

Insurer Estopped from Denying Coverage under Lawyer's Professional Liability Policy

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The U.S. District Court for the Western District of New York has held that a professional liability insurer was estopped from disclaiming coverage based on the policyholder's late notice because the insurer unreasonably delayed disclaiming coverage to the detriment of the policyholder. *Adams v. Chicago Ins. Co.*, No. 01-CV-6164 CJS, 2002 U.S. Dist. LEXIS 860 (W.D.N.Y. Jan. 22, 2002).

The policyholder, a lawyer, sought coverage under a lawyer's professional liability policy for a suit alleging malpractice based on the failure of the attorney and his co-counsel to file a workers compensation claim within the New York statute of limitations. The lawyer was aware in November 1996 that the statute of limitations had been missed. However, he failed to provide notice of a potential claim or a claim under his professional liability policy until July 1999, when the new attorney for the client informed him that they were considering a legal malpractice claim. Eight months later, in March 2000, the insurer disclaimed coverage on the ground that the policyholder failed to give timely notice of a potential claim as required by the policy. The policyholder then filed a declaratory judgment action against the insurer.

The court held that the policyholder's failure to provide notice of a potential claim for almost three years after he became aware that the statute of limitations had been missed was untimely as a matter of law. The court rejected the policyholder's argument that he was not aware of the potential for a claim until he was informed by the client's new attorney that they were considering a legal malpractice claim. The court reasoned that the lawyer, knowing he was closely engaged in work on a client's case with co-counsel, had to reasonably believe that co-counsel's failure to file suit before the expiration of the statute of limitations could potentially expose him to a malpractice claim requiring notice to his insurer.

The court held, however, that the insurer was estopped from denying coverage because its disclaimer was unreasonably delayed and the policyholder relied on an expectation of coverage to his detriment. An insurer may be estopped from asserting a valid defense under the policy if: (1) the insurer undertakes the defense of the insured; (2) with knowledge of a defense to coverage under the policy; (3) unreasonably delays disclaiming coverage on the basis of that defense; (4) if the insurer's delay prejudices the insured; and (5) the insured reasonably relied on the insurer to his detriment. Here, the court held that the insurer's eight month delay in disclaiming coverage, during which time the insurer corresponded with plaintiff's counsel on behalf of the insured, constituted an unreasonable delay in disclaiming coverage. The court determined that the insurer

had no reason to delay a disclaimer, since it was aware of the policyholder's late notice from the outset, and that its actions caused the policyholder to believe that the insurer would provide a defense. Accordingly, the court concluded that the insurer was estopped from denying coverage.