

ALERT

# Underwriting Exclusion Bars Coverage for Claim for Failure to Notify Life Insurance Applicants of Adverse Test Results Obtained as Part of Application Process

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The Iowa Supreme Court, applying Iowa law, has affirmed a lower court's application of an underwriting exclusion to bar coverage for a claim against an insured life insurance company for its failure to notify applicants of the results of certain medical tests taken during the application process. *Farm Bureau Life Insurance Co. v. Holmes Murphy & Assocs., Inc.*, 2013 WL 2127573 (Iowa May 17, 2013).

The insured, a life insurance company, denied a husband and wife's application for a policy when it learned they were HIV positive. The life insurance company did not inform the applicants of the test results and the applicants learned they were HIV positive two years later. The applicants sued the life insurance company, among others, alleging negligence in failing to report their HIV-positive status. The life insurance company and applicants ultimately settled the lawsuit. The life insurance company provided notice of the settlement to its broker, which was, in turn, to report the settlement to the life insurer's professional liability insurer. The broker did not report the matter to the professional liability insurer, however, until more than two years after it had received notice of the matter from the insured life insurance company, by which time the professional liability policy had already expired.

The professional liability insurer denied coverage on the basis of late notice and the application of the policy's "bodily injury" and "underwriting" exclusions. The insured life insurance company filed a complaint against the professional liability insurer and the insured's

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broker. Summary judgment was granted in favor of the professional liability insurer based on untimely notice, which an intermediate appellate court affirmed. The life insurance company filed an amended complaint against the broker and the court granted the broker's motion for summary judgment on the basis that even if notice was timely provided, the policy's bodily injury and underwriting exclusions would apply to bar coverage. The life insurance company again appealed.

In affirming the lower court's opinion, the Iowa Supreme Court first looked at the underwriting exclusion, which precluded coverage for claims "based upon, arising from, or in consequence of the underwriting of insurance, including any decisions involving the classification, selection or renewal of risks." Because the term "underwriting" was not defined in the policy, the court used a definition found in a dictionary when interpreting the provision. The court concluded that the underwriting exclusion applied, explaining that the insured life insurance company's eligibility investigation and management of information derived from the investigation arose out of its underwriting activity. In addition, the court noted that the professional liability policy's definition of "insurance services," from which a covered claim must arise, did not include activities like the ones at issue and also specifically excluded "medical or health care services."

The court rejected the insured life insurance company's argument that the application of the underwriting exclusion rendered the policy illusory because the professional liability insurer provided an example of circumstances when the policy would, in fact, afford coverage.