

Timely Notice from Underlying Claimant Sufficient Despite Provision Requiring Insured To Provide Notice of Claim

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The Court of Appeals of Indiana, applying Indiana law, has held that notice of a claim provided by an attorney's clients to his malpractice insurer was proper as a matter of law where notice was given during the policy period and where notice from the insured himself was an impossibility. *Ashby v. Davidson*, 2010 WL 2770243 (Ind. Ct. App. July 14, 2010).

The insurer issued a legal professional liability policy to the attorney. During the policy period, the attorney abandoned his law practice without notice to his clients and embarked on a multi-state crime spree for which he was later incarcerated. His former clients filed professional malpractice complaints against him. The insurer intervened, arguing that its policy barred coverage because of the attorney's failure to provide timely notice of the claim. The trial court granted summary judgment in the insurer's favor, and the former clients appealed.

The policy directed that, as a condition precedent to coverage, the insured was required to provide written notice of claims to the insurer within 20 days of the date any claim is first made and also was required immediately to forward to the insurer every demand, notice, summons or other process received. The insurer argued that, even though it received notice of the claim during the policy period, coverage was not available because the insured himself did not supply the notice.

The court rejected the insurer's argument, noting that "the person required to provide written notice to [the insurer] was running from the law," and thus notice by him to the carrier was "an impossibility." Further, the court emphasized that the former clients provided notice to the insurer themselves, which was both timely under the policy's terms and allowed the insurer the opportunity to investigate and defend the claim. Accordingly, the court determined that the "purpose" underlying the notice provision had been satisfied and that the notice provided by the former clients was sufficient as a matter of law. As such, the appellate court reversed and remanded the matter to the trial court.