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NEWSLETTER

Notice of Claim Received by Doctor's Wife Imputed to Doctor and Medical Practice

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The United States District Court for the Southern District of New York has held that receipt of intent-to-sue letters by the wife of a doctor named as a defendant in an eventual medical malpractice claim who also served as vice president of the doctor's medical firm (also named as a defendant) could be imputed to the doctor and the firm and, based on that determination, held that doctor and the firm's two professional liability insurers were entitled to summary judgment on untimely notice and prior knowledge grounds. *Leak v. Lexington Ins Co.*, 2009 WL 2243710 (S.D. Ohio July 24, 2009).

The insureds were sued by a former patient who had visited the doctor in December 2004. In November 2005, the patient sent via certified mail "180-day letters" to the doctor and the firm informing them that she was considering filing a malpractice claim. These letters, because they were sent within the one-year statute of limitations period for medical malpractice claims, served, under an Ohio statute, to extend the filing period another 180 days. The doctor's wife (and the firm's vice president) certified receipt of both letters and placed them on the doctor's desk, but did not otherwise bring them to his attention. The doctor later denied recalling that he had received the letters. The former patient filed suit in May 2006, after which the insureds notified the insurers. The first insurer provided coverage for the period April 13, 2004 to April 13, 2006. Under that policy, coverage was afforded only if the insureds reported a "professional incident" giving rise to a claim during the policy period and, further, within 30-days after "any assertion of liability" related to such "professional incident. " The second insurer provided coverage for the period April?13, 2006 to April 13, 2007, with a retroactive date of April 13, 2004. That policy explicitly did not provide coverage for a claim if the allegations underlying it were previously known by the insured. In addition, the application for coverage with the second insurer, signed by the doctor on April 13, 2006, provided that the doctor had no "knowledge of any incident or activity ... that might give rise to a claim or suit in the future."

The insurers denied coverage and in subsequent coverage litigation moved for summary judgment. The first insurer argued that the insureds did not provide notice within 30-days of receiving the 180-day letters, and the second argued that the insureds had failed to disclose the potential claim when applying for coverage. The insureds conceded their failure to provide timely notice and to disclose knowledge of a potential claim but argued that these failures resulted from not being properly served with the 180-day letters and not having actual knowledge of their existence.

The court rejected the insureds' contentions and granted summary judgment in favor of the insurers, holding that, under traditional agency principles, the doctor and firm were chargeable with notice of the potential claim by virtue of the receipt of the 180-day letters by their agent, the wife and firm's vice president. The court also held that knowledge of the letters' receipt was also imputed to the firm by virtue of the wife's serving as an officer of the firm. The court rejected the insureds' reliance on two unreported Ohio cases in support of their argument that, under the statute permitting an extension of the limitations period when "180-day letters" are sent, those letters must actually be served on the person who is subject to the potential claim. The court found that those cases were distinguishable because, unlike in this case, the underlying plaintiffs had delivered the letters to the hospitals where they were treated, and the letters were received by hospital employees, not employees of the defendant doctors or the corporations employing them. Thus, according to the court, in those cases, traditional agency principles did not apply. In any event, the court explained, those cases were inapposite because they addressed whether the statute of limitations had been effectively extended pursuant to the Ohio statute, whereas in this case the issue was whether receipt of the 180-day letters could be imputed to the insureds, triggering contractual obligations to notify their insurers.