



Rothbart v. Delaware Insurance Guaranty Assoc. (D. Del.)

Topics Covered: Insurance (Liability) Coverage

Outcome: Favorable

Issue

The issue in this case was whether a liability insurance company was obligated to inform its insured (a physician) of whether the policy covered an underlying claim for medical malpractice.

AMA Interest

The AMA believes that insurers should provide the appropriate degree of coverage on claims and communicate with their insureds regarding the extent of coverage.

Case Summary

This was an action for declaratory judgment arising from a claim made by a retired physician, Philip L. Rothbart, M.D., against the Delaware Insurance Guaranty Association (DIGA) for coverage of a medical malpractice/wrongful death lawsuit.

Dr. Rothbart asked DIGA to interpret and confirm the levels of his coverage rights under the DIGA Act. DIGA refused to provide the requested interpretation, presumably until the underlying malpractice/wrongful death suit against Dr. Rothbart reached a stage where DIGA would be required to make some payment to satisfy its statutory obligations. Because Dr. Rothbart believed that this delay prejudiced his ability to defend the malpractice/wrongful death suit effectively, he sued DIGA for a declaratory judgment.

Both the underlying medical malpractice/wrongful death lawsuit and the declaratory judgment lawsuit settled. Pursuant to the agreements, DIGA paid the settlement proceeds to the underlying litigants, and Dr. Rothbart was not required to contribute from his own pocket.

Litigation Center Involvement

The Medical Society of Delaware and the Litigation Center each contributed modestly toward Dr. Rothbart's litigation expenses.