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A HARD LANDING FOR NARROW READING OF INSURING CLAUSE COVERING CLAIMS "RESULTING FROM CONDUCT"

19 JUNE 2017 | INSURANCE ISSUES

A Medical Malpractice Civil Liability policy did respond to a claim for indemnity by an insured who had failed to provide any health care services.

IN ISSUE

- The scope of an insuring clause covering claims "resulting from the conduct of the insured's healthcare services", where no specific services were in fact provided to the claimant, but where the insured's system failed to identify the need to provide these services.

THE BACKGROUND

GEO Group was the operator of Parklea Correctional Centre (Parklea) and provider of psychological and counselling services to inmates at Parklea. A new inmate advised a separate health provider, Justice Health, that he was taking medication for schizophrenia and depression, but was not provided with any medication to address those conditions. The inmate jumped off an upper landing and suffered serious injuries four days after his arrival at Parklea.

The inmate brought claims in negligence for personal injury against GEO and GEO claimed under its "Medical Malpractice Civil Liability Insurance Policy" held with Vero Insurance. The policy indemnified GEO against civil liability for claims made against GEO "resulting from the conduct of the Healthcare Services". Healthcare Services was exclusively defined as "the provision of medical services and treatment including services and treatment provided by psychologists and counsellors". Vero denied indemnity, on the basis that the inmate's claim did not result from any provision of medical services, but rather the omission to provide these services at all.

THE DECISION AT TRIAL

The trial judge rejected Vero's argument, on the basis that the obligation to insure against claims "resulting from the conduct" of the Health Services went beyond the provision of services by a particular psychologist or counsellor to a particular inmate during a consultation. Rather, it included claims which resulted from how GEO conducted the provision of such services, including their non-provision. In reaching this finding, the trial judge took into account that GEO was contractually obliged to identify and manage inmates at risk of self-harm.

THE ISSUES ON APPEAL

On appeal, Vero argued that the primary judge erred in characterising the inmate's claim as one relating to how GEO conducted the provision of its services, rather than a total failure to provide these services.

THE DECISION ON APPEAL

The Court of Appeal found that GEO's claim did "result from the conduct of the Healthcare Services", as it arose directly from the faulty operation of the system GEO had devised and implemented to address the risks to the mental health of inmates. GEO's pleaded case was correctly understood by the trial judge as a claim that the omission to provide Healthcare Services to the inmate arose from a failure of GEO's healthcare systems, and was not simply a claim that GEO did not conduct Healthcare Services at all.

In making its finding, the Court of Appeal took into account the broad wording of the insuring clause, the fact that the policy elsewhere referred to claims as including "omissions" and the commercial circumstances that the policy intended to address.

IMPLICATIONS FOR YOU

Insurers should exercise caution in denying coverage under broadly-worded insuring clauses, where the commercial context of the policy and the wording of the policy as a whole support a broad application.

AAI Ltd t/as Vero Insurance v GEO Group Australia Pty Limited [2017] NSWCA 110

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