

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 14-50878

United States Court of Appeals
Fifth Circuit

FILED

July 16, 2015

Lyle W. Cayce
Clerk

NETSPEND CORP.,

Plaintiff - Appellant

v.

AXIS INSURANCE COMPANY and AXIS SURPLUS INSURANCE
COMPANY,

Defendants - Appellees

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:13-CV-456

Before JONES, SMITH, and COSTA, Circuit Judges.

PER CURIAM:*

In 2012, NetSpend Corporation (NetSpend) was sued in Texas state court. NetSpend did not initially request a defense of that suit pursuant to a professional liability insurance policy with AXIS Insurance Company and AXIS Surplus Insurance Company (collectively, AXIS). Only after a second amended petition was filed in the lawsuit did NetSpend request that Axis fund the defense. AXIS denied the request on the ground that the claim was

* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

No. 14-50878

untimely because it was not reported during the policy period (or extended reporting period) when the state court suit was first filed.

NetSpend subsequently sued AXIS in state court, while proceeding to defend the underlying litigation at its own expense. NetSpend alleged breach of contract, breach of the duty of good faith and fair dealing, and violations of the Texas Insurance Code. AXIS removed to federal court, and the parties filed cross-motions for summary judgment. The district court granted summary judgment in favor of AXIS, holding that the original petition in the underlying litigation constituted a covered “claim” within the meaning of the policy and that NetSpend thus was required to report that claim during the first policy period in order to secure coverage.

The sole question on appeal is whether the original petition filed in the state court case constituted a “Claim arising out of a Wrongful Act” that triggered NetSpend’s obligation to seek defense costs from its insurer.

We have carefully reviewed that operative petition and incorporated attachments. We have also considered the parties’ briefs and the applicable legal authorities and heard oral argument from both sides. The judgment is **AFFIRMED** essentially for the reasons given by the district court.