

Endorsement Retroactively Terminated Coverage

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An Illinois intermediate court has held that a doctor was not entitled to coverage for a medical malpractice suit under the claims-made-and-reported policy issued to the doctor's former employer, a healthcare provider, where the insurer issued an endorsement amending the policy to include a retroactive date reflecting that the doctor was not an insured at the time he was named as a defendant in the suit. *Geisler v. Everest Nat'l Ins. Co.*, 2012 WL 5910470 (Ill. App. Ct. Nov. 16, 2012)

The policy had a policy period of January 1, 2003 through December 31, 2003. After the healthcare provider decided to terminate the doctor's employment, the insurer provided notice to the doctor on December 31, 2003 that he would no longer be an insured under the policy and would not receive any future coverage. In March 2004, the doctor and the healthcare provider were named as defendants in a malpractice suit. The healthcare provider requested that the insurer provide it with coverage for the suit but requested that the insurer not defend the doctor due to the termination of his employment. In August 2004, the insurer issued an endorsement reflecting that the policy was amended to terminate the doctor's coverage effective December 31, 2003. A month later, the insurer amended the policy again to include an extended reporting period, allowing the healthcare provider an unlimited period of time during which to report claims made under the policy. The doctor then sued the insurer, seeking coverage for the malpractice suit. The trial court granted summary judgment to the insurer, holding that the doctor was not entitled to coverage.

The appellate court affirmed summary judgment for the insurer, rejecting the doctor's argument that he was still an insured under the policy when he requested coverage for the suit in March 2004 because the insurer had waited until August 2004 to issue the endorsement amending the policy to reflect that he was not an insured as of December 31, 2003. The court explained that insurers often issue policy endorsements with retroactive dates to document in writing that a policy has been amended to terminate an insured's coverage. The court also reasoned that, even if it accepted the doctor's argument, the policy period had expired on December 31, 2003, four months before the doctor was named in the malpractice suit, and the insurer did not retroactively amend the policy to include an extended reporting period until September 2004, almost five months after the doctor reported the claim. In addition, the court rejected the doctor's argument that the insurer violated public policy because it failed to follow the notice requirements for cancelling coverage and attempted to cancel the doctor's coverage after a claim had been made against him. According to the court, the doctor's public policy argument was inapplicable because the policy's cancellation provision only applied

to insureds, and the doctor did not qualify as an insured when the claim was made against him.