NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2442-10T2

MONICA KUMAR, M.D.,

Plaintiff,

v.

ROBERT WOOD JOHNSON UNIVERSITY HOSPITAL AT HAMILTON,

Defendant/Third-Party Plaintiff-Respondent,

v.

AON RISK SERVICES NORTHEAST, INC.,[1] a corporation of the State of New Jersey,

Third-Party Defendant-Respondent,

and

LEXINGTON INSURANCE COMPANY, a corporation of the State of Delaware,

Third-Party Defendant-Appellant.

Submitted February 6, 2012 - Decided August 10, 2012

Before Judges Parrillo, Grall and Skillman.

---

[1] Improperly pled as Aon Risk Services of New Jersey.

On appeal from Superior Court of New Jersey, Law Division, Mercer County, Docket No. L-2312-07.

William J. Cleary (Law Offices of Beth Zaro Green) attorney for appellant.

Norris McLaughlin & Marcus, P.A., attorneys for respondent Robert Wood Johnson University Hospital (Robert Mahoney, of counsel and on the brief; Bradford W. Muller, on the brief).

Madden & Madden, P.A., attorneys for respondent Aon Risk Services of New Jersey (Michael P. Madden and John-Paul Madden, on the brief).

PER CURIAM

Plaintiff Dr. Monica Kumar sued her employer Robert Wood Johnson University Hospital at Hamilton (RWJ) for breach of a provision of their employment contract requiring RWJ to provide primary and excess insurance for professional liability she might incur in the course of her employment. RWJ answered and filed third-party claims against the insurer that denied Dr. Kumar coverage under RWJ's policy, Lexington Insurance Company (Lexington), and Aon Risk Services Northeast, Inc. (Aon), which RWJ retained to advise, plan and secure insurance for RWJ and the doctors it employs. After RWJ settled with Dr. Kumar, the

trial court entered a $1,153,148.92 judgment in favor of RWJ and against Lexington on cross-motions for summary judgment.[2]

Lexington appeals from that judgment arguing, among other things, that the trial court erred in finding coverage. Because the material facts are in dispute, RWJ was not entitled to summary judgment as a matter of law. President v. Jenkins, 180 N.J. 550, 567 (2004); Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). Accordingly, we reverse.

I

Dr. Kumar accepted a contract of employment offered by RWJ in October 2002, and on December 12, 2002, she operated on Mary Ann Septak with the assistance of Dr. Antonio Sison, another employee of RWJ. During that operation, one of Septak's veins was unintentionally cut causing Septak to require additional surgery. Consequently, Septak filed a malpractice action to recover damages from the doctors and RWJ. Although Septak threatened to sue in December, she did not serve a written demand for compensation until January 13, 2003, when RWJ

[2] Although Aon and Lexington did not cross-claim, the trial court also granted summary judgment to Aon on its cross-motion in opposition to Lexington's motions for summary judgment. Because no order disposing of RWJ's third-party claim against Aon has been entered, this appeal is interlocutory. Yuhas v. Mudge, 129 N.J. Super. 207, 209 (App. Div. 1974). As authorized by Rules 2:4-4(b)(2) and 2:2-4, we grant leave to appeal.

received her notice of tort claim. She filed the malpractice suit on April 30, 2003.

Lexington did not dispute that Septak's medical incident was covered by policies of primary and excess insurance it issued for the period from January 1, 2003 to January 1, 2004. The policies provided coverage for claims made during the policy period based on medical incidents occurring after the policies' retroactive date, and Septak's surgery was after the retroactive date of RWJ's coverage. In fact, Lexington defended and indemnified RWJ and Dr. Sison in Septak's malpractice case.

Dr. Kumar received a defense and indemnification in Septak's action under a policy issued by Professional Underwriters Liability Insurance Company (PULIC) that RWJ obtained, but that coverage was insufficient. When the magnitude of Septak's claim became apparent, her attorney inquired about excess coverage for Dr. Kumar under Lexington's excess policy. He made the first inquiry in January 2006.

Lexington did not disclaim coverage for Dr. Kumar until June 3, 2007. Lexington's disclaimer was based on a schedule of physicians, allegedly the schedule determinative of coverage for physicians employed by RWJ under the policy terms. That schedule stated that Dr. Kumar's coverage was effective and

retroactive to January 6, 2003, twenty-five days after the Septak event.

