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ALERT

# Notice of Potential Claim and Reporting of Claim Adequate Despite Failure to Comply with Written Notice Requirement

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A federal court in Georgia upheld a jury verdict finding that a law firm's notice of a potential claim and its reporting of the ensuing claim were adequate notwithstanding the firm's failure to comply with the letter of the policy's notice requirements. *Fleming, Ingram & Floyd P.C. v. Clarendon Nat'l Ins. Co.*, 2011 WL 117226 (S.D. Ga. Jan. 13, 2011).

The policyholder, a law firm, purchased a claims made and reported lawyers professional liability policy for the policy period of March 13, 2002 to March 12, 2003. The firm became aware of a potential claim arising out of its failure to sue and timely serve the proper defendant in a lawsuit. The firm contacted an agent of the insurer in late March 2002 and discussed the potential claim of malpractice. The insurer's agent informed the firm that it need not give written notice of the potential claim at that time. The insurer cancelled the policy effective August 29, 2002, and the firm purchased a one-year extended reporting period.

A partner of the firm met with the client in September 2002 to inform the client that the firm's error might result in the possible dismissal of his suit. The client made clear at the meeting that he intended to recover from the firm's malpractice carrier if his lawsuit were dismissed. That same month, the firm sent a letter to the insurer outlining the events of the client meeting and informing the insurer that "this may be a claim."

## Practice Areas

D&O and Financial Institution Liability

E&O for Lawyers, Accountants and Other Professionals

Insurance

Professional Liability Defense

The policy's potential claim provision provided, "If during the policy period the Insured becomes aware of any act or omission that may reasonably be expected to the basis of a claim against the Insured and gives written notice to the Company of such act or omission and the reason for anticipating a claim, with full particulars, . . . then any such claim that is subsequently made against the Insured and reported to the Company shall be deemed to have been made at the time written notice was provided to the Company."

The court first held that a reasonable jury could have found that the oral notice to the insurer's agent during the policy period was sufficient notice of a potential claim because the response of the insurer's agent that no written notice was required waived the policy requirement of detailed, written notice.

Next, the court held that a reasonable jury could have found that the client made a claim against the law firm during the September 2002 meeting because he told the firm that he would recover from the firm's insurance carrier if the suit were dismissed, which was highly likely given the firm's mishandling of the case. The court also held that a reasonable jury could have found that the claim adequately was reported to the insurer because the policy did not define the term "reported" and the firm's September 2002 letter recounted the details of the meeting with the client, explained the facts and law of the client's lawsuit, and noted that the circumstances "may be a claim."