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NEWSLETTER

Loss Run Reports Could Serve as Notice of Claim

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The United States District Court for the District of Massachusetts has held that an insured's inclusion of a claim in loss run reports submitted to its insurer could, but did not in this case, constitute adequate notice of the claim. *Lexington Ins. Co. v. United Health Group, Inc.*, 2011 WL 573609 (D. Mass. Feb. 15, 2011.

The insured, an insurance company itself, sought coverage from its claims-made insurer for a claim it had settled for $28 million. The insurer denied coverage on the grounds that it had no notice of the claim until shortly before settlement. The insured contended that it had provided notice of the claim numerous times in its quarterly loss run reports, which the insured was required under the policy to submit to the insurer.

The court held first that the loss run reports could satisfy the policy's notice requirement, which required the insured to notify the insurer as soon as practicable of all claims for which the insured set reserves at or above 50% of the retention, and which further required the insured to send quarterly loss reports to the insurer identifying all such claims. The court interpreted this provision broadly and held that nothing in its text suggested that a loss run report could not also satisfy the requirement of initial notice. Moreover, the court stated that the placement of the loss run report requirement in the policy's notice provision was significant in that it indicated such reports were part of the notice of claims.

Nevertheless, the court determined that, under the facts of this case, the insured's loss run reports did not constitute adequate notice to the insurer of the claim because the reports' information about the claim was incomplete. The court found that the insured had listed the claim on over 40 loss run reports, the last two of which listed the claim at a zero reserve, thus suggesting that the claim would not exceed the insured's retention. Consequently, the court held that the insurer did not have adequate notice of the claim.

Finally, the court stated that, under Minnesota law, the insurer could deny coverage based on late notice only if it established prejudice. The court held that the mere facts that the insurer was not notified of the claim for seven years or that it only learned of the claim on the eve of settlement were insufficient to establish prejudice. The nature of the claim, however, was exceedingly complex, and thus the court found that the insurer was prejudiced as a matter of law because it had no opportunity to involve itself in the defense of the claim. The court also noted that the insured was a sophisticated insurance company itself, and as such, was well aware of the importance of timely notice of claims. Accordingly, the court ruled for the insurer that no

coverage was available for the claim.