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NEWSLETTER

Delayed Notice Absolves Insurer

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In an unreported decision, a federal district court in Pennsylvania, applying Pennsylvania law, has held that a 16-month delay in notifying an insurer of a claim absolves the insurer of its duty to indemnify because the policyholder knew or should have known earlier that the complaint filed against it constituted a claim under the policy. *Philadelphia Indem. Ins. Co. v. Fed. Ins. Co.*, 2004 WL 1170525 (E.D. Pa. 2004).

The policyholder, an insurance company, was insured by a reinsurer under a professional liability policy. The policy provided coverage for "Loss which the Insureds shall become legally obligated to pay as a result of any Claim first made against the Insureds...arising out of any Wrongful Act committed by the Insureds or any person for whose acts the Insureds are legally liable." The policy defined claim as "a civil proceeding commenced by the service of a complaint or similar pleading." The policy also provided that the policyholder must provide "written notice as soon as practicable...of any Claim made against the Insured(s) for a Wrongful Act, of which the Insured's General Counsel or equivalent officer first becomes aware of such Claim."

One of the insurance company's insureds submitted a claim under a D&O policy. The insurance company denied the claim, and the policyholders filed suit alleging bad faith. The insurance company retained outside defense counsel, who identified the underlying coverage litigation as a "bad faith" suit on each invoice. However, the insurance company delayed notifying the reinsurer of the claim against it for 16 months. After the underlying bad-faith litigation settled, the reinsurer offered to pay only a portion of the settlement amount, contending that the case could have settled for a lower amount had it been timely notified of the claim. Coverage litigation ensued.

In determining whether the reinsurer had a duty to indemnify, the court focused on the issue of whether service of the complaint on the insurance company's president and chief operating officer triggered the notice provision of the policy. The court first rejected the insurance company's argument that the notice provision was ambiguous because the insurance company did not have a general counsel. The court noted that the insurance company admitted that it authorized its vice president of claims to notify the reinsurer in the event of a claim, and it therefore concluded that the notice provision was triggered once that employee became aware of the complaint. The court found that even if he did not read the complaint, the officer "was familiar" with the underlying litigation, and the notice provisions of the policy therefore applied. The court explained that the vice president of claims was aware of the litigation based on the fact that the company "den[ied] coverage in the underlying [litigation] matter just five months earlier, coupled with the seriousness of a suit for coverage, and his actual receipt of the...complaint." The court also noted that the captions in the bad faith

complaint were bolded, so that "even a cursory review of the complaint would have revealed the causes of action" alleged. As such, the court held that the officer "knew or should have known of the likelihood" that the complaint constituted a claim under the company's reinsurance policy. The court also rejected the insurance company's promissory estoppel argument based on the reinsurer's reservation of rights letter, finding no promise or detrimental reliance.

For more information, please contact us at 202.719.7130.