored appropriately to work together and avoid unexpected denials. It serves as a cautionary tale for businesses that may assume they are covered for a broader range of claims than their policies actually allow.

As the critical endorsement showed in the SRX dispute, liability policies are highly negotiable and customizable. Policyholders should ensure they are adequately protected against potential liabilities by conducting a holistic review of their insurance programs, as coordinating insurance coverage across various insurance products is often key to protecting a business against potential coverage gaps.

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