

MAINE STATE LEGISLATURE

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February 11, 1976

Frank M. Hogerty, Jr., Superintendent

Insurance

S. Kirk Studstrup, Assistant

Attorney General

Public Law, Chapter 442 - Temporary Joint Underwriting Association

The following material responds to your memorandum of January 7, 1976, on the subject noted above. In that memorandum you asked for our opinion as to whether the words "including incidental coverage," which are found in 24 M.R.S.A. § 2403,4 (P.L. 1975, c. 442: L.D. 1459), would accommodate the inclusion of premises liability for hospitals. The answer to your question is that the term may be construed to include premises liability in light of general practices of the insurance industry and legislative intent.

Section 2403,4 of Title 24 M.R.S.A., reads in pertinent part:

"4. Powers. The association shall, pursuant to the provisions of this chapter and the plan of operations with respect to medical malpractice insurance, have the power, on behalf of its members, to issue or to cause to be issued, policies of insurance to applicants, including incidental coverage and subject to limits as specified in the plan of operation . . ." (emphasis provided)

There is no specific indication in the legislative history of P.L. 1975, c. 442 that the legislature intended any particular meaning for the words "including incidental coverage." Nor has this term been interpreted by courts in Maine or elsewhere in this particular context. Therefore, it would be appropriate to use applicable rules of statutory construction to assist in interpreting the phrase.

Chapter 442 is specifically designed to deal with an insurance problem and is directed to the insurance industry. The term "incidental coverage" is frequently used in the industry and may be considered a commercial or trade term. In the absence of manifested legislative intent to the contrary, or other evidence of a different meaning, commercial terms used in commercial statutes are presumed to have been used in their commercial meaning. 2A Sutherland, Statutory Construction (4th Ed.), § 47.31, page 155. Therefore, it would be appropriate to give the term the same meaning which it is given by the medical malpractice insurance industry.

It is our understanding that premises liability insurance is often included with malpractice insurance to form a professional insurance "package" for doctors, dentists, and other health professionals. In this situation, the premises liability insurance would be considered

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"incidental coverage." It is also our understanding that the insurance industry encourages hospitals to have the same type of coverage. Therefore, if our understanding of the common trade or commercial usage of the term within the industry is correct, then the term, as used in section 2403,4, could include premises liability insurance coverage for hospitals.

S. KIRK STUDSTRUP
Assistant Attorney General

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