

New Jersey High Court Applies Reasonable Expectations Doctrine

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The Supreme Court of New Jersey has held that the language of a claims-made medical malpractice policy was ambiguous as to the applicable retroactive date and that the case could not be resolved on summary judgment because there was a genuine issue of material fact regarding the policyholder physician's reasonable expectations as to the retroactive date of the policy. *President v. Jenkins*, 853 A.2d 247 (N.J. 2004).

Prior to the issuance of the policy in question, the doctor obtained an occurrence-based medical malpractice policy, which was cancelled in October 1997 for nonpayment of premiums. The doctor then sought to obtain replacement medical malpractice insurance.

After allegedly misrepresenting that his current policy would remain in force until February 1998, and that his professional liability insurance had never been denied, cancelled or reviewed, the insurer issued a series of documents (a binder, certificate of insurance and endorsement) that listed either January 1, 1998, or February 1, 1998, as the retroactive date for the policy. However, the insurer issued the policy through a physicians' insurance procurement group, rather than directly to the doctor, and an endorsement to the policy as to that group listed January 1, 1997, as the retroactive date of the policy.

The policy cover page set forth in large type that the policy was a claims-made policy under which coverage was available only if a claim is first made and reported during the policy period. The insuring agreement provided that the insurer would "pay on behalf of a physician, damages that the physician shall become legally obligated to pay because of a claim first made during the policy period arising out of a medical incident which occurred on or after the retroactive date and which is reported to us during the policy period." The policy defined "policy period" as "the period of coverage that begins...on the inception date...and ends...on the expiration date or effective date of cancellation of this policy."

On September 20, 1999, the doctor was sued by a former patient and her spouse who alleged that the patient was injured by the doctor's negligence during a delivery on January 3 and 4, 1998, and suffered serious injuries. The doctor tendered the suit to the insurer, and the insurer denied coverage on the grounds that the incident occurred prior to the February 1, 1998 retroactive date of the policy. After the underlying plaintiffs amended their complaint to include the insurer as a defendant, the doctor asserted a cross claim against the insurer. The insurer moved for summary judgment on the ground that it provided no coverage for

acts prior to February 1, 1998.

On appeal, the New Jersey Supreme Court held that "the presence of different retroactive dates, the failure to provide a clear definition of the term 'retroactive date' and the different policy periods and effective dates [in the various policy documents], combined to render the policy ambiguous." Following its earlier decision in *Sparks v. St. Paul Insurance Co.*, 495 A.2d 406 (N.J. 1985), the court, having found the policy ambiguous, attempted to determine the policyholder's "reasonable expectations" as to coverage. The court concluded that material issues of fact existed concerning the doctor's expectations as to when the claims-made coverage began because there was substantial evidence contradicting the doctor's assertion of his belief that the policy period of January 1, 1998, to January 1, 1999, represented the scope of his coverage under the policy. Due to the existence of the issues of material fact, the court remanded the case to the trial court for further fact finding on the issue.

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