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ALERT

Eighth Circuit Finds Notice Sufficient Under Claims-Made Policy

May 23, 2011

The United States Court of Appeals for the Eighth Circuit, applying Minnesota law, has held that an insured's letter to the insurer enclosing a notice of administrative investigation satisfied the timing and content requirements of a claims-made policy's notice provision. *Owatonna Clinic-Mayo Health System v. Medical Protective Co. of Fort Wayne, Ind.,* 2011 WL 1775813 (8th Cir. May 11, 2011). The court also held that the insured's belief that "allegations of liability [might] result" from the notice of administrative investigation was objectively reasonable as a matter of law.

The insurer issued a claims-made medical malpractice policy to the insured. During the policy period, the insured provided the insurer with a letter enclosing an administrative notice stating that the insured was under investigation. The investigation was focused on allegations that one of the insured's practitioners had deviated from the proper standards of care, but included only generalized information about the alleged misconduct. The insurer provided counsel to the insured's practitioner to represent the practitioner before the administrative board. In connection with the investigation, that counsel obtained the name of the patient involved and reviewed her relevant medical records during the course of the investigation. Subsequently, after the policy expired, a malpractice lawsuit was filed against the insured based on the misconduct at issue in the investigation. The insured sought coverage for that lawsuit under the policy.

The insurer denied coverage, asserting that the letter from the insured did not comply with the policy's notice requirements because it only included general details of the allegations of misconduct, while the policy required the insured to provide "written notice of a medical

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incident from which [the insured] reasonably believes allegations of liability may result" including "all reasonably obtainable information with respect to the time, place and circumstances of the professional services from which liability may result and the nature and extent of the injury including the names and addresses of the injured and available witnesses." The insurer also contended that the insured did not have an objectively reasonable belief that "allegations of liability would result" from the letter. The insured filed suit against the insurer, and the district court held that the notice was sufficient as a matter of law and that the insured had an objectively reasonable belief that liability would result from the administrative investigation. The insurer appealed.

The appellate court first held that the letter and enclosure constituted sufficient notice under the policy. The court determined that, while the initial letter and administrative notice did not provide all the details required by the policy, the insurer was able to obtain that information during the policy period through counsel's involvement in the administrative investigation. According to the court, the insurer "had knowledge of all relevant particulars or could gather them to hand without any difficulty" during the policy period. In reaching its conclusion, the court addressed the insurer's contention that notice requirements must be strictly adhered to in the context of claims-made coverage in order to allow the insurer to accurately assess potential liabilities and premiums. The court noted that strict adherence to notice requirements in the notice context typically relates to the timing of the purported notice rather than the sufficiency of its contents. Moreover, the court concluded that "the law of Minnesota places a burden of inquiry on the insurer when it has notice of facts that would raise a likelihood of a claim."

The appellate court determined that the insured had an objectively reasonable belief that allegations of liability might result from the administrative notice. According to the court, the policy language only required that a reasonable insured would believe that someone might allege that it was liable based on the notice. The court concluded that the allegations within the administrative notice "would set off alarms in the minds of any reasonable person charged with risk management . . . and would certainly alert a reasonable mind to the possibility that someone might claim that the [insured] was liable for the patient's injuries."