Before Septak's December 12, 2002 surgery, RWJ retained Aon to develop and market an insurance plan that would meet its needs. Aon contacted Lexington to negotiate RWJ's coverage. At that time, RWJ had a liability policy with Princeton Insurance Company (Princeton) that was due to expire at the end of December 2002.

The Princeton policy and Lexington's standard policies had different coverage requirements. Under Princeton's policy compensable events that occurred during the period of Princeton's policy were not covered unless the claimant made a written demand for compensation within the policy period. Under Lexington's standard policy, "claims made" during the policy period were covered but only if the compensable medical event occurred during the policy period.

Those involved in the negotiation of RWJ's coverage with Lexington were aware that there would be a gap in coverage for compensable incidents that occurred during Princeton's policy period for which no demand was made until the Princeton policy expired. Consequently, representatives of Lexington, RWJ, and RWJ's expert, Aon, negotiated for a policy that would cover potentially compensable events (PCEs) identified by RWJ that

would fall within the coverage gap. The solution they agreed upon was to give the policies a retroactive date that would cover the PCEs.

The negotiations continued past January 1, 2003, the date the policy period commenced. Lexington's regional manager, Jack Lewkowitz, did not quote a premium for coverage of the PCEs until he had a telephone conference to discuss the PCEs with Aon's account manager, Donna Vible, and RWJ's risk management director, Jan Stout. That conference was held in the first week of January 2003. The Septak surgery was one of the PCEs they discussed. Lewkowitz admittedly knew that the Septak surgery was to be covered, was aware of Dr. Kumar's involvement and fixed the premium for the PCEs on the assumption that all RWJ employees involved would be covered. On January 6, 2003, Lewkowitz quoted a premium of $375,675 for excess coverage of the PCEs, which RWJ accepted.

Deposition testimony given by Lewkowitz, of Lexington, and Vible, of Aon, demonstrates that they had a common understanding of the retroactive date for physicians – the doctor's date of employment. Vible understood that the date for a doctor is "the day the doctor starts working." Lewkowitz understood that "employed physicians were covered," subject to the language of the policy. Stout's testimony indicated she understood

"retroactive date" to mean "[t]he date on which coverage was needed."

Lexington issued RWJ two policies that are pertinent here. Policy 5495630, "HEALTHCARE PROFESSIONAL LIABILITY [(HPL)] — CLAIMS MADE AND HEALTHCARE GENERAL LIABILITY - OCCURRENCE," and policy 5495631, "EXCESS HEALTHCARE PROFESSIONAL LIABILITY - CLAIMS MADE AND HEALTHCARE UMBRELLA LIABILITY - OCCURRENCE." The policy period for both is from January 1, 2003 to January 1, 2004.

The declarations page for 5495630 explains: "Claims made coverage is limited to liability for claims first made against an insured during the policy period or any extended reporting period, if applicable." It also indicates that the named insured is Children's Specialized Hospital and that the retroactive date for that hospital's HPL coverage is October 1, 1977.

RWJ's Hamilton hospital, where Dr. Kumar was employed, is added as a named insured under policy 5495630 in Endorsements Nos. 6 and 12. Endorsement 12 amends that hospital's retroactive date stated in Endorsement 6 from April 8, 1996 to April 9, 1976. No retroactive date for the doctors who have HPL coverage is listed in the policy, and the policy does not define the term "retroactive date."

In pertinent part, the HPL coverage part describes the insuring agreement for healthcare professional liability applicable to a named insured as follows:

> We will pay those sums that you become legally obligated to pay others as damages resulting from a medical incident arising out of professional services provided by any Insured. . . . The medical incident must take place on or after the retroactive date and before the end of the policy period. A claim for a medical incident must be first made against an Insured during the policy period or the extended reporting period, if applicable.
>
> . . . .
>
> [(Emphasis added).]

The term "insured" is defined to include "your employees, . . . but only for acts within the scope of their employment."

Part three of the HPL coverage sets forth several exclusions to this coverage. Pertinent here, exclusion "S" states, with exceptions not applicable in this case, that the insurance does not apply to "[a]ny claim against any physician." Endorsement 11, however, provides exemptions to Exclusion "S." That endorsement "amends the policy" to provide:

> For the purposes of this endorsement only, and only with respect to professional services provided with[in] the scope of their agreement for the Named Insured, Section III, EXCLUSIONS, of the EXCESS HEALTHCARE PROFESSIONAL LIABILITY COVERAGE PART S. Physicians shall not apply to any

> physician . . . employed or contracted by you per the schedule on file with us.
>
> [(Emphasis added).]

