



## ALERTS

### Appeals Court Says Professional Services Exclusion Does Not Bar Insurance Coverage For Claims Against Hospital

September 28, 2022

#### Highlights

Court rules commercial general liability policy provides coverage for claims of sexual misconduct and negligence against hospital

Professional services exclusion does not apply to bar coverage

Allegations of sexual misconduct or negligent hiring and supervision do not arise out of professional services provided by hospital to patient

Hospitals and other healthcare facilities are sometimes exposed to liability as a result of bad acts by their employees, such as when an employee is accused of assault or sexual misconduct involving a patient. Expecting insurance coverage for such situations under a general liability policy can be problematic because of exclusions in the general liability insurance policies that attempt to carve out coverage for conduct arising from or related to “professional services” provided to patients.

However, a federal appellate court recently held that a “professional services” exclusion in a hospital general liability policy did not exclude coverage for a lawsuit filed by a patient allegedly assaulted by a hospital

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In *Westchester General Hospital, Inc. v. Evanston Insurance Company*, No. 20-14814 (11th Cir. Sept. 16, 2022), a patient sued the hospital alleging she was assaulted by a hospital employee while sleeping and also alleging negligence by the hospital. The hospital asked its insurance company to defend and provide coverage for the patient's lawsuit. The insurance company denied coverage, claiming the hospital's general liability policy provided no coverage for the assault due to the exclusion for "professional services."

This exclusion excluded any claim "based upon, arising out of, or in any way involving an act . . . in the performance of services of a professional nature." The U.S. Court of Appeals for the Eleventh Circuit held that for an "act" to "in any way involve services of a professional nature," the act must have some causal connection to the professional service. The fact that the patient was in the hospital receiving medical treatment at the time of the alleged assault was not sufficient to trigger the professional services exclusion, the court said.

In this case, the "acts" alleged against the hospital could be the employee assault itself or the hospital's negligent hiring of the culpable employee, neither one of which came within the exclusion, according to the court's decision. The court held the exclusion did not defeat insurance coverage for the hospital, regardless of which "act" by the defendant was the focus of the plaintiff's claim, because neither act involved "the performance of services of a professional nature."

The Eleventh Circuit's decision further weakens an insurer's ability to rely on the professional services exclusion to defeat coverage in sexual misconduct cases levied against employers. Hospitals and medical providers should carefully examine all of their policies for potential coverage in the event of claims involving sexual misconduct by an employee, even if the policy contains a professional services exclusion.

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