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NEWSLETTER

Sixth Circuit Holds that Insurer Did Not Waive Right to Rescind Policy

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Applying Ohio law, the United States Court of Appeals for the Sixth Circuit has held that an insurer did not waive its right to rescind a professional liability policy issued to an accountant and his firm where the insurer knew of the accountant's potential involvement in a fraudulent investment scheme but still issued the policy and then canceled it after complying with a 90-day notice of cancellation provision. *Chi. Ins. Co. v. Capwill*, 2013 WL 469370 (6th Cir. Feb. 8, 2013). The district court opinion was reported in the February 2012 edition of the *Executive Summary*.

In 1997, the accountant applied for and obtained the first of three consecutive professional liability policies from the insurer. In 1998, two investment companies that had suffered losses in a fraudulent investment scheme sued the accountant and then went into receivership. At some point in 1998, the insurer learned that the accountant potentially was involved in the fraudulent investment scheme, but because the 1998 policy contained a 90-day notice of cancellation provision, the insurer issued the 1999 policy, then provided the accountant with notice of cancellation and canceled the policy after the 90-day period expired. The accountant eventually was convicted of fraud. When the receiver for the investment companies sought to recover from the proceeds of the 1999 policy, the insurer filed a declaratory judgment action, seeking to rescind the policy based on misrepresentations in the renewal application.

Granting summary judgment to the insurer, the district court had held that the insurer was entitled to rescind the 1999 policy because it established as a matter of law that the accountant had made material misrepresentations with fraudulent intent in answering three questions on the renewal application for the policy. In so holding, the district court rejected the receiver's argument that the insurer was barred from rescinding the 1999 policy by the doctrines of waiver, acquiescence, or equitable estoppel. On appeal, the Sixth Circuit summarily affirmed the district court's ruling, stating that "[b]ecause the reasoning which support[ed] the grant of summary judgment [was] articulated by the district court, the issuance of a detailed written opinion . . . would be duplicative and serve no useful purpose."