

Policy's Post-Acts Date Bars Coverage

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An Ohio federal district court, applying Ohio law, has adopted a magistrate judge's Report and Recommendation granting summary judgment to an insurer, holding that a professional liability insurer owed no duty to defend corporate and individual insureds under a runoff policy because the underlying claims arose out of wrongful acts occurring after the policy's post-acts date. *LISN, Inc. v. Gulf Underwriters Ins. Co.*, 2006 WL 753102 (N.D. Ohio Mar. 22, 2006).

The insurer issued a claims-made professional liability policy to the parent of the plaintiff company. When the parent was acquired by another company, a change-in-control provision converted the policy into a six-year runoff policy for claims arising out of wrongful acts occurring on or before December 14, 1999. On December 16, 1999, the plaintiff's board voted to terminate the CEO and dissolve the company. In subsequent litigation in both Maryland and Ohio, the CEO alleged wrongful termination and dissolution against the company and the board members. The company and the board members sought defense and indemnification under the policy for the litigation, but the insurer denied coverage.

In granting summary judgment to the insurer, the court first concluded that all of the CEO's allegations in the underlying litigations arose out of two alleged wrongful acts occurring after December 14, 1999: the CEO's termination and the dissolution. In doing so, the court rejected the policyholders' contention that the policy did not require claims to "accrue" prior to December 14, 1999, noting that the plain language of the policy required that wrongful acts occur on or before that date in order to implicate coverage. The court also held that the insurer did not have to advance defense costs to the insureds because the claim fell outside the scope of the policy's coverage.