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NEWSLETTER

Notice of Intent to Sue Attorney for Malpractice Triggered Duty to Defend Claim for Sanctions

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Applying Pennsylvania law, a federal district court has held that a letter advising an insured attorney that his former client intended to bring suit for malpractice constituted a "claim" under a professional liability policy such that the insurer was obligated to defend pre-suit proceedings against the attorney for sanctions that had been brought by opposing counsel in the underlying action and in which the former client had joined the demand for relief. *Post v. St. Paul Travelers Ins. Co.*, 2009 WL 37491 (E.D. Pa. Jan. 7, 2009).

In the underlying action, the insured attorney had represented a hospital in connection with a claim for medical malpractice. The action had ended in a settlement reached by the parties during trial, which the hospital contended was due in part to allegations of discovery abuse by the attorney. The hospital then sent a letter to the attorney directing him not to destroy any files relating to the action and advising the attorney that the hospital was preparing to sue him for malpractice. The attorney provided notice of this letter to his professional liability insurer.

A few weeks later, opposing counsel in the medical malpractice action filed a petition seeking sanctions for the insured attorney's purported litigation abuses, as well as "any of other relief that [the] court deem[ed] just and equitable." The hospital filed an answer to the petition but did not bring an independent suit against the attorney at that time. Instead, the hospital joined the petition and sought the same relief from its former defense counsel. The insured tendered the defense of the petition to the insurer, which denied coverage based on the policy's definition of "loss," which specifically did not include "civil or criminal fines, forfeitures, penalties, or sanctions."

In the coverage litigation that followed, the court rejected the insurer's position. In doing so, the court first focused on the provision in the policy that obligated the insurer "to defend any protected person against a claim or suit for loss covered by this agreement." The court pointed out that the policy distinguished between a "claim" and a "suit," defining the latter to mean "a civil proceeding that seeks damages" while defining the former to mean a "demand that seeks damages." The court also noted that the policy specified that a "claim" was considered to have been made on the date that the insurer or any insured "first receive[d] written notice

of such claim" or the insurer first received notice from an insured of "a specific wrongful act that caused the loss which resulted in such claim."

Turning to the intent-to-sue letter from the hospital that preceded the sanctions petition, the court determined that it triggered a duty to defend because it constituted a "claim" within the meaning of the policy. In making this determination, the court found that the phrase "demand for damages" was "unclear" and, therefore, had to be construed in favor of the insured. On this basis, the court held that the hospital's intent to seek damages against the insured could be inferred, even if damages were not specifically requested in the hospital letter.

Next, the court pointed out that, when defending a claim, the policy required the insurer to pay "defense expenses," which were defined to include "fees, costs, and expenses that result directly from the investigation, defense, or appeal of a specific claim or suit," as well as those stemming from "proceedings involved in the suit." In this regard, the court recognized that the hospital's malpractice claim and the sanctions petition "both stemmed from the same underlying claim" and that a ruling in the proceedings for sanctions could have a collateral estoppel effect on the malpractice claim. Indeed, the court speculated that the hospital likely joined the sanctions petition to develop the facts and law that would directly impact its eventual suit against the attorney. According to the court, therefore, the proceedings for sanctions, with the hospital's participation, were "involved" in the hospital's previously asserted malpractice claim and, as such, the insurer was required to pay defense expenses and defend the insured in those proceedings.

Finally, the court addressed the insurer's argument that it had no duty to defend the sanction proceedings because the relief sought was outside the scope of covered loss under the policy. Rejecting this argument, the court first reiterated that the obligation to defend against the sanctions petition stemmed from its connection to the hospital's malpractice claim and, while the malpractice claim presented the possibility for a covered loss, the insurer was required to defend all proceedings involved in that claim. The court then pointed out that the policy does not define the term "sanctions" and that the term in this context generally is understood to refer to relief sought by an opposing counsel, not an attorney's former client. Rather, according to the court, a client seeking redress for its attorney's errors typically seeks malpractice damages. For these reasons, the court concluded that the carve-out in the policy's definition of loss for sanctions did not apply to the relief sought by the hospital, which, in any event, was not limited to "sanctions" but also included "any other relief the Court deem[ed] just and equitable."