

The Disaster That Can Result from Failure to Timely Report

by Mark Bassingthwaighte

Legal malpractice insurance carriers are often asked, "When must we report a claim?" We work with a few firms that overreport, but the problem is with firms that do not make timely reports. Late reporting is dangerous because coverage can be denied.

Cass v. American Guar. & Liab. Ins. Co. 2006 NY Slip Op 52169(U) underscores the significance of timely reporting.

In *Cass*, a New York attorney and his firm represented a client in a disability claim before a state workers' compensation board. The client's disability benefit was reduced and eventually suspended based upon the report of an orthopedist hired by the client's employer. The doctor was never cross-examined. Two experts hired by the firm failed to appear for hearings, and their testimony was precluded. In November 2005, it was determined that the client had no disability. The client sued for malpractice in March 2006,

and the claim was immediately reported to the law firm's malpractice carrier. Two weeks later, the insurer denied coverage on the grounds that the claim was not reported in a timely fashion as required under the policy. The firm filed suit to challenge this decision.

The judge in this coverage dispute sided with the carrier. The judge ruled that allowing four months to pass with knowledge of circumstances that a reasonable attorney would view as likely to result in a claim was untimely as a matter of law. Further, the attorney's argument that the claim was meritless was rejected. The judge wrote, "The issue is not whether or not plaintiffs actually committed malpractice, or whether they subjectively believed there was no conduct which could give rise to a claim, but whether a reasonable attorney would have expected a malpractice claim under the circumstances."

So when should a potential claim be reported? It is not important whether a claim is viewed as frivolous or if a suit has been filed. One must comply with terms of the policy that require the insured to report upon becoming aware of any act, error, or omission that happens before the end of the policy period and that could reasonably be expected to give rise to a claim against the insured.

Don't procrastinate. There is no bright line in the real world. When in doubt, report. Not doing so can be disastrous.

For more about this issue, please see "To Report or Not To Report—That Is Not the Question," by Rob Tanelerat at <http://www.alpsnet.com/alps/Newsletter/DisplayNewsletter.aspx?id=25>.

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