

No Coverage Because Claim Not Made During Policy Period

June 2009

The United States District Court for the District of Massachusetts, applying Massachusetts law, granted summary judgment in favor of an insurer, holding that a general liability policy that requires a claim be made during the policy period and reported either during the policy period or extended reporting period is not ambiguous. *James River Ins. Co. v. Alliance Children's Services, Inc.*, 2009 WL 1292770 (D. Mass. May 8, 2009).

The policyholder was hired "to place and supervise [a child] in a foster home" by a state social services department. The policyholder then subcontracted those duties to a third party. When the child later died of shaken-baby syndrome, the estate of the child filed a wrongful death action against the policyholder. The underlying suit was filed on September 28, 2006 and served on the policyholder's agent on October 2, 2006. The policyholder immediately notified the insurer of the suit and sought coverage for the wrongful death action.

The policy at issue had a September 29, 2005 through September 29, 2006 policy period. The policy included a 30-day extended reporting period. In addition, the policy's declaration page stated that the policy provides coverage for a "claim for damages because of 'bodily injury' [that] is first made against any insured . . . during the policy period or any Extended Reporting Period." However, the policy also included an endorsement that "distinguished between when a claim was 'made' and when it was 'reported.'" The endorsement provided that the insurance applies if a "claim for damages because of the 'bodily injury' . . . is first made against any insured during the policy period and reported to us in accordance with the Restricted Reporting Endorsement, . . . during the policy period or any Extended Reporting Period." The insurer denied coverage for the underlying action on the basis that the "claim" was made after the policy period expired. The policyholder contended that the claim was properly made within the extended reporting period. In the ensuing declaratory judgment action, the insurer and the policyholder filed cross-motions for summary judgment.

The court ruled in favor of the insurer. First, the court rejected the policyholder's argument that the extended reporting provision extended not only the reporting time under the policy but also the "time in which a 'claim' may first be 'made.'" The court noted that the extended reporting provision "does not address when a claim must be 'made' and it explicitly states that it 'does not change the scope of coverage.'" The court also rejected

the policyholder's assertion that the claim was "made" when it was filed, and not when it was served, which the court noted was inconsistent with the "specific definition of 'made' provided in the policy."

The court also denied the policyholder's contention that the policy language was ambiguous because the policy's declaration page and the endorsement conflict regarding the time period in which a claim must be "made" and "reported." The court stated that the policyholder's "ambiguity argument runs afoul of the rule of construction . . . that specific contract provisions take precedence over more general provisions." The court also stressed that the "central objective of contract interpretation . . . is to give effect to the parties' intent" and that "[e]ndorsements represent a later expression of the parties' intent on a particular issue." According to the court, "[t]he whole point of an endorsement is to vary provisions in the basic policy form that might otherwise govern." As such, the court held that the policy unambiguously afforded no coverage for the underlying action "because that claim was 'made' after the expiration of the policy period."