

Untimely Notice of Potential Claim under Lawyers Policy Precludes Coverage

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A federal district court in New York granted summary judgment in favor of an insurer, denying coverage under a lawyer's professional liability policy to an insured attorney who failed to provide timely notice of a potential claim. *Sirignano v. Chicago Ins. Co.*, No. 01-7010, 2002 U.S. Dist. LEXIS 5289 (S.D.N.Y. March 26, 2002).

The attorney sought coverage under his professional liability policy for a legal malpractice suit that arose out of his handling of a medical malpractice action. The insurer cross-moved for summary judgment asserting that the attorney did not furnish a timely notice of a potential claim as required under the terms of the policy. The applicable policy stated that "[u]pon the Insured becoming aware of any negligent act, error, omission...written notice shall be given by the Insured...as soon as practicable. If the Claim is made or suit is brought against the Insured, the Insured or its representative shall immediately forward to the Company every demand, notice, summons or other process received by the Insured or the Insured's representative." (Emphasis added.) The court interpreted the policy as imposing two separate notice conditions: a notice requirement for a potential claim and a notice requirement for an actual claim or suit.

The underlying medical malpractice case was dismissed as abandoned because the insured attorney had done nothing to restore the case within the specified calendar year under New York's procedural rules. The court found that the attorney's knowledge of that dismissal was alone sufficient to create a reasonable expectation of a malpractice claim. Moreover, the court noted that the court deciding the medical malpractice claim denied the insured attorney's motion to vacate the dismissal, and in so doing, directed him to personally pay the costs of the defendants' counsel, stating that his vacatur motion itself was procedurally defective.

In the ensuing insurance coverage case, the court found that both the dismissal of the action and the court's denial of the vacatur were sufficient to put the attorney on notice of a potential claim. In finding for the insurer, the court stated that although the attorney did give the insurer notice of the malpractice claim shortly after his receipt of the claim letter, he did not give the insurer notice of a potential claim until approximately 18-22 months after he learned of it. The court found such a delay to be unreasonable. The attorney attempted to justify his delay by asserting that he should have been allowed to withhold notice until a remediation process had run its course. The court rejected this excuse and stated that the "fact that an insured lawyer continues to represent the client in a pending matter, and that the courts have not finally spoken on the case, does not

eliminate his notice responsibility to his carrier." Likewise, the court rejected the attorney's suggestion that the underlying plaintiff's failure to notify him promptly of the malpractice claim excused his own notification delay to the insurer, observing that even an injured party's communication to the insured that no claim would be made would not excuse a notice delay. Finding that the attorney had no legally cognizable excuse for his "inordinate delay," the court held that such delay precluded coverage under the policy.