Endorsement 11 does not describe the information to be included in the schedule that controls coverage. Specifically, it does not indicate that the schedule will set forth a retroactive date for a physician employee or how doctors "employed or contracted" by RWJ will be placed on the schedule that Lexington will keep on file.

This HPL policy does not preclude an insured from having the same or similar primary coverage under another policy. In fact, 5495630 addresses that issue in paragraph H of part III by providing that if there is other insurance that applies to the loss, that other insurance must pay first.

The declarations page of excess policy 5495631, like that for 5495630, identifies Children's Specialized Hospital as the first named insured. Part II identifies those insured to include the first named insured and "any insured named on the Underlying Policy." Endorsement 6 amends the schedule of named insureds to include RWJ with a retroactive date of April 9, 1976. Item 7 on the declarations page identifies forms "attached at inception," including a schedule of "underlying policies" and a schedule of named insureds. The schedule of underlying policies includes Lexington's HPL policy 5495630; it

does not include the PULIC policy under which Dr. Kumar was insured. The schedule of named insureds does not include any doctors.

Because no doctor who is an employee of RWJ is on the schedule of named insureds for 5495631, and because no policy other than Lexington's 5495630 is listed on the schedule of underlying policies, a doctor's coverage under the excess policy, like a doctor's coverage under 5495630, depends on whether the schedule of physicians on file with Lexington brings the doctor within the exception to Exclusion "S."

As with policy 5495630, there is nothing in the excess policy indicating that the schedule will include a retroactive date for a doctor's coverage.

On January 29, 2003, a representative of Aon emailed Clark Haley, Lexington's primary underwriter on these policies, advising that Aon "need[ed] to get certificates of insurance issued for [the] client" and had to invoice the policies before doing that. In that email Aon referenced the $375,675 premium for excess coverage Lewkowitz quoted as the "umbrella." Lewkowitz was copied on the email.

On February 5, 2003, Aon issued a certificate of insurance indicating that Dr. Kumar had $1,000,000 hospital professional coverage per occurrence under policy 5495630 and excess coverage

of $5,000,000 under policy 5495631 for a period from January 6, 2003 thru January 6, 2004, a period that commenced and ended five days after the policy periods on RWJ's policy.

In a space reserved for "DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS," the certificate states a retroactive date for Dr. Kumar: "Monica Kumar MD OB/GYN Retro Date 11/08/00[.]" Although this certificate includes disclaimers indicating that the coverage is subject to all terms, exclusions and conditions of the policies, it also states:

> THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN.
>
> [(Emphasis added).]

Despite the fact that Aon's email indicated its intention to give a copy of the certificate to RWJ and should have given a copy to Lexington, no one questioned the dates for Dr. Kumar's policy period or the retroactive date set forth in this certificate of insurance.

In denying coverage to Dr. Kumar, Lexington relied on the "Hire/Retro" date for her coverage set forth in a document that it claimed was the schedule referenced in policy 5495630. The

inquiry from Dr. Kumar's attorney in January 2006 sparked a search for the critical schedule that lasted about seventeen months. During those months, RWJ's claim manager, a claims analyst and underwriters employed by Lexington, and Aon's analyst and its president made unsuccessful efforts to find documents pertinent to the schedule determinative of coverage for physicians employed by RWJ under these policies.

Jan Stout of RWJ found a schedule prepared for the policy period from January 1, 2003 to January 1, 2004. It includes Dr. Kumar and lists two dates following her name, January 6, 2003 and June 30, 2003. The dates appear in separate columns adjacent to her name.[3] That schedule also includes Dr. Sison with one date in the first column following his name, September 12, 1997. Stout also found a second document reflecting Dr. Kumar's policy with PULIC and stating its renewal date as December 2, 2003.

