

Delay in Providing Notice of Lawsuit and Default Judgment Precludes Coverage

March 2006

The United States District Court for the Middle District of Alabama, applying New York, New Jersey and Alabama law, has granted summary judgment to two insurers, holding that they owed no duty to indemnify a policyholder for any portion of a \$5 million default judgment because the policyholder breached the notice provisions of the applicable primary professional liability policy and excess liability policy. *Lemuel v. Admiral Ins. Co.*, 2006 WL 173657 (M.D. Ala. Jan. 23, 2006).

The policyholder ambulance service was sued for allegedly providing inadequate medical treatment to an injured man who eventually died. The suit, served on the ambulance service in January 2003, identified the ambulance service by its trade name rather than its actual name. The ambulance service took a "calculated risk" by not answering the complaint and a \$5 million default judgment was entered in May 2003 that was upheld on appeal. The ambulance service eventually provided notice of the lawsuit and judgment to its primary professional liability insurer in June 2003 and its excess carrier in May 2004.

Noting that New York and Alabama law did not differ on the issue of late notice under primary liability policies for claims arising outside New York, the court found that the ambulance service's five-month delay in providing notice to the primary insurer, without justification, was "untimely and unexcused" and breached the policy's requirement that notice be provided "as soon as practicable." The court also held that the sixteen-month delay in providing notice to the excess insurer breached the notice provision of the excess policy, under either New Jersey or Alabama law, both because the delay was unreasonable and because the insurer was prejudiced as a result. Accordingly, the court determined that coverage was barred due to untimely notice.