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ALERT

Claim First Made When Insured Received Writ of Summons

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A Pennsylvania state court has held that a claim against an insured psychiatrist was first made under his professional liability policy when he was served with a writ of summons commencing a malpractice suit, not when he received a medical records request for a deceased patient or when he sought help from the insurer in responding to the request. *Wolfson v. Medical Care Availability and Reduction of Error Fund*, 2012 WL 376695 (Pa. Commw. Ct. Feb. 7, 2012).

A psychiatrist received a medical records request from an attorney who indicated that he represented a former patient "now deceased" regarding a "claim for personal injuries." The attorney requested the patient's "medical records, reports, notes, [and] medication lists]" for "litigation/legal matters." The psychiatrist faxed this request to his professional liability insurer, along with the dates on which he had treated the patient and on which the patient had died. The insurer assigned counsel to assist the psychiatrist in responding to the request. The former patient's estate subsequently filed suit against the psychiatrist, alleging that his negligent treatment of the patient had caused him to commit suicide. When the psychiatrist sought excess coverage from the state's medical malpractice insurance fund, the fund denied coverage on the grounds that the claim was first made prior to the psychiatrist's payment for the excess coverage. The psychiatrist then sought judicial review of the fund's denial.

In reviewing the fund's denial of excess coverage, the court interpreted the provisions of the psychiatrist's professional liability policy, which defined a "Claim" as "a demand received by an Insured for money including the service of Suit, demand for arbitration or the institution of any other similar legal proceeding to which this policy applies." The policy also provided that a Claim was "first

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made" at the earlier of "when the Company first receives notice that a Claim had been made" or "when the Insured first gives the Company written notice of specific circumstances involving an incident or injury to a particular person, which may result in a Claim." The court determined that the medical records request by the attorney for the former patient did not constitute a Claim under the policy because it did not demand money and did not identify how the patient had died. The court also held that the psychiatrist's correspondence with the insurer seeking assistance in responding to the medical records request was too vague to constitute the reporting of circumstances that may result in a Claim. Accordingly, the court held that the Claim was first made no earlier than when the psychiatrist received the writ of summons.