

ALERT

Insurer Prejudiced by Insured's Failure to Report Adverse Trial Court Decision in Underlying Action

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The United States Court of Appeals for the Fourth Circuit, applying Maryland law, has held that no coverage was available for a legal malpractice claim because the "claim" was first made when a trial court granted summary judgment against the law firm's client for failure to submit a properly executed affidavit and because the law firm failed to provide notice of the "claim" during the relevant policy period. *Minn. Lawyers Mut. Ins. Co. v. Baylor & Jackson, PLLC*, 2013 WL 3215246 (4th Cir. June 27, 2013). The court held that the insurer suffered prejudice—without deciding whether Maryland Code § 19-110 required the insurer to prove prejudice to deny coverage for late notice—because the insurer was denied a "true mitigation opportunity" concerning the appeal of the adverse trial court ruling.

The insured law firm represented a client who was sued in Maryland state court. In response to the plaintiff's motion for summary judgment, the insured law firm filed an opposition brief but failed to submit either an affidavit or sworn statement to support its client's contentions that a material fact existed as required by Maryland Rule 2-501. Based on this failure and other arguments, the judge granted summary judgment to the plaintiff in August 2006. In July 2009, an appellate court affirmed the trial court's ruling because the insured's "failure to comply with Maryland Rule 2-501 severely undermined their opposition to summary judgment on all the counts." The insured provided notice of the appellate court's decision to its insurer. The insurer denied coverage under the 2006 policy because the insured failed to provide notice to the insurer when the trial court granted summary judgment in 2006.

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The court held that the "claim" was first made when the trial court granted summary judgment against the law firm's client for failure to file a properly executed affidavit with its opposition brief. The 2006 policy provided that a "claim is deemed made when . . . an act, error or omission by any insured occurs which has not resulted in a demand for damages but which an insured knows or reasonably should know, would support such a demand." The court reasoned that a lawyer who received notice of the opinion and was present at the summary judgment hearing would have considered the possibility of a malpractice claim. Because the insured did not provide notice of the claim during the 2006 policy period, notice of the claim was not timely provided.

Although refusing to decide whether the insurer was required to prove prejudice under Maryland Code § 19-110, the court did find that the insurer was prejudiced by the insured's failure to provide notice until after the adverse appellate court decision. In this regard, it held that the insurer had been prejudiced because "by the time [the insured] provided notice of a possible claim, the harm supporting the malpractice judgment was irreversible."