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NEWSLETTER

Insured's Notice of Basic Facts of Incident Sufficient to Satisfy Reporting Requirement of Claims-Made Policy

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The Missouri Court of Appeals has held that an insured's notice of the basic information about a misdiagnosis by an insured physician before the end of the policy period was sufficient to satisfy the requirements of the notice of potential claim provision of a claims-made policy. *Landry v. Intermed Ins. Co.*, 2009 WL 1657992 (Mo. App. June 16, 2009).

The insurer issued a claims-made policy to a health care clinic and the physicians who worked there. An insured physician misdiagnosed a patient's myocardial infarction (MI), resulting in a delay of proper treatment and permanent heart damage. The physician reported the misdiagnosis to the clinical director responsible for reporting all medical incidents and claims to the clinic's insurer. A few days before the policy was set to expire, the clinical director compiled a list of approximately 100 incidents that occurred under the care of the clinic's physicians during the claim period and sent it to the insurer. The list included for each incident the doctor's name, the patient's name, the date of the incident and the nature of the allegation. For the incident at issue, the report described the allegation as "Missed acute MI."

The insurer responded that the information provided was insufficient to preserve coverage for future claims arising out of any incident on the list and requested a narrative description of each incident and the reason it might give rise to a claim. The clinical director replied that he believed the information provided satisfied the notice requirement and stated that the reason the incidents listed might develop into claims is that each was either "a misdiagnosis or a bad outcome." He also offered to provide more detailed information, though he said it would be impossible to do so before the policy period ended. Thereafter, the injured patient sued the clinic and the physician and settled for the policy limits. She then filed an equitable garnishment action against the insurer seeking to satisfy the judgment. The insurer denied that there was coverage under the policy because it had not received timely notice of a potential claim. The trial court granted summary judgment for the patient, and the insurer appealed.

The Court of Appeals affirmed, noting that, although there was little law on what constituted adequate notice of a potential claim, the clinical director's email informing the insurer that a physician had misdiagnosed an acute MI provided adequate notice during the policy period of facts reasonably expected to give rise to a claim. The court opined that the purpose of requiring notice under a claims-made policy is to afford the insurer an opportunity to investigate. The court cited with approval an Eleventh Circuit opinion, which held that "[n]o matter what the form of notice of loss may be, if it operates to bring the attention of the insurer to the loss or accident, sets forth the essential facts upon which liability of the insurer depends, and appears credible, it is sufficient." *St. Paul Fire & Marine Ins. Co. v. Tinney*, 920 F.2d 861, 863 (11th Cir. 1991). The court found that the specific mention of the "missed" diagnosis of acute MI put the insurance company on notice of the reasonable possibility of a future claim.