

ALERT

Retroactive Date Precludes Coverage Despite Insureds' Failure to Read Policy

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Applying Pennsylvania law, the United States District Court for the Eastern District of Pennsylvania has held that a retroactive date in an errors and omissions liability policy precluded coverage despite the insureds' mistaken understanding regarding the scope of coverage. *A.P. Pino & Assocs., Inc. v. Utica Mut. Ins. Co.*, 2012 WL 2567093 (E.D. Pa. July 3, 2012). The court also held that the insureds were not entitled to the reformation of the policy and rejected their bad faith claim.

The carrier issued an errors and omissions liability policy to a life insurance brokerage company. Although the owner of the company was interested in prior acts coverage, the insurer, based on its determination that the insured entity qualified as a new business entity, included a retroactive date in the policy, which provided that "[t]his insurance does not apply to loss, whenever occurring, from 'wrongful acts' which took place before the Retroactive Date." Thereafter, the insureds sought coverage for a claim that indisputably alleged wrongful acts occurring prior to the retroactive date. The insurer denied coverage, and the insureds filed suit seeking a declaratory judgment that the insurer had a duty to defend and indemnify in connection with the underlying action based on the insureds' reasonable expectation that the policy provided prior acts coverage. The insureds also sought reformation of the policy to provide the requested coverage and asserted that the carrier's conduct was in bad faith. The parties filed cross-motions for summary judgment.

The court granted the insurer's motion. First, the court held that the retroactive date language was unambiguous and readily comprehensive, and thus that the insureds could not avoid

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application of the retroactive date based on their failure to read the policy. The court also held that the insureds could not rely on the reasonable expectations doctrine, noting that the policy used clear and ambiguous language, the insureds were not unsophisticated non-commercial parties, and the insureds had failed to present any evidence that the insurer indicated that the insureds would receive prior acts coverage.

Second, the court rejected the argument that the insureds were entitled to reformation because the insurer mistakenly treated the insured entity as a new business entity. The court explained that the insurer had correctly treated the insured entity as a new business entity because of its lack of prior insurance coverage, not because of any mistaken view that the insured entity was a newly operating business. The court also noted that the insureds had not shown any evidence that the insurer either engaged in fraud or had reason to know of the insureds' unilateral mistake regarding the scope of coverage.

Finally, the court rejected the insureds' bad faith claim, holding that the insureds had failed to produce any evidence to support their claim for breach of the contractual duty of good faith and fair dealing as required under Pennsylvania law, and further that the insurer did not breach its insurance policy because it had a reasonable basis for denying coverage.

The opinion is available [here](#).