

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION**

NCMIC INSURANCE COMPANY,	:	JANUARY TERM, 2004
	:	
Plaintiff,	:	No. 02487
	:	
v.	:	COMMERCE PROGRAM
	:	
LARRY TURETSKY, D.C. and	:	Control No. 051542
ROBIN KELLY,	:	
	:	
Defendants.	:	

**ORDER**

**AND NOW**, this 26<sup>th</sup> day of August 2004, upon consideration of plaintiff's Motion for Summary Judgment, defendant's response thereto, the briefs in support and opposition, and all other matters of record, it is hereby **ORDERED** that the Motion is **GRANTED** and plaintiff has no further duty to defend or indemnify defendant Larry Turetsky, D.C. in the action filed in the Court of Common Pleas for Philadelphia County at docket number 00623, June Term 2003.

**BY THE COURT:**

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**C. DARNELL JONES, II, J.**

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**MEMORANDUM OPINION**

In this action, plaintiff NCMIC Insurance Company (“NCMIC”) has moved for summary judgment on its claim for a declaratory judgment that it need not defend and indemnify defendant Larry Turetsky, D.C. in a certain underlying tort action brought by nominal defendant Robin Kelly (the “Underlying Litigation”). Turetsky is a chiropractor to whom NCMIC issued a policy of professional liability insurance (the “Policy”). Kelly was apparently an employee of Turetsky’s, and she claims that he assaulted her while purporting to examine her back.

“A court’s first step in a declaratory judgment action concerning insurance coverage is to determine the scope of the policy’s coverage.” General Accident Insurance Co of America v. Allen, 547 Pa. 693, 706, 692 A.2d 1089, 1095 (1997). In this case, the Policy provides coverage to Turetsky for injuries “caused by an accident arising from a medical incident.” Complaint, Ex. C, p. 2. “Medical incident means any negligent omission, act or error in the providing of professional services.” *Id.* at p. 1. “Professional services means those services which are within the scope of practice of a chiropractor in [Pennsylvania].” *Id.* The Policy excludes coverage for criminal acts, the intentional infliction of injury, and sexual impropriety or assault. *Id.* at pp. 3-4. This state’s highest court has previously held with respect to similar policy provisions, that a

professional liability insurer has no duty to defend or indemnify the insured in the underlying litigation unless “the act that caused the alleged harm is a [professional] skill associated with [the insured’s] specialized training.” Physicians Ins. Co. and Professional Adjustment Services, Inc. v. Pistone, 555 Pa. 616, 726 A.2d 339 (1999).

In determining whether NCMIC owes Turetsky a duty to defend, and ultimately indemnify, him in the Underlying Litigation, the court must review the allegations of the complaint in the Underlying Litigation to see if the acts alleged involve Turetsky’s use of professional chiropractic skills that are covered by the terms of the Policy. *See* General Accident Insurance Co of America v. Allen, 547 Pa. 693, 706, 692 A.2d 1089, 1095 (1997) (“After determining the scope of coverage, the court must examine the complaint in the underlying action to ascertain if it triggers coverage. If the complaint against the insured avers facts that would support a recovery covered by the policy, then coverage is triggered and the insurer has a duty to defend until such time that the claim is confined to a recovery that the policy does not cover.”)

In her complaint in the Underlying Litigation, Kelly alleges that Turetsky pulled down her pants to expose her buttocks, breathed heavily, and made reference to her need for employment. Complaint, Ex. B, ¶¶ 16, 18-19. None of these acts involved any “skills” associated with Turetsky’s specialized chiropractic training; they are instead acts that any layperson could commit with equal facility. Since the allegedly wrongful conduct was clearly not part of Turetsky’s professional responsibilities covered under the Policy, NCMIC owes him

no further duty of defense<sup>1</sup> or indemnification in the Underlying Litigation.

### **CONCLUSION**

For all the foregoing reasons, plaintiff's request for summary judgment is granted, and the court will issue a declaratory judgment in plaintiff's favor.

**BY THE COURT:**

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**C. DARNELL JONES, II, J.**

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<sup>1</sup> With respect to acts of sexual impropriety or assault, if they are "otherwise covered" by the Policy, then NCMIC must provide Turetsky with a defense against them until he agrees that NCMIC need not do so or until "a court finds that [NCMIC] no longer [has] an obligation to defend." Complaint, Ex. C., p. 4. Due to this provision, the court will not require Turetsky to reimburse NCMIC for the fees and costs incurred in his defense through the date of entry of the Order accompanying this opinion.