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NEWSLETTER

Notice of Claim by Loss Run Sufficient, But Notice of Suit Also Required

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The United States Court of Appeals for the Fifth Circuit Court, applying Texas law, has held that where a claims-made excess liability policy required "written notice of a claim or suit," the insured's submission of a computer generated "loss run" spreadsheet that identified claims and noted the existence of 4590i letters (which, in Texas, notify healthcare providers that an injured party is asserting a healthcare liability claim) constituted sufficient notice of a claim. *East Tex. Med. Ctr. Reg'l Healthcare Sys. v. Lexington Ins. Co.*, 2009 WL 1982368 (5th Cir. Jul. 10, 2009). However, where the insured later learned that a claimant had filed suit, the policy at issue imposed a separate and additional obligation to notify the insurer of the suit. The court finally held that, under the circumstances, the insurer was required to show prejudice for the medical center's failure to provide timely notice of the suit.

The loss run submitted by the medical center insured contained "relatively scant" information about the patient's claim, but the court held that nothing in the policy limited written notice to a particular format, or required any specific level of detail. The court went on to hold that despite the disjunctive use of "claim *or* suit" and despite the fact that "claim" was defined to include a "suit," the policy at issue established separate notification requirements for claims and subsequent suits. The medical center delayed notifying the insurer of the existence of a suit for seven months, and the court ruled that such notice was not given "as soon as practicable," as required by the policy.

Overruling the trial court, the appellate court further held that, although the medical center violated the policy's requirement that notice of suit be given "as soon as practicable," the insurer must show that it had been prejudiced by the delay before it could rely on inadequate notice as a bar to coverage. The court therefore remanded the case for a new trial on the issue of prejudice.

Finally, the court ruled that although an insurer is capable of waiving its right to receive certain documents, the insurer does not waive that right simply by failing to explicitly request such documents. The policy at issue required the policyholder to send immediately to the insurer "copies of any demands, notices, summonses, or legal papers received [by the insured] in connection with any suit or claim." The insurer here did not waive that right when it sent a letter to the medical center asking for certain documents, but neglecting to request any legal documents related to the claim.