Product liability case resolves batch-clause interpretation in favor of insurers

By Courtney Wylie

In *Allianz Insurance Co., et al. v. Guidant Corp., et al.*, 2008 WL 5412846 (Ill. App. Ct. 2008), the Illinois Appellate Court affirmed partial summary judgment in favor of the insurers, denying a manufacturer policyholder coverage for aggregate product liability claims brought under the policy's batch clause. The requirement that the aggregated claims involve both the same product and the same defect, as well as the specificity of the "advisory memorandum," were key factors in the court's decision.

The policyholder in *Allianz* manufactured implantable grafting devices used to repair abdominal aortic aneurysms. Due to injuries connected with the device, claims were filed during multiple policy periods, with a majority of claims occurring after the last policy period had ended. In order to exhaust its required retention amount in the first policy period, the policyholder attempted to aggregate claims made in later years under the batch clause of the policy.

The language of the batch clause provided that aggregated claims deal with "all products which have the same known or suspected defect or deficiency which is identified by the same advisory memorandum." Furthermore, the provision states that "the term 'advisory memorandum' is a communication issued to you to inform health professionals or other appropriate persons or firms of a risk of bodily injury or 'property damage' from a product in use."

The policyholder argued that claims involving injuries from the same product could be batched, even if separate and different product defects caused the claimed injuries. The Appellate Court held, however, that the plain language of the batch clause required that the claims must involve both the same product and the same defect in order for them to be aggregated.

The Appellate Court also held that the "advisory memorandum" requirement was not met, even though the policyholder had sent several "Dear Doctor" letters informing physicians about certain issues regarding the product's use. The court found that the letters did not communicate a "risk of 'bodily harm'… from a product in use." On the contrary, they merely continued to explain that the product was safe and effective, while elaborating only on deficiencies in the regulatory process and communications with the FDA. The Appellate Court went on to find that even had the letters satisfied the requirement, they did not discuss the defects of the underlying claims, and the batch clause would still not be satisfied.