

Insurer Cannot Rescind Policy Because of Duty to Request Supplemental Forms to Application

August 2005

The United States District Court for the Southern District of New York has held that a professional liability policy was not void when the insured law firm failed to report details of a potential claim or to include supplemental forms regarding the claim because the insurer had a duty to inquire about the claim.

Philadelphia Indemn. Ins. Co. v. Horowitz, Grenner & Stengel, 2005 WL 1660961 (S.D.N.Y. July 13, 2005).

The insurer issued a legal malpractice insurance policy to a law firm that contained a clause requiring the insured to "give prompt written notice to the Company" of any claims made against the insured. The insurer issued several renewal policies to the insured, each one requesting information about any potential claims.

During his representation of a client, an attorney at the law firm was issued a \$400 sanction by the court for failing to respond to court-ordered discovery requests. The court in that case stated that the attorney's actions were "willful, contemptuous and in bad faith." The attorney's client did not immediately file a complaint against him. Shortly after the attorney received the sanction from the court, it notified its insurer of another claim against it but did not mention the sanction. A week later, the insured submitted a renewal application, and when asked whether he was aware of "any claim, circumstance, incident, act or omission during the last year, which might reasonably be expected to be the basis of a claim or suit arising out of the performance of professional services," the attorney answered "Yes." The law firm failed to attach a Supplemental Claim Information Form as requested, however. Based on this information, and without the supplemental form, the insurer issued the renewal policy.

The underlying claimant ultimately filed a complaint against the lawyer for legal malpractice and the law firm immediately forwarded a copy of this complaint to the insurer. The insurer defended under a reservation of rights and subsequently initiated an action against the insured seeking a judicial determination that the insured breached the terms of the policy, materially misrepresented facts in the renewal application, failed to disclose circumstances, incidents, acts or omissions which might give rise to a claim and acted in a dishonest manner.

The insurer argued that the law firm had made a material misrepresentation because, in the absence of supplemental information, it understood the "yes" to refer to a different claim involving a disciplinary proceeding against another lawyer at the firm, which had been disclosed in response to a different question.

The court rejected this argument, reasoning that, because the question was "imperfectly answered," and the insurer still issued the policy, it "waive[d] the want or imperfection in the answer." The court explained that because the law firm had stated that a claim had been made against it, the burden shifted to the insurer to request supplemental information regarding that question if it was not included with the application. The insurer was thus estopped from arguing that the policy was now void.

For more information, please contact us at 202.719.7130