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Nevada Adopts Notice-Prejudice Doctrine

By Andrew B. Downs

Last week, the Nevada Supreme Court joined the majority of states, including California, in holding that an insurer who denies coverage based on the policyholder's failure to provide timely notice of the claim must be able to demonstrate both that the notice was late and that the insurer was prejudiced by the late notice in order to assert a late notice defense to coverage under an occurrence-based policy.

Las Vegas Metropolitan Police Department v. Coregis Insurance Company, 127 Nev. Adv. Op. 47 (Aug. 4, 2011), arose out of a claim reported 10 years after the incident that led to the underlying lawsuit. The police department, which was self-insured up to \$1 million, defended the claim through two lawsuits without notice to the excess insurer until it received a settlement demand which was in excess of the self-insured retention. Written notice of the claim was provided to the insurer approximately three months later. The trial court granted the insurer's motion for summary judgment, finding that coverage was properly denied because the police department failed to provide timely notice. The trial court also found that the insurer did not need to show that it was prejudiced by the late notice, but that events in the underlying action, including a discovery sanction against the police department overturning a summary judgment ruling, were sufficient to establish prejudice.

In reversing the trial court, the Nevada Supreme Court changed the burden of an insurer asserting a late notice defense by adding the requirement for a showing of prejudice. The court defined prejudice as a delay which "materially impairs the insurer's ability to contest its liability to an insured or the liability of the insured to a third party." Finding both the notice and prejudice requirements to be factual issues, the court reversed the summary judgment decision and remanded the case to the trial court for further proceedings. There were factual issues because the underlying action against the Police Department had been dismissed twice, only to be reversed on appeal during the ten year period before notice was given. The Nevada Supreme Court felt it important that the policy was an excess policy where the obligation to give notice was only triggered by claims that might invade the excess layer. The court was also concerned about the inclusion of multiple, and to the court, inconsistent, notice provisions in the policy.

The Nevada Supreme Court emphasized that the change to the late notice defense reflects the need to bring Nevada law in line not only with the law in the majority of the states, but also with Nevada's Division of Insurance regulations. NAC 686A.660(4) prohibits a denial of an insurance claim for failure to give timely notice unless the policy specifies a time limit or the insurer's rights are prejudiced by the late notice.

Given the legal climate in Nevada and the wide acceptance of the Notice-Prejudice Doctrine in neighboring states, Nevada's adoption of the Notice-Prejudice Doctrine is hardly a surprise.

For more information about this eAlert, please contact Andy Downs or the Insurance Group of Bullivant Houser Bailey PC.