

Maine Supreme Court Requires Professional Liability Insurer to Prove Fraud, Materiality and Reliance in Order to Rescind Policy

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The Supreme Court of Maine, applying Maine law, has held that a professional liability policy may be rescinded only if the insurer can prove fraud, materiality and reliance. *Liberty Ins. Underwriters, Inc. v. Estate of Faulkner*, 2008 WL 4482517 (Me. Oct. 7, 2008). The court also held that Maine law permits rescission of a renewal professional liability policy based on a misrepresentation in the original application for insurance.

In an application for a lawyer's professional liability insurance policy, the insured indicated on the application that he had not been reprimanded, censured or disbarred. In fact, he had been censured by the Maine Bar. The following year, in a renewal application, the insured stated that he had not been reprimanded, censured or disbarred *in the prior year*. Following the insured's death, the insurer pursued a declaratory judgment action against the insured's estate, as well as several former clients of the insured that had claims against the estate, seeking to rescind the policy on the basis of the alleged misrepresentations in the policy application and renewal.

In an appeal of the ensuing declaratory judgment action, the Maine Supreme Court answered three certified questions regarding the interpretation of Maine's rescission statute, M.R.S. § 2411. First, the court concluded that M.R.S. § 2411 requires an insurer to prove both fraud and materiality in order to rescind a professional liability insurance policy. Second, it held that an insurer must show actual reliance to rescind an insurance policy. Finally, the court held that 24-A M.R.S. § 2908 permits rescission of a renewed lawyer's professional liability policy based on a misrepresentation in the original application for insurance.