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NEWSLETTER

Twenty-Seven Month Delay in Providing Written Notice Not Unreasonable

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The Supreme Court of Illinois has held that oral communications with an insurer's authorized agent constituted "actual notice" of a claim, and the failure to provide formal written notice of the claim for more than 27 months was not unreasonable under the circumstances because the agent had advised the insured that there "probably" was no coverage available for the claim under the policy. *West Am. Ins. Co. v. Yorkville Nat'l Bank*, 2010 WL 3704985 (Ill. Sept. 23, 2010).

The claim at issue was a lawsuit for defamation filed against a bank on September 24, 2004, based on certain acts alleged to have occurred in November 2001. The bank's commercial general liability (CGL) policy in effect at the time provided that, in the event of a claim or suit against any insured, the bank must "[n]otify [the insurer] as soon as practicable" and "must see to it that [the insurer] receive written notice of the claim or 'suit' as soon as practicable." The policy further obligated the bank to "[i]mmediately send [the insurer] copies of any demands, notices, summonses or legal papers received in connection with the claim or 'suit.'"

The bank's president spoke with the insurance company's agent about the suit in late 2001 or early 2002. The agent also was present at several meetings of the bank's board of directors in 2002, during which the allegations against the bank were discussed along with the legal fees incurred as a result. The agent advised the bank at the time that the CGL policy probably would not provide coverage. Two years later, however, an agent for a different insurance company advised the bank that that policy "should" cover the suit, and the bank provided formal written notice of the claim, including a copy of the complaint, on January 19, 2004. The insurer denied coverage based on late notice.

In the coverage litigation that followed, the Illinois Supreme Court held that a policy provision requiring notice "as soon as practicable" means notice must be given "within a reasonable period of time." According to the Court, whether notice has been given within a reasonable period of time depends on the facts and circumstances of each case and consideration should be given to the following: (1) the specific policy language at issue; (2) the insured's sophistication; (3) the insured's awareness of a triggering event; (4) the insured's diligence in ascertaining whether coverage is available; and (5) prejudice to the insurer.

As to the first factor, the court recognized that the term "immediately" is uniformly interpreted to mean "as soon as practicable" and therefore did not aid its analysis. The court next presumed that the bank was sophisticated in matters of commerce and insurance, and found that it had been aware of the potential for a claim for defamation in November 2000. These factors, according to the court, weighed in favor of a determination that the 27 month delay was unreasonable. On the other hand, the court pointed out that the bank provided verbal notice to the insurer's agent shortly after the suit was filed and was told that coverage probably did not exist. According to the court, "a reasonably prudent person in the position of the insured would not have continued to pursue coverage under the policy" in light of this information from the agent. The court also found that the insurer had "actual notice" of the claim because the information communicated by the bank president to the agent, as well as at the board meetings attended by the agent, was sufficient to allow the insurer to locate and defend the suit. Such notice, in the court's view, indicated that the insurer was not prejudiced by the delay in receiving written notice. Accordingly, the court concluded that on balance the delay was not unreasonable, and therefore the insured did not breach the policy's notice provision.