

Reversing Lower Court, Seventh Circuit Finds Insured's Delay In Providing Notice Unreasonable As A Matter Of Law

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The Seventh Circuit ruled that a policyholder's twenty-one month delay in providing notice to his insurer was unreasonable as a matter of law. As such, the insurer had no duty to defend the underlying claims. *State Auto Prop. & Cas. Ins. Co. v. Brumit Servs.*, 2017 WL 6276199 (7th Cir. Dec. 11, 2017).

The coverage dispute arose out of a minor automobile incident in which Carl Brumit, owner of a small construction business, struck a pedestrian while backing out of a parking space. Brumit was unaware that he had struck a pedestrian until a bystander alerted him as he was driving away. The pedestrian was treated by an EMT for skin scrapes but declined a trip to the hospital. Brumit believed the incident was so insignificant that he was not required to report it to his business automobile liability insurer. However, nearly two years later, he was sued by the pedestrian for personal injuries. He promptly notified State Auto of the suit. Thereafter, State Auto sought a declaration that it had no duty to defend Brumit because he had breached the policy's notice requirement. An Illinois federal district court granted Brumit's summary judgment motion, finding that the twenty-one month delay was reasonable as a matter of law. The Seventh Circuit reversed.

Under Illinois law, the reasonableness of a delay in providing notice is determined by evaluating five factors. The district court had determined that all five factors mitigated in favor of a finding of reasonableness. However, as set forth below, the Seventh Circuit concluded that all factors lean toward the unreasonableness of the delay.

Policy Language: The Seventh Circuit emphasized the unambiguous notice requirement in the policy, dismissing the district court's reasoning that the notice requirement would not be understood to require policyholders to report "each and every accident" they were involved in.

Brumit's Sophistication: The Seventh Circuit rejected the district court's finding that Brumit "falls somewhere on the unsophisticated end of the spectrum." Rather, the Seventh Circuit explained that as a high school graduate with two years of college courses, several years of work experience and two years of business ownership, Brumit "should be expected to possess a better-than-average understanding of commerce and insurance."

Awareness of Possible Claim: The district court had reasoned that because the incident was so trivial and had resulted in no apparent harm, Brumit had a reasonable basis to conclude that no claim would arise. The Seventh Circuit rejected this reasoning, finding that "no matter how

minor the incident appeared to be at the time, a reasonable driver would understand that a claim” might later be filed based on latent injuries.

Brumit’s Diligence: The Seventh Circuit “strongly disagree[d]” with the district court’s conclusion that “[t]here is very little [Brumit] could have done to be more diligent.” The Seventh Circuit emphasized that Brumit took no action during the twenty-one month delay, noting that he could have made inquiries to his insurance agent about the necessity of reporting the accident.

Prejudice to State Auto: The Seventh Circuit held that State Auto was prejudiced by the delay because earlier notice would have given the insurer an opportunity to investigate the accident and the pedestrian’s alleged injuries, and to evaluate the pedestrian’s willingness to settle immediately after the accident. The court concluded that the deprivation of those opportunities establishes prejudice under Illinois law.

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