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NEWSLETTER

No Prejudice Required to Bar Claim for Late Notice under Claims-Made Policy; Even Mistaken Misrepresentations in Policy Application Can Void Coverage under Illinois Law

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Applying Illinois law, a federal court in Chicago has concluded that the insureds under a claims-made EPL policy did not provide timely notice of a claim regardless of whether the insurer was prejudiced by the late notice. The court also ruled that a material misrepresentation in a policy application voids coverage even if the misrepresentation was mistaken. *St. Paul Reinsurance Company, et al. v. Williams & Montgomery*, Ltd., et al., No. 00 C 5037, 2001 U.S. Dist. LEXIS 16871 (N.D. Ill. Oct. 12, 2001).

The policyholder law firm sought coverage under two EPL policies for lawsuits arising out of claims by several partners who had been terminated. The two claims-made policies were issued for the periods from May 3, 1998 to May 3, 1999 and from May 3, 1999 to May 3, 2000, respectively. Both policies required that the insurers be notified within 30 days of a complaint or demand being received by the law firm. On April 3, 1999, the former partners sent a letter indicating that they believed that they were owed money and requesting that firm preserve all relevant evidence. The law firm did not notify the insurers of this letter. A few weeks later, the law firm submitted an application for the second policy. It did not disclose the existence of any claim or change in circumstances since the last renewal. In June 1999, the terminated partners filed suit. The law firm did not notify the insurers until October 1999. The carriers denied coverage on the grounds that notice was late. The insurer under the second policy also sought to rescind the coverage based on misrepresentations in the policy application.

The law firm filed suit. It asserted that demand letters by the former partners did not require notice to the insurer since no claim existed until the filing of the lawsuits. The court found this argument "unreasonable," noting instead that in Illinois, a demand for money constitutes a claim. At any rate, the court noted "regardless of whether the policyholder should have reported either the [demand letters, first made on April 1, 1999]... or within the 30 days after the ... [June 1999] filing [of the lawsuits]," it violated the notice requirement by waiting until October 15, 1999, almost two and half months after the lawsuits were filed.

The law firm also argued that any delay in notice was a mere technical violation and that the insurer did not show that it was prejudiced by the delay. In finding for the carrier, the court noted that "a showing of prejudice is only required in instances involving an occurrence policy," and was not necessary in claims-made policies.

The insurer for the second policy period also argued that it was entitled to rescind its policy because of a material misrepresentation in the application made on April 23, 1999. There, the insured answered "no" to the question whether, since the first policy period, there had been any change in the status of any EPL claims or circumstances. The court agreed, noting that Illinois courts have stated that a failure to disclose the possibility of claims in an insurance application was a material misrepresentation "because it affected [the insurer's] risk assessment." The court further determined that a material misrepresentation would void coverage "even if it was made by mistake," and thus the court "does not have to determine whether or not [policyholder's] failure to disclose all relevant information was intentional... . It is enough that the failure occurred."