

Request for Medical Records Not Necessarily Sufficient To Put Insured on Notice of Potential Claim, Even Where Request Was Listed on Potential Claim Log Submitted To Insurer

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The United States District Court for the District of Arizona, applying Arizona law, has held that a request for medical records is not necessarily sufficient to put an insured on notice of a potential claim, even where the insured listed the request on a potential claim log submitted to its insurer. *Evanston Ins. Co. v. Hearthstone of Sun City, LLC*, 2010 WL 396366 (D. Ariz. Jan. 29, 2010).

The insurer issued a professional liability insurance policy to a health care provider for the policy period January 30, 2007 to January 30, 2008. The policy provided specified coverage for claims first made against an insured during the policy period. The policy contained a prior acts exclusion, which precluded coverage for "[a]ny liability arising out of acts, errors or omissions of which an Insured had knowledge prior to the inception date of the policy period if, as of such date, an Insured could reasonably foresee a claim might result."

One day before the inception of the policy, the insured submitted to the insurer a "Possible Claim Reporting Log," in which it provided a list of what it referred to as 112 "claims or possible claims." The log included a notation indicating that a patient had an "unavoidable wound progression" and that the patient's son had requested a form to obtain his father's medical records. The patient subsequently died and, on November 9, 2007, the patient's family filed a lawsuit against the insured. The insured sought coverage under the policy for the claim, and the carrier denied coverage pursuant to the policy's prior acts exclusion.

In the coverage litigation that followed, the insurer argued that, based on the notation regarding the request for medical records that was included on the "Possible Claim Reporting Log," which the insured submitted prior to the policy's inception, the insured was aware of the underlying claim at that time or, at the very least, could reasonably have foreseen that a claim might result. The insurer asserted that, accordingly, the policy's prior acts exclusion precluded coverage for the claim. The insured countered that the request for medical records was included on the log as part of the insured's compliance with state and federal regulations, which require it to track such requests, and not for insurance purposes. The insured further asserted that the request for medical records alone was insufficient to put it on notice that the patient or his son were dissatisfied with

the medical care that the insured had provided. The insured contended that it therefore did not have a reasonable basis to believe, at the time the policy incepted, that the patient or his son might assert a claim against it.

Noting that the matter was a "close call," the court ultimately concluded that, based on the record, "reasonable minds could differ" as to whether the insured could have foreseen that a claim might result based on the request for medical records. Accordingly, the court denied the parties' cross-motions for summary judgment on the issue of coverage. Nevertheless, the court granted the insurer's motion for summary judgment on the insured's bad faith claim, concluding that the insured could not show that the insurer "lacked any reasonable basis for denying benefits under the policy."