

Connecticut District Court Holds Underwriter's Testimony Insufficient to Support Summary Judgment on Rescission

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The United States District Court for the District of Connecticut, applying Connecticut law, has denied an insurer's summary judgment motion seeking rescission. *Westport Ins. Corp. v. Laschever*, 2008 WL 4426899 (D. Conn. Sept. 26, 2008). In doing so, the court held that testimony by the insurer's underwriter that the insurer would not have issued the policy if it had known of a prior insurer's rescission and state regulatory action against a company that the policyholder represented was insufficient to support a grant of summary judgment.

The policyholder in this case was an attorney who performed loan closings for an investment company. The policyholder submitted a renewal application for a professional liability policy on May 20, 2005. In the application, the policyholder represented that no prior application for insurance had been declined, cancelled or non-renewed; that no disciplinary action had been taken against the policyholder; and that no institution that the policyholder represented was or had been under regulatory review.

After the inception of the policy, the insurer learned of facts not disclosed on the insurance application and sought to rescind the policy. The policyholder had not disclosed that in July 2000, his prior insurer had filed a suit against him seeking rescission of an insurance policy because of alleged misrepresentations in his application. In addition, the policyholder had not disclosed regulatory actions by the state of Connecticut against the investment company he represented.

Upon learning of the prior rescission action and state regulatory action, the insurer sought to rescind the policy and filed a motion for summary judgment, arguing that it would not have issued the policy had it known of these undisclosed facts. The court applied the standard for rescission under Connecticut law, which requires the insurer to establish that there was "(1) a misrepresentation by the insured on the application which was (2) knowingly made and (3) material to the insurer's decision whether to insure." Under this standard, a misrepresentation is material to the issuance of a policy if, "in the judgment of reasonably careful and intelligent persons, it would so increase the degree or character of the risk of the insurance as to substantially influence its issuance, or substantially affect the rate of premium."

Although it found that a prior rescission of an insurance policy is material to the issuance of a new policy, the court held that summary judgment was inappropriate because the insurer had not sufficiently established actual reliance based upon the underwriter's testimony that the insurer would not have issued the policy had it known of the prior rescission. The court reasoned that it was inappropriate to "grant summary judgment relying solely on an underwriter's hindsight-view of the process." Similarly, the court held that the underwriter's testimony alone did not provide a sufficient basis for the court to conclude that the insurer would not have provided insurance coverage if the policyholder had disclosed the Connecticut state agency actions against the investment company. The court found that based on the insurer's underwriting guidelines, disclosure of such information does not "necessarily result in the rejection of the insurance application." The court determined that "a reasonable jury may conclude that [the insurer] did not rely on [the policyholder's] misrepresentation."