

Reversing District Court, Fifth Circuit Rules That No “Claim” Was Made During Policy Period Despite News Coverage Putting Insurer On Notice (Insurance Law Alert)

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Disagreeing with a district court holding that “information received and recorded as a timely claim by the parties will be deemed a timely claim” under a claims-made policy, the Fifth Circuit ruled that no claim was made against the policyholder during the relevant policy period and therefore the insurer had no duty to defend. *Jordan v. Evanston Ins. Co.*, 2022 WL 141777 (5th Cir. Jan. 17, 2022).

The insurance dispute arose out of injuries suffered by a child after ingesting small magnetic toys. During the relevant policy period, numerous news stories were published about the incident, which the manufacturer forwarded to its insurers. Upon receiving those media accounts, Evanston opened an internal “Claim/Occurrence” file. Months later, and after the policy period had ended, the toy company received a demand letter from the injured child’s family, which it forwarded to its insurers. Evanston denied coverage.

In a declaratory judgment action, a Mississippi district court denied Evanston’s summary judgment motion. The trial court sidestepped the question of whether the news constituted a “claim” against the toy manufacturer, and instead ruled that Evanston had effectively received notice of a claim, as evidenced by its internal files. The Fifth Circuit reversed, ruling that no claim was made against the toy manufacturer during the policy period and therefore the district court erred in finding that Evanston had received notice of a claim.

The Fifth Circuit concluded that the news articles did not constitute a claim because they did “not evidence an assertion of an existing right[,] any right to payment or to an equitable remedy.” The court deemed it irrelevant that Evanston occasionally referred to the media reports as a “claim” in its internal files, explaining that awareness of an alleged injury is not sufficient to constitute a claim.

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