

No Coverage for Claim First Made Before Policy Inception But After Retroactive Date

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A Florida federal trial court has held that a claims-made-and-reported policy does not provide coverage for a claim first made prior to the policy's inception. *Rowland v. Diamond State Ins. Co.*, 2013 WL 5278219 (S.D. Fla. Sep. 18, 2013).

This lawsuit arose out of a negligence action filed in September 2007 by the personal representative of a deceased child who sued the insured foster parent, among others, for negligently causing the child's death. The foster parent agreed to a consent judgment against her and assigned her rights to bring a coverage action against her insurer.

The relevant claims-made-and-reported policy had a policy period of February 14, 2009 to February 14, 2010. The insuring agreement provided coverage "only if a claim . . . is first made against the insured and reported to us during the policy period." The policy also had a wrongful act retroactive date of February 14, 2003, under which the insurance "does not apply to injury caused by a wrongful act that . . . was committed before [February 14, 2003]." The policyholder was named as a defendant in a lawsuit served in September 2007, and first reported to the carrier in September 2009.

The policyholder sued for coverage on the theory that the retroactive date "brings the claim within the Policy period." The court rejected that argument, holding that the "clear and unambiguous" language of the insuring agreement provided coverage only for claims made and reported during the policy period, which the underlying claim indisputably was not. Accordingly, the court granted summary judgment to the carrier.