

# Minnesota Court: Failure To Disclose Claim Voids Coverage

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The Court of Appeals of Minnesota affirmed summary judgment in favor of an insurer, rescinding a lawyers professional liability insurance policy, based on an insured lawyer's material misrepresentation in the renewal process. *Chapman v. Minnesota Lawyers Mut. Ins. Co.*, 2009 WL 1851901 (Minn. App. June 30, 2009).

On behalf of his client, the lawyer accused a company in 1994 and 1995 of infringing the client's copyright. The company never responded. Beginning in 1996 and continuing through 1998, the lawyer advised his client that he would institute a suit against the alleged infringer, but he never did so, even after his client forwarded a letter from another lawyer who asserted that any suit filed would be barred by the statute of limitations. In August 1999, the attorney admitted that he had never filed a lawsuit and advised his client: "if you think you have a claim, it is against me." The client responded: "Well, you know, you've got an insurance company obviously, so maybe we can get something there." The lawyer and the client discussed the claim further, and the lawyer advised the client that he had contacted his insurance carrier, but in fact he did not do so until several months later, in February or March of 2000.

The lawyer was insured under a professional liability policy issued for the period from December 28, 1998 to December 28, 1999. In connection with his renewal, on December 27, 1999, the lawyer completed a "Request to Issue" form in which he certified that he was "not aware of any claims or circumstances that could result in claims or disciplinary actions that have not been reported to [the carrier]." A few weeks later, after a renewal policy issued, he advised his carrier regarding the claim against him arising out of his failure to file the infringement action before the statute of limitations expired. The insurer, citing the lawyer's knowledge of the claim prior to the renewal, advised him that coverage was voided due to a material misrepresentation.

The insured and his client entered into a settlement in which the lawyer assigned his rights against the insurer to the client. In the resulting coverage action, the appeals court affirmed the trial court's grant of summary judgment to the insurer, finding that the lawyer failed to disclose his knowledge of his client's claim in the renewal application. Despite the client's contentions that "the communications from a disgruntled client, such as this, do not rise to a level of a 'claim' that needs to be reported" to a carrier, the appeals court determined that "[t]he evidence is conclusive that [the attorney] misrepresented his knowledge of [the client's] claim when he renewed his insurance . . . ." Furthermore, the appeals court held that it was "starkly obvious" that the lawyer's misrepresentation was material and warranted rescission of the policy pursuant to Minn. Stat.

§ 60A.08, because the misrepresentation increased the insurer's risk of loss.