

DON'T TAKE A CHANCE AND NOT GIVE NOTICE OF A POTENTIAL CLAIM TO YOUR INSURANCE COMPANY - *You can Void your Coverage!!!*

One of the most common experiences faced by individuals, businesses, attorneys, doctors and other professionals is whether to give notice to the insurance company of a potential claim. There is a general reluctance on the part of people, even attorneys who should know better, to give notice of a potential claim. The most common concern is that giving notice of a potential claim will result in increased rates. This is not so. Even in the case of automobile coverage, a claim will result in a surcharge only if the insurance company is required to make a payment under the law of most jurisdictions. With all types of coverage, the mere reporting of a potential claim will simply result in a file being opened and, if no claim results, the file will thereafter be closed based on the procedure of the particular insurance company.

A recent case illustrates the danger of not giving notice of a potential claim although it involves a slightly different aspect of the notice requirements in an insurance policy. In Executive Risk Indemnity, Inc. v. Pepper Hamilton LLP, - - NY3d - -, 2009 NY Slip Op 07453 (October 20, 2009) New York's court of appeals decided a case under the laws of Pennsylvania where the law firm was located. In that case, the activities of the law firm's client had led to some lawsuits against the client. The firm had not been sued but it was apprehensive of its possible malpractice exposure. It had several insurance policies providing both primary and excess coverage and each policy excluded coverage for a category called "prior knowledge exclusions" which involved acts that the insured might foresee as producing a claim. The law firm did not report its apprehensions of possible malpractice exposure in applying for coverage. The New York Court of Appeals applied Pennsylvania law (based on where the firm was located) and concluded that the firm was on notice of its possible implication in the wrongdoing and that "a reasonable attorney with [that] knowledge should have anticipated the possibility of a lawsuit." Consequently,

two of the insurers were allowed to void the coverage and not pay the claim.

We like to tell what we call "cautionary tales" and advise clients, including law firms, that it is better to advise the insurance company of the potential for claim than to try and hope that there won't be a claim when there is knowledge that there might be one. Even where the insurance company may be required to show prejudice, such as where the insured fails to give notice of a claim or lawsuit, it is never worth the risk of having to explain why any information, even only a potential claim, was held back. Keeping the insurance company on notice of the potential for a claim has no down side - not advising the insurance company has potentially serious consequences, i.e. the loss of the coverage.

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