

Broad Notice of Potential Claim Satisfies Policyholder's Obligations

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The United States District Court for the Eastern District of Pennsylvania, applying Pennsylvania law, has held that a notice of potential claim that informed the insurer of the alleged injury and parties in very general terms satisfied a professional liability policy's notice of potential claim provision. *Systems & Computer Tech. Corp. v. Columbia Cas. Co.*, 2007 WL 1221177 (E.D. Penn. Apr. 25, 2007).

The policyholder, a software company, was issued two successive one-year professional liability policies from two different insurance companies. The policies provided liability coverage for claims arising out of the company's professional services, which were defined as services relating to "the performance of providing Computer Services for others for a fee."

The first insurer's policy included a notice provision that required the company to provide written notice of potential claims that included "the names of injured parties, and [the] specifics of the time, place, and nature of the Wrongful Act." The second insurer's policy included two relevant exclusions: a pending and prior litigation exclusion and a prior knowledge exclusion. The pending and prior litigation exclusion barred claims "based on or arising out of a Wrongful Act, fact or circumstance which before the effective date of the Policy was reported to [the Insurer] or any other Insurer." The Prior Knowledge exclusion barred claims "based on or arising out of a Wrongful Act actually or allegedly committed prior to the beginning of the Policy Period, if, on or before the . . . effective date of this Policy . . . [the policyholder] knew or reasonably could have foreseen that the Wrongful Act did or could lead to a Claim."

The company sent the first insurer two letters that it contended provided notice of a potential claim. In the first letter, the company explained that one of its software distributors had been sued because of problems it was experiencing implementing the company's software. The letter went on to state that while the company had not been named, it "wanted to notify [its] carrier(s) of this matter. Accordingly, please accept this letter and the enclosed letter as notice of a claim under [its] applicable insurance policies." The second letter attached a chart of claims in which the claim was described as follows: "Australian client, through a channel partner, [the distributor], has repeatedly expressed dissatisfaction with quality of product and [the policyholder's] alleged failure to incorporate Australian and deregulation features into its product"

The court examined the letters and concluded that the first letter failed to provide sufficient notice of a potential claim because it did "not identify an alleged act, error, or omission by [the company], or any professional services [the company] provided to a potential claimant for a fee." The court then determined that the second letter did provide sufficient notice of a potential claim, stating that the "'alleged failure' to incorporate certain features into its software" was fairly read as an "alleged breach of duty, neglect, [or] error" and provided "sufficient notice of the nature of [the] wrongful act." The court determined that the identity of the injured party, described in the chart as an "Australian client," sufficiently "name[d]" the allegedly injured party. The court also determined that the description of the client as "Australian" sufficiently notified the insurer of the "place" of the alleged wrongful act. Finally, the court held that the company sufficiently notified the insurer of the "time" of the wrongful act. The correspondence provided to the first insurer indicated that the agreement at issue was signed in April 1997 and that the acts occurred sometime prior to the plaintiff's letter to the distributor in April 2001. Thus, the "time" of the alleged wrongful act "occurred sometime between April 21, 1997 and April 2, 2001." According to the court, this four year range sufficiently identified the "time" of the wrongful act because the "policy does not explain how specifically [the company] was obliged to describe the time." Therefore, the court concluded that the company had sufficiently provided notice of a potential claim during the policy term of the first insurer.

The court then considered the first insured's argument that it was prejudiced by the late denial of the claim by the second insurer and by the company's failure to obtain its consent to incur defense costs. For nearly three years, the company sent defense invoices and provided litigation updates to the second insurer. Without considering the issue of prejudice, the court held that the first insurer waived its right to assert strict performance under the policy because it wrongfully denied coverage.

Regarding the second insurer, the court held that the company's alternative claims against it were moot, but nevertheless indicated that two of the exclusions in that insurer's policy barred coverage. The court stated that the Pending and Prior Litigation exclusion barred coverage because it applied to wrongful acts reported to the first insurer or "any other Insurer." It stated that the Prior Knowledge exclusion would apply even if the letters sent to the first insurer had failed to satisfy the notice requirements under that policy, because the company "knew of the nature of [the plaintiff's] complaints and (correctly) foresaw that problems . . . could lead to a claim against it."