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Summary of Physicians Insurance Company of Wisconsin, Inc. v. Williams, 128 Nev. Adv. Op. No. 30

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INSURANCE/CONTRACT – CONSTRUCTIVE NOTICE OF CLAIM

Summary

The Court considered, on appeal, the difference between “claims-made” coverage versus “occurrence” coverage under an insurance policy. Further, the Court considered whether the insured’s “claims-made” coverage could be triggered through constructive notice and what was required for constructive notice to be found.

Disposition/Outcome

The Court concluded an insurer could be given notice with “actual notice” or “constructive notice.” If the notice is given constructively, the insurer must receive notice of specific wrongful acts in order to trigger coverage.

Factual and Procedural History

Dr. Ahmadi (“Ahmadi”) used street cocaine to anesthetize Glenn Williams’ (“Williams”) gums during a root canal in 2002. Shortly after, Williams was involved in an accident while driving a cement truck for work. He was drug tested and tested positive for cocaine. Ahmadi wrote a letter to Williams’ employer telling him that he had used cocaine to anesthetize Williams but the employer was not convinced and fired Williams.

Williams sent Ahmadi a demand letter of February 6, 2004. Ahmadi neither responded nor notified his insurer, Physicians Insurance Company (“PIC”). Williams then filed suit on April 15, 2004, one day after Ahmadi’s coverage with PIC ended. Prior to this occurring, Ahmadi was arrested in December 2003 for possession of cocaine and charged with drug trafficking. A month later the Nevada State board of Dental Examiners suspended Ahmadi’s dental license. Then, on April 13, 2004, Ahmadi was arrested again for prescribing himself painkillers.

PIC slowly obtained information about Ahmadi’s issues. In January 2004, PIC heard that Ahmadi had been charged with giving cocaine to patients. Also, around that time, Ahmadi had reported a burglary in the office. After that, PIC had Ahmadi investigated and found two articles about his drug-trafficking arrest and his license suspension. This investigation gave PIC grounds to cancel the policy or assess additional premiums. PIC notified Ahmadi of renewal coverage and the additional premiums but he neither paid nor renewed the policy.

¹ By Bryan Schwartz

After filing suit against Ahmadi on April 15, Williams then made a direct demand on PIC. PIC took the position that the coverage did not exist because the claim had not been made and reported during the policy period. The district court held that Williams did not have a direct right against PIC to enforce his default judgment against Ahmadi. However, it granted Williams declaratory relief, holding that Williams' claim had been made and reported during the policy period, based on the "totality of information" that PIC had possessed. Subsequently, PIC appealed.

Discussion

Justice Pickering wrote the opinion for the unanimous three-judge panel. The Court first discussed that PIC is a claims-made-and-reported malpractice policy. This means that in order for coverage to exist, the claim must be made and reported within the policy period. This differs from an "occurrence-based" policy, which provides coverage so long as the injury happens during the policy period. The Court noted the risks and benefits associated with each type of claims-made policy, but further discussed that the Nevada Legislature has recognized that claims-made insurance is important because it helps to provide affordable malpractice insurance.²

A. The Insuring Agreement

Next, the Court analyzed the insuring agreement between PIC and Ahmadi. The policy required Ahmadi to give PIC written notice of Williams' demand, including a description of the health care incident, its date, time, and place, a description of the health care services provided, and the name and contact information of the claimant and any witnesses. But Ahmadi did not notify PIC and Williams did not redirect the demand to PIC until months after the policy had expired. Thus, under this provision of the agreement, PIC was not notified during the policy period and the policy did not cover Williams' claim.

Another provision of the agreement stated that Ahmadi had the option for an "extending reporting" option, but Ahmadi failed to purchase this option. The Court stated that it would not rewrite contract provisions that were otherwise unambiguous. Since Ahmadi did not purchase the extension, the Court stated that it would be unfair to find otherwise.

B. Definitions Section: Actual and Potential Claims

Williams argued that while PIC may not have received actual notice of the demand during the policy period, it did receive constructive notice of the incident. The policy did allow for constructive notice of a claim by "the receipt...of an oral or written report from someone other than [the insured] regarding a professional health care incident that is reasonably likely to give rise to a demand for damages." Williams argued, and the district court agreed, that the news

² Nev. Rev. Stat. 690B.210 (2007).

accounts of Dr. Ahmadi's arrests and drug problems, combined with his license suspension, gave PIC constructive notice of a potential claim during the policy period and was enough to trigger coverage under the constructive notice provision.

The Court ultimately found that in order to find constructive notice, the insurer must receive notice of specified wrongful acts. The Court noted that if it was to allow coverage to be triggered by "broadly phrased, innocuous, or non-specific statements" this would create an "unbargained-for expansion of the policy, undermining the key distinguishing characteristic of a claims made policy" which is reducing exposure for the insurer and lower premiums for the insured.³ Thus, a report of potential demand for damages will only qualify as a "claim" if there is "sufficient specificity to alert the insurer's claim department as to the existence of a potential demand for damages arising out of an identifiable incident, involving an identified or identifiable claimant... with actual or anticipated injuries."

In this case, the Court found that there was not enough specific information provided to PIC to qualify as a report of a potential demand for damages under the policy's discovery clause.

Conclusion

Constructive notice to PIC requires more specificity and information than it received through its investigation of Ahmadi. Thus, pursuant to the purposes of a claims-made policy, Williams' claim was not received by PIC during the policy period. The Court reversed and remanded with instruction to enter summary judgment in favor of PIC.

³ Sigma Financial v. American Intern. Specialty, 200 F. Supp. 2d 710, 718 (E.D. Mich. 2002).