



March 2007

Delay in Reporting Claims and Circumstances Can Cost Coverage

Jay Moroney
Executive Vice President
Lemme Insurance Group, Inc.
jmoroney@lemme.com
Phone: (847) 385-6800

A recent court case in New York serves as a reminder of the importance of the timely reporting of claims and circumstances to your insurance company. Courts have often held that the failure to timely report allows the insurance company to successfully deny coverage. What constitutes "timely", however, can vary depending on the policy language and the particular facts of the case. In a stark decision, the New York case granted the insurance company's motion and adjudged that the insurance company had no obligation to defend or indemnify a law firm insured because of the failure to timely report a circumstance.

The case is Alan M. Cass et al v. American Guarantee & Liability Insurance Company and Zurich North America, (Supreme Court of the State of New York).¹ In Cass, the insured, a small law firm, reported the claim to their insurance company the same day that they received notice of the claim. The insurance company nonetheless denied coverage for failure to timely comply with the notice conditions of the policy.² The court agreed with this denial. The insurance company claimed the attorneys, or another representative at the firm, should have reported the matter as a circumstance four months earlier when their client lost a case on facts that the attorneys should have reasonably expected to result in a potential malpractice claim by their former client.³ Because the law firm did not report a circumstance at the time the client lost its case, instead waiting until four months later when an actual claim was made by the client, the court agreed with the insurance company and held that the failure to timely report resulted in no coverage for the malpractice claim.

The decision is harsh for the insureds as there was no finding of prejudice to the insurance company arising out of the delay, the time elapsed was only four months and the law firm did report to the insurance company the same day the matter became an actual claim. Not all states would necessarily rule the same way as the New York court did in Cass but the lesson here is to report right away both claims and circumstances that you believe may become claims. Moreover, if you have excess layers of insurance, you should report all claims and circumstances to the excess insurers at the same time as you report to the primary insurer. By reporting right away you can avoid the risk of your insurance company claiming the report was not timely.⁴

¹ In New York State, the "Supreme Court" is the trial court level. The full decision can be found at <http://www.nylawyer.com/adgifs/decisions/103106tolub.pdf>

² The policy in question required that "immediate" notice of a circumstance. See Cass p. 5.

³ The court stated "[u]nder New York law, an attorney/insured's awareness that his or her particular handling of a client's matter may adversely affect that client's interests is sufficient to put a reasonable attorney on notice of a potential claim for malpractice." See Cass p. 9

⁴ **For any particular situation you should review your policy's reporting requirements and consult your broker or attorney if you have questions on the reporting of a claim or circumstance.**