



Alerts

Insurance Producer Owed No Duty to Additional Insured to Notify Excess Carrier

May 15, 2013

Professional Lines Alert

Defendant was the insurance producer for a policy issued to an insured. There was an additional insured under that policy. An additional insured claims administrator sent the insurance producer a complaint and a request for coverage under the policy and tender of defense. The additional insured sent the complaint to the general liability carrier and not the excess carrier that was listed on the certificate of insurance. The additional insured did not give notice to the excess carrier and the insurance producer did not provide notice until more than four years later, when the adjuster for the general liability carrier requested notice to the excess carrier. The excess carrier denied coverage based on failure to provide notice as soon as practicable after a suit was brought that was likely to involve the excess policy. The additional insured agreed to a \$2 million consent judgment and assigned its claims against the excess carrier and the insurance producer to plaintiff. Plaintiff sued the excess carrier and the insurance producer to collect the remaining \$1 million in coverage and an additional \$500,000 in attorneys' fees and bad faith penalties. The excess carrier settled for \$800,000 and the insurance producer moved for summary judgment on grounds that it had no duty to notify the excess carrier. A Georgia trial court denied the motion and the Georgia Court of Appeals reversed.

Question Before the Court

Does an insurance producer have a duty to notify an excess carrier on behalf of an additional insured?

No. After stating that it could not find any case law in Georgia or any other jurisdiction directly addressing the scope of any duty owed by an insurance producer to give notice to an excess carrier on behalf of an additional insured, the court relied upon an analogous case, in which the court there held that an insurance agent was not liable to an additional insured for failing to procure a policy. *Workman v. McNeal Agency*, 458 S.E.2d 707 (Ga. App. 1995). In *Workman*, the court held that defendant broker was not plaintiff's insurance agent and had no duty to obtain insurance for her property or notify her that it had not done so. The same reasoning would apply to a claim that an insurance producer owes a duty to notify an excess carrier on behalf of an additional insured based solely on its status as an additional insured under the policy.

Service Areas

Professional Liability



The court also found that no duty existed based on the “voluntary undertaking” doctrine. Under that doctrine, one who undertakes gratuitously or for consideration to render services to another where the protection of that third person is subject to liability for failure to exercise reasonable care in the undertaking. The court held that the record did not support a conclusion that the insurance producer undertook a duty to notify excess carriers on behalf of the additional insured. There was no prior conduct by the insurance producer which would have created a reasonable expectation that it would do so because the additional insured had no prior dealings with the insurance producer. The insurance producer only undertook a duty to notify the general liability carrier, a duty which it performed without negligence.

What the Court’s Decision Means for Practitioners

The Georgia Court of Appeals here made new law in holding that there was no duty on the part of the insurance producer to give notice to the excess carrier. The insurance producer’s duty was to give notice to the general liability carrier. The court found that there was nothing in the record to show any prior relationship between the additional insured and the producer which could support a voluntary undertaking.

Garner & Glover Co. v. Barrett, 738 S.E.2d 721 (Ga. App. Mar. 14, 2013)

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