“Please” Is Not a Material Condition of an Insurance Policy’s Notice of Claim Provision

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It is fundamental that a policyholder has to notify its insurance company about a claim if it expects the insurer to defend and indemnify the policyholder against that claim. When and where that notice has to be given, however, varies. Sometimes the notice requirement is expressed as a mandatory condition and sometimes the policy wording is more polite. In a recent non-precedential case, the Fifth Circuit Court of Appeals addressed this issue in a legal malpractice case.

In Landmark American Insurance Co. v. Lonergan Law Firm, P.L.L.C., No. 19-10385 (5th Cir. Jun. 4, 2020) (not for publication), a lawyer sued for legal malpractice had a claims-made professional liability policy with the following notice provision: “Please send all claim information to: Attention: Claims Dept [address].” The insured never sent the underlying claims information to the insurer’s claims department. Instead, when renewing the policy, the policyholder reported the claim on a claims supplement to the renewal application.

The insurer refused to defend the underlying lawsuit and brought a declaratory judgment action claiming it did not have any obligation to defend the case because of the lack of notice to its claims department. The district court agreed and granted summary judgment to the insurer. The Fifth Circuit reversed and remanded.
In reversing, the court held that the policyholder “reported” the underlying claim information to the insurer as required by the policy when it included the information in the claim supplement. The court noted that the insurer did not dispute that it received the claims information in the claims supplement. While the court conceded that other circuits had held reporting to the claims department fulfills an essential feature of notice provisions, in this case the notice provision was permissive and not mandatory. In other words, saying “please send” is very different than saying the insured “must” or “shall” send the notice to the claims department.

Thus, the court held that the notice provision in this policy was not a material condition of the policy and breach of this permissive requirement, unlike a mandatory condition, did not result in a justifiable denial of coverage. In this case, the insurer could be relieved of its duty to defend and indemnify only upon a showing that it was prejudiced by the breach. Because the district court never reached that issue, the circuit court remanded the case for further proceedings. The circuit court made it clear that it was not deciding whether the insured breached the notice provision or whether any breach may have prejudiced the insurance company.

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