

Court Upholds Application of Retroactive Date

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A D.C. Court of Appeals panel, applying District of Columbia law, has held that a claims-made professional liability policy issued to a doctor did not afford coverage for a claim made during the policy period. The claim was for injuries that developed during the policy period but resulted from surgery that occurred prior to the policy's retroactive date. *Evans v. Medical Inter-Insurance Exch.*, 2004 WL 2035018 (D.C. Aug. 19, 2004).

The policy at issue was a claims-made policy with a policy period of May 1, 1997 to January 1, 1998. The policy contained a Retroactive Date of January 1, 1995, and its front page stated that:

This policy does not provide coverage for medical incidents that take place before the retroactive date shown on the declarations page.

The policy also stated that it provided coverage for "[i]njury arising out of the rendering or failure to render, on or after the retroactive date, professional services...." The policy defined "medical incidents" as "a single act or omission or series of related acts or omissions in the rendering or failure to render professional services to any one person" and stated that "a medical incident shall be deemed to take place at the time of the first act or omission by any person in the rendering or failure to render professional services to any one person that...gives rise to the claim or suit."

The doctor performed a surgical procedure on the plaintiff on July 12, 1994. The plaintiff, dissatisfied with the doctor's handling of the surgery and her post-operative care, sought treatment from other doctors and informed the doctor that she would not return to his office for further treatment in August 1994. The plaintiff's injuries from the surgery continued to require treatment during the policy period. In 1997, the plaintiff brought a malpractice action against the doctor, which the doctor tendered to the malpractice carrier. The insurer declined to defend or indemnify the doctor and, after obtaining a judgment against the doctor, the plaintiff filed the instant action against the insurer.

On appeal from the trial court's grant of summary judgment in favor of the insurer, the plaintiff argued that the phrase "[i]njury arising out of the rendering or failure to render, on or after the retroactive date, professional services" provides coverage for *injuries* that occur on or after the retroactive date, as opposed to professional services rendered or failed to be rendered after January 1, 1995.

The court rejected that argument, and held for the insurer, applying the "Rule of the Last Antecedent," which provides that, generally, qualifying phrases "are to be applied to the words or phrases immediately preceding them" and holding that the above-quoted language was unambiguous. The court further stated that the notice provision quoted above supported this reading of the policy. Finally, the court held that the clear weight of testimony established that the doctor could not have failed to render professional services after the retroactive date in the policy because the plaintiff's own testimony established that she removed herself from his care in the summer of 1994. Based on the foregoing, the court noted that "the language of the policy required only that [the insurer] provide coverage for injuries arising out of the rendering or failure to render services on or after the...retroactive date" and thus held that the policy provided no coverage for the claim.

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