SUPREME COURT OF PENNSYLVANIA

Lorraine Paternaster, Administratrix of the Estate of Damon Paternaster v. Dong P. Lee, M.D., and Commonwealth of Pennsylvania Medical Professional Liability Catastrophe Loss Fund

581 Pa. 28 (2004) (Pa. 2004) · Decided December 22, 2004

SUMMARY

The Supreme Court of Pennsylvania affirmed summary judgment for the Pennsylvania Medical Professional Liability Catastrophe Loss Fund in a medical malpractice coverage dispute. The Court held that CAT Fund regulations requiring a health care provider with claims-made coverage to obtain tail or comparable coverage were valid and consistent with the Health Care Services Malpractice Act. Because the physician allowed his claims-made policy to lapse without obtaining tail coverage, the CAT Fund was not responsible for the resulting default judgment.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Justice Nigro; Cappy, C.J.; Castille, J.; Nigro, J.; Newman, J.; Saylor, J.; Eakin, J.; Baer, J.
JURISDICTION	Pennsylvania
DECIDED	December 22, 2004
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Commonwealth Court's order granting the CAT Fund's motion for summary judgment and denying the appellant's motion for summary judgment in an execution and garnishment proceeding arising from a medical-malpractice default judgment.
STANDARD OF REVIEW	Summary judgment is reviewed de novo; the court determines whether the record presents no genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Pennsylvania
PARTIES	Lorraine Paternaster, Administratrix of the Estate of Damon Paternaster v. Dong P. Lee, M.D., Commonwealth of Pennsylvania Medical Professional Liability Catastrophe Loss Fund

TOPICS

health law · insurance · medical malpractice · administrative law · statutory interpretation

PRACTICE AREAS

health law · insurance · medical malpractice · administrative law · statutory interpretation

QUESTIONS PRESENTED

1. Whether the CAT Fund was required to indemnify Dr. Lee for a malpractice judgment when he had maintained the required primary insurance at the time of the alleged malpractice but later allowed a claims-made policy to lapse without obtaining tail or equivalent coverage.
2. Whether the CAT Fund director had statutory authority to promulgate regulations requiring providers with claims-made policies to obtain tail, prior-acts, or equivalent coverage to preserve CAT Fund coverage.
3. Whether those CAT Fund regulations were consistent with and reasonably implemented the Health Care Services Malpractice Act.

HOLDINGS

1. Section 701(e)(11) of the Health Care Services Malpractice Act authorized the CAT Fund director to issue substantive regulations concerning the establishment and operation of the Fund, including regulations addressing claims for which no primary insurance remained because a provider failed to obtain tail or equivalent coverage.
2. The CAT Fund regulations requiring a provider with a claims-made policy to obtain tail, prior-acts, or substantially equivalent coverage were within the director's authority, reasonable, and consistent with the Act.
3. The CAT Fund was not responsible for covering the default judgment against Dr. Lee because Dr. Lee failed to maintain primary coverage after his claims-made policy lapsed and did not obtain tail or equivalent coverage.

KEY QUOTATIONS

> *“Under these circumstances, we hold that the CAT Fund director's regulations requiring health care providers with claims policies to maintain primary insurance after the claims policies' expire by purchasing prior acts coverage are surely reasonable and consistent with the Act.”* (863 A.2d at 494)

> *“In sum, given the essential character of CAT Fund coverage as excess coverage over and above available primary coverage and the Act's explicit requirement that providers maintain a certain level of primary coverage, we conclude that the CAT Fund director's regulations, which require health care providers to obtain a tail or similar policy to maintain CAT Fund coverage, i.e., 31 Pa.Code §§ 242.2, 242.7(a)(2), and 242.17(d)(2), are completely consistent with the Act and were properly enacted by the CAT Fund director.”* (863 A.2d at 495)

FACTUAL BACKGROUND

Dr. Lee treated Damon Paternaster in 1986 and 1987 and maintained the statutorily required amount of primary professional-liability insurance under a claims-made policy. Dr. Lee allowed that policy to lapse in late 1987 and did not purchase tail, prior-acts, or equivalent coverage. Paternaster later sued Dr. Lee for alleged medical malpractice, obtained a $1,432,525 default judgment, and sought to execute against the CAT Fund. The CAT Fund denied coverage because no primary coverage remained for the claim and Dr. Lee had not obtained the required tail or equivalent policy.

PROCEDURAL HISTORY

After Dr. Lee failed to respond to the malpractice complaint, the trial court entered a $1,432,525 default judgment. The appellant then sought execution against Dr. Lee and the CAT Fund as garnishee. Following transfer by stipulation to the Commonwealth Court, the parties filed cross-motions for summary judgment. The Commonwealth Court granted summary judgment to the CAT Fund, concluding that the Fund was not responsible because Dr. Lee had allowed his claims-made primary policy to lapse without obtaining tail or equivalent coverage. The Supreme Court of Pennsylvania affirmed.

DISPOSITION

affirmed

CASES CITED

- Dellenbaugh v. Pennsylvania Medical Professional Liability Catastrophe Loss Fund, 562 Pa. 558, 756 A.2d 1172 (2000)
- McCoy, M.D. v. Board of Medical Education and Licensure, 37 Pa. Cmwlth. 530, 391 A.2d 723 (1978)
- Bailey v. Zoning Board of Adjustment of the City of Philadelphia, 569 Pa. 147, 801 A.2d 492 (2002)
- Lloyd v. Pennsylvania Medical Professional Liability Catastrophe Loss Fund, 573 Pa. 114, 821 A.2d 1230 (2003)
- Pennsylvania Medical Society Liability Insurance Co. v. Medical Professional Liability Catastrophe Fund, 577 Pa. 87, 842 A.2d 379 (2004)
- Ruch v. Wilhelm, 352 Pa. 586, 43 A.2d 894 (1945)
- Sullivan v. Department of Transportation, Bureau of Driver Licensing, 550 Pa. 639, 708 A.2d 481 (1998)