On May 9, 2007, Lewkowitz of Lexington found a schedule purportedly emailed to him by an employee of Aon on October 2, 2003. During his deposition, Lewkowitz acknowledged that documents pertinent to the policy could have been lost during a change in the location of the primary underwriter's office. On

[3] The significance of those dates is not clear on the copy provided to us because the headings above the columns in which the dates appear are blacked out.

the schedule sent to Lewkowitz in October 2003, Dr. Kumar's name appears with other physicians for the policy period from January 1, 2003 to January 1, 2004. The schedule Lexington found appears to be in the same format as the one RWJ found for policy period 2003-2004. The headings for the various columns, however, are legible on this schedule. They appear as follows:

"**Last Name First Name Specialty SS/License NUMBER FT/PT Hire/ Retro Delete Date**"

For each doctor on the list, the "Hire/Retro" column states a date. For Dr. Kumar, the date listed is "1/6/03." For Dr. Sison, the date listed is "9/12/97." There is no evidence indicating any relationship between the "Hire/Retro" date for Dr. Kumar and the date Dr. Kumar was hired. As noted above, she signed her employment contract in October 2002 and was employed by RWJ when she operated on Septak in December 2002. Nor does the "Hire/Retro" date listed for Dr. Kumar coincide with the date her policy with PULIC was up for renewal, which was December 2003.

Following Lewkowitz's discovery of this schedule, Lexington promptly relied upon it to deny Dr. Kumar coverage. On June 5, 2007, Lexington's attorney wrote a letter disclaiming coverage for Dr. Kumar. In pertinent part, it reads:

> . . . We have had an opportunity to review the Lexington policy in issue and have determined that while you are insured under

> that policy, that insurance in your favor did not take effect until January 6, 2003, more than twenty-five (25) days after the medical incident involving Ms. Septak occurred. Accordingly, for this reason and as will be explained more fully below, we regret to inform you that you are not afforded coverage under the Lexington excess policy for the claim asserted against you by Ms. Septak.
>
> . . . .
>
> . . . Robert Wood Johnson University Hospital at Hamilton through its insurance broker, AON Risk Services Inc. of New Jersey, identified you as an employee of the hospital for purposes of establishing coverage under the Lexington policy and requested a retroactive date of January 6, 2003. As reported, the policy was so endorsed.
>
> As indicated, in order for coverage to extend to you under the Lexington policy issued to Robert Wood Johnson University Hospital at Hamilton, the medical incident must take place on or after the retroactive date. Inasmuch as the medical incident involving Ms. Septak took place on December 12, 2002, and the retroactive date established for you was January 6, 2003, the medical incident occurred prior to the retroactive date and thus, no insurance would be afforded you under the policy. Accordingly, Lexington is denying coverage . . . .
>
> . . . .

In the trial court's oral decision on the cross-motions for summary judgment, the court identified ambiguities in the contract of insurance. The court found: that the policy

mentioned but did not define a retroactive date; that the retroactive date for this hospital was changed from 1996 to 1976 by separate endorsements; that the retroactive dates for the doctors were not discovered for months; and that the document stating those dates was sent to Lewkowitz a few months after the policy's effective date. The court also found that RWJ's expectations were that there would be no gaps in coverage and that Septak's claim would be covered. For those reasons, the court granted RWJ's and denied Lexington's motion for summary judgment.

II

Appellate courts apply the same standard as the trial court when reviewing a grant of summary judgment. Liberty Surplus Ins. Corp. v. Nowell Amoroso, P.A., 189 N.J. 436, 445-46 (2007). Because this judgment was entered in favor of RWJ, the question is whether the hospital is entitled to judgment as a matter of law or whether a genuine dispute of material fact presents a question for the jury. Brill, supra, 142 N.J. at 540.

Lexington's primary argument is that the trial court erred in finding coverage for Dr. Kumar. Lexington correctly notes that RWJ had the burden of establishing coverage. Hartford Accident & Indem. Co. v. Aetna Life & Cas. Ins. Co., 98 N.J. 18, 26 (1984); Reliance Ins. Co. v. Armstrong World Indus., 292 N.J.

Super. 365, 377 (App. Div. 1996). While RWJ's proofs on this question were sufficient to defeat Lexington's motion for summary judgment, review of the policy provisions and the evidential materials demonstrates that facts material to coverage are in dispute. Accordingly, RWJ was not entitled to summary judgment.

Under the terms of the policies, Dr. Kumar was entitled to coverage if her name appeared on the schedule on file with Lexington. Lexington produced a schedule that it deemed controlling, and that schedule names Dr. Kumar. While that evidence does not compel a finding that Dr. Kumar was a physician covered by the policy, it permits the inference.

