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NEWSLETTER

Written Notice Not Required for Claims-Made Policy

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An Ohio appellate court, in an unreported decision, has held that because an insurance policy's terms governing notice of claims were ambiguous, the policyholder was not required to provide written notice of a claim. *Ohio Bar Liab. Ins. Co. v. Hunt*, Nos. 19320, 19321, 2003 WL 1425949 (Ohio Ct. App. March 21, 2003). The court also held that a claim for bad faith could be assigned, but that the insurer's mistaken reading of the ambiguous notice provisions could not provide a basis for a finding of bad faith.

The insurer issued a claims-made policy to an attorney that contained several provisions concerning the reporting of a claim. First, the policy provided that "coverage of this policy is limited to liability for only those claims that are first made against the insured and reported to the Company while the policy is in force." Second, the policy provided that coverage was afforded for "all sums which the Insured shall be legally obligated to pay as money damages because of any claim first made against the Insured and reported to the Company during the policy period." A third provision in the policy stated that "the Insured...shall, during the Policy Period or Extended Reporting Period, give written notice thereof to the Company in accordance with Condition VI.... A Claim shall be considered to be first made when the Company first receives written notice of the Claim or of any event which could reasonably be expected to give rise to a claim." Fourth, the policy provided that "written notice shall be given by or on behalf of the Insured to the Company or any of its authorized agents as soon as practicable...." Finally, an endorsement to the policy, entitled "What to Do in Case of a Claim," provided that "[i]n the event you directly or indirectly become involved in any situation which you believe may result in a claim, you should immediately report it to your [insurer's] claims representative. Telephone:...Mailing address:..." The policy also contained a provision regarding assignment of claims: "The interest hereunder of an insured is not assignable. If the Insured shall die or be adjudged incompetent, this policy shall cover the Insured's legal representative as the Insured with respect to liability previously incurred and covered by this policy."

The policyholder attorney was fired by a client and later sued for malpractice after failing to timely file an appeal. Although the attorney did not provide written notice to the insurer until four years later, long after the expiration of the policy period, he alleged that he called the insurer on the telephone after he was fired to report a potential claim. The insurer denied coverage, and litigation followed.

The appellate court held that the policy was ambiguous as to whether written notice was required and therefore found that a telephone call to the insurer was adequate notice. The court reasoned that because the first provision of the policy concerning notice did not specify the form of notice and the last such provision "expressly allow[ed] for notice by telephone," those provisions were in conflict with the three other policy provisions requiring written notice. The court explained that "[t]he notice provisions found within the policy conflict[ed], creating an ambiguity that must be resolved in the [insured's] favor." Because there was a dispute about whether oral notice had in fact been provided through a telephone call, the court remanded the issue.

The court also held that assignment of the policyholder's claim for bad faith to the underlying plaintiff was proper because the policy provision concerning assignment of claims was ambiguous. The court reasoned that the phrase "interest hereunder of an insured" could "reasonably be construed as extending only to an insured's contractual right to defense and indemnification, not to a tort claim based upon the insurer's bad faith." Thus, construing the policy against the insurer, the attorney could assign a claim for bad faith to his former client. The court held, however, that in these circumstances, a sufficient predicate for a finding of bad faith had not been established because the apparent basis for the claim was simply the insurer's determination that the policyholder had failed to comply with the policy's notice requirements. The court explained that "bad faith is not shown by a mere breach of a contractual duty, nor can it be shown by an insurance company's mistaken actions relating to an unclear contractual provision."

For more information, please contact one of WRF's Professional Liability Attorneys at 202.719.7130