

OREGON LAW UPDATE

Increases in Policy Limits are Not Retroactive

case in point ...

From the desk of Jeff Eberhard: This case discusses whether an endorsement adding additional coverage is effective on the date the new coverage was added or retroactively applies from the initial policy start-date.

Claims Pointer: Since there is a presumption against insurance policies applying retroactively, when an endorsement unambiguously identifies the “effective date of change,” the policy endorsement applies from the date of the change, and not the policy period start-date.

Capitol Specialty Insurance Corporation v. Chan & Lui, Inc., in the Court of Appeals of the State of Oregon, 248 Or App 674, --- P3d ---- (March 14, 2012).

After becoming intoxicated at a restaurant, a customer left the restaurant and caused an automobile accident that killed two people. The Estates of the deceased eventually filed wrongful death lawsuits against the restaurant and entered into a settlement agreement of \$1.5 million each. At the time of the accident, the restaurant's insurance policy contained “liquor liability” coverage with a policy limit totaling \$1 million. Four months after the accident, the restaurant obtained an umbrella policy with a \$2 million limit, which increased the coverage for claims of injuries arising from the sale of alcohol from \$1 million to \$3 million.

The insurer that issued the umbrella policy filed a judicial declaration against the Estates seeking a declaration from the court that the additional \$2 million policy limits did not apply at the time of the accident. Both parties filed motions for summary judgment. The insurer argued that since there is a presumption against applying insurance policies retroactively and the endorsement was added after the accident, the umbrella coverage did not apply at the time of the accident. The Estates argued the statement, “This change endorsement will not be used to amend policy conditions” in the endorsement, did not amend any other policy terms, including the policy period. The Estates

argued since the policy start-date was before the accident, the endorsement retroactively applied back to the start-date of the policy and provided coverage at the time of the accident. The trial court granted the insurer's motion finding the only plausible interpretation was that the additional coverage applied only from the date it was purchased not the policy start-date. The Estates appealed to the Oregon Court of Appeals.

On appeal, the Estates renewed their argument that the endorsement applied back to the start-date because the endorsement provided that it would not change any of the policy terms, including the start-date of the policy. The court of appeals disagreed and found the only plausible interpretation of the language in the policy was that the endorsement applied at its effective date of change, which was after the accident. Thus, the umbrella policy issued after the accident did not apply at the time of the accident and the insurer was not obligated to pay beyond the lower policy limits of \$1,000,000.

Contact: Jeff Eberhard | www.smithfreed.com | email: jeberhard@smithfreed.com

Ph: 503.227.2424 | Fax: 503.227.2535 | 111 SW 5th Ave, Suite 4300 | Portland | OR | 97204

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