The policy language does not clearly permit the insurers to include any retroactive date for the individual doctor covered in the schedule of physicians on file with Lexington. On that point, the policy is ambiguous. As noted above, the primary policy makes a doctor's coverage dependent on whether the physician is "employed or contracted by [RWJ] per the schedule on file with [Lexington]." That provision is silent on the information that will be included on the schedule and, thus, can be read to contemplate a retroactive date based on the date of employment or the employment contract. Or it can be read to incorporate the policy's retroactive date for the physician's

employer and confine coverage for an individual doctor-employee after that date only on the ground that the doctor was not rendering care as an employee or a contractor of RWJ.

"[A]s with any contract, construing insurance policies requires a broad search 'for the probable common intent of the parties in an effort to find a reasonable meaning in keeping with the express general purposes of the policies.'" S.T. Hudson Eng'rs, Inc. v. Pa. Nat. Mut. Cas. Co., 388 N.J. Super. 592, 604 (App. Div. 2006) (quoting Royal Ins. Co. v. Rutgers Cas. Ins. Co., 271 N.J. Super. 409, 416 (App. Div. 1994)), certif. denied, 189 N.J. 647 (2007). This record includes evidence that permits, but does not compel, the conclusion that the parties intended to include a retroactive date for each doctor coinciding with that doctor's employment. That evidence includes the deposition testimony of Aon's Vible and Lexington's Lewkowitz and also the "Hire/Retro" date information that appears on the schedule Aon, on behalf of RWJ, allegedly submitted to Lexington in October 2003. If RWJ fully understood the meaning of the otherwise ambiguous policy provisions governing retroactive dates for coverage, then it should be enforced despite the ambiguity. Sparks v. St. Paul Ins. Co., 100 N.J. 325, 340 n.4 (1985).

The second question is whether Dr. Kumar's "Hire/Retro" date is ambiguous. While there is nothing ambiguous about the date that is listed, our courts have found ambiguity with respect to coverage dates where the retroactive date is subsequent to the commencement of the policy period. For example, the Supreme Court determined that a policy binder stating a retroactive date later than the policy's effective date is ambiguous. See President, supra, 180 N.J. at 565-66. As in President, Dr. Kumar's "Hire/Retro" date, as reflected on the schedule, is January 6, 2003 and that date is after the effective date of the policy period, which is January 1, 2003 to January 1, 2004. Thus, under President, it is ambiguous.

The ambiguity of this retroactive date is exacerbated, not clarified, when the heading on the schedule under which the January 6 date appears is considered. That heading, "Hire/Retro" date, suggests that the date is the doctor's hiring date, but it cannot be assigned that significance in this case. It is undisputed that Dr. Kumar signed her employment contract and started working as an employee of RWJ prior to January 6, 2003. Indeed, it is also undisputed that she was acting as an employee of RWJ when she operated on Septak on December 12, 2002.

The Court has also found ambiguity where different dates are reflected in different documents related to the policy, such as the certificate of insurance. Id. at 556, 566 (discussing discrepancies in dates and considering dates in the certificate of insurance, the binder, the declarations page and endorsements). In this case, the ambiguity of having a retroactive date later than the effective date of the policy is heightened by the fact that the certificate of insurance confirming Dr. Kumar's coverage states a much earlier retroactive date, November 8, 2000, and a later date for the commencement of the policy period, January 6 rather than January 1, 2003, the date on which RWJ's policy period commences.

As a general rule, such ambiguities in insurance documents warrant a liberal construction in favor of the insured to ensure that the policy is applied as the insured reasonably expected. Sparks, supra, 100 N.J. at 337-38. The rationale for these rules requiring that liberal interpretation is that contracts of insurance are generally prepared unilaterally and offered to the public as contracts of adhesion. President, supra, 180 N.J. at 562-63.

These policies, however, were not contracts of adhesion offered to a member of the public. They are the product of negotiations between representatives of Lexington and RWJ, who

participated with the assistance of its insurance expert and advisor, Aon. True, Dr. Kumar did not have any role in the negotiations or the selection of the carrier, but, in effect, through its employment contract with Dr. Kumar, RWJ took on that responsibility. Dr. Kumar vindicated her right to the insurance coverage RWJ owed her under the employment contract by suing RWJ. In this third-party litigation, RWJ is protecting its interest in having Lexington provide the coverage that RWJ owed to Dr. Kumar. In this context, the reasonableness of RWJ's expectations is better assessed in accordance with general principles of contract law under which the intent of parties with relatively equal bargaining power control. Diamond Shamrock Chems. Co. v. Aetna Cas. & Sur. Co., 258 N.J. Super. 167, 209 (App. Div. 1992) (noting that when "it is clear that an insurance policy was 'actually negotiated or jointly drafted,' and where the policyholder had bargaining power and sophistication . . . the rule of strict construction of policy terms against the insurer [is] not invoked"), certif. denied, 134 N.J. 481 (1993).

Our disagreement with the trial court's grant of summary judgment in favor of RWJ is that the evidence relevant to the reasonableness of RWJ's expectation that Dr. Kumar would be covered for the Septak event is not sufficiently one-sided to

permit a determination of reasonableness as a matter of law. As in President, the disputes of fact material to the reasonableness of RWJ's expectations preclude an award of summary judgment. 180 N.J. at 566-67.

As discussed above, there is evidence that would permit a finding that the parties intended different retroactive dates for different doctors based on the doctor's hiring date. There also is evidence that would permit a finding that Aon, using information supplied by RWJ, provided the "Hire/Retro" dates listed on the physicians schedule that Lexington eventually found. If that is so, RWJ's expectation of an earlier retroactive date for Dr. Kumar could be deemed unreasonable. If the retroactive date listed was a product of mutual mistake that defeated the parties' intention to cover Dr. Kumar for the Septak surgery, that mistake could be remedied by reformation of the schedule incorporated by reference in the policy upon request of a party. See Restatement (Second) of Contracts § 155 (1981). But that mistake could not be corrected by relying on the doctrine of reasonable expectations.

The question of whether the document Lexington identified as the schedule was, in fact, the schedule agreed upon is far from clear on this record, however. It took the parties several months to locate the schedule, and the schedule that was found

was not sent to Lexington until ten months after the policy period commenced. This raises a question about whether the list found was prepared as the schedule of physicians covered by the policy or for some other purpose. In addition, Aon's statement of a much earlier retroactive date on the certificate of insurance suggests that it had a different retroactive date for Dr. Kumar, one that would encompass the Septak event.

The fact that neither Aon nor RWJ could produce the critical schedule of physicians that was prepared contemporaneously with the issuance of the policies raises another question about the reasonableness of RWJ's expectations. The primary policy incorporates that schedule by reference, effectively making it a part of the policy that is critical to coverage for physicians. One might conclude that if RWJ and its agent Aon were acting reasonably, they would have obtained and reviewed a copy of the schedule that the policy required Lexington to use in deciding whether to provide or deny coverage. See Bauman v. Royal Indem. Co., 36 N.J. 12, 25 (1961) (noting that an insured is expected to read the policy); accord Morrison v. Am. Int'l Ins. Co. of Am., 381 N.J. Super. 532, 542 (App. Div. 2005). In that regard, it is worth noting that the certificate of insurance memorializing Dr. Kumar's coverage states a policy period different than the period of the policies

issued to RWJ. Arguably, a discrepancy of that magnitude would lead a reasonable insured in RWJ's position, its expert advisor, or the insurer Lexington to confirm the accuracy of the schedule incorporated by reference in the policy.

These factual disputes about the source of the "Hire/Retro" date, which are relevant to the reasonableness of RWJ's expectation that Dr. Kumar's coverage would be retroactive to a date encompassing the Septak incident, cannot be resolved as a matter of law on this record.

We reject Lexington's suggestion that Dr. Kumar's coverage under the PULIC policy precludes a determination of any coverage for her under Lexington's primary policy. The significance of the PULIC policy is a factual question relevant to determining whether RWJ intended to cover Dr. Kumar under both the Lexington policies and the PULIC policy, or just under the PULIC policy. That question cannot be resolved with reference to policy provisions because under Lexington's policy, RWJ could obtain primary coverage for Dr. Kumar and additional primary and excess coverage under the Lexington policies. The factual issue is pertinent to the coverage question and RWJ's expectations.

Because of the factual questions presented relevant to coverage and the reasonableness of RWJ's expectation that Dr. Kumar, as opposed to RWJ, would have primary and excess coverage

for the Septak event, we reverse the grant of summary judgment and remand for further proceedings. As the trial court noted, Aon, RWJ and Lexington all had a role in this situation created by their mutual failure to identify a definitive schedule of physicians at the outset as contemplated by their contract. In our view, these material factual disputes preclude assignment of responsibility among Lexington, RWJ and Aon on this record. In remanding, we note that RWJ's third-party complaint against Aon is still pending in the trial court and should be included in those proceedings. The reversal makes it unnecessary to address Lexington's claims of error related to the amount of the judgment.

Reversed and remanded.