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COVERAGE UPDATE

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WHEN THERE ARE TWO INSUREDS AND ONLY ONE PROVIDES NOTICE, AN INSURER DOES NOT HAVE AN OBLIGATION TO DISCLAIM COVERAGE TO THE ONE INSURED THAT DID NOT PROVIDE TIMELY NOTICE

The United States Court of Appeals for the Second Circuit in Webster v. Mount Vernon Fire Ins. Co., 2004 WL 859177 (2d Cir. 2004) has held, in a decision issued on April 22, 2004, that an insurer's obligation to disclaim coverage to a particular insured, including secondary insureds, does not arise until that particular insured has provided notice of the occurrence or claim.

THE CLAIM FACTS

In Webster, claimant was injured in 1996 while attending an elementary school owned and operated by the named insured under the policy, Linton Grant. On October 20, 1996, ten days after the accident, Linton received a letter from claimant's father, threatening to file a lawsuit against the school.

Almost five years later, in May 2001, Linton provided notice of the occurrence and claim to Mount Vernon for the first time. The notice did not mention his wife, Ina, as a possible insured with respect to the accident, and Ina never independently notified Mount Vernon of the claim. The notice was sent to Mount Vernon by Linton Grant's broker with the insured indicated only as Linton Grant.

Mount Vernon investigated Linton's claim and determined that Linton know about the accident when it occurred in 1996, and that he had no excuse for the five-year delay in notification. Mount Vernon thus disclaimed coverage to Linton on May 30, 2001, explaining that Linton's notice was untimely under the terms of the policy.

The disclaimer, however, did not mention, Ina, and Mount Vernon did not directly disclaim coverage to Ina. The disclaimer was sent to Linton Grant's broker as well as Linton Grant.

The claimant, Webster, and the insureds, the Grants, argued that Mount Vernon's disclaimer was invalid because Ina was a secondary insured under the policy and she never received notice of the disclaimer. Mount Vernon responded that it had no obligation to disclaim to Ina because she, as a secondary insured, had a duty to provide notice of the occurrence or claim to Mount Vernon, which she failed to do.

THE DISTRICT COURT'S DECISION

The United States District Court for the Eastern District of New York ruled that Mount Vernon had a duty to disclaim to Ina because Linton provided Mount Vernon with actual knowledge of the occurrence and claim. The District Court in essence imputed Linton's notice of the occurrence to Ina.

THE SECOND CIRCUIT'S DECISION

The Second Circuit, however, reversed the District Court's decision and ruled that "[b]ecause an insurer's obligation to disclaim coverage as to a particular insured does not arise until that insured has provided notice of the occurrence or claim, Ina's failure to provide any notice relieved Mount Vernon of its obligation to disclaim coverage as to her."

The Second Circuit explained that when a policy unambiguously states that each insured has a duty to comply with the policy's notice requirements, regardless of whether the insured is the primary or secondary insured, the "notice provided by on insured in accordance with the policy terms will not be imputed to another insured. See Travelers Ins. Co. v. Volmar Constr. Co., 752 N.Y.S.2d 286 (1st Dept. 2002) (holding that the secondary insured's failure to notify the insurer of the occurrence relieved the insurer of its obligation to disclaim coverage as to the secondary insured, despite the fact that the primary insured had provided timely notice).

As such, the Court held that Mount Vernon's obligation to provide a disclaimer to Ina never arose. See Roofing Consultants v. Scottsdale Ins. Co., 709 N.Y.S.2d (4th Dept. 2000), Sayed v. Macari, 744 N.Y.S.2d 509 (2nd Dept. 2002), Moore v.. Travelers Ins. Co., 734 N.Y.S.2d 717 (3rd Dept. 2001), Amer. Mfgrs. Mut. Ins. Co. v. CMA Enters. Ltd., 667 N.Y.S .2d 724 (1st Dept. 1998), Heydt Contracting Corp. v. Amer. Home Assurance Co., 536 N.Y.S.2d 770 (1st Dept. 1989).

CONCLUSION

The Webster decision provides a simple and clear cut approach to notice. If one wants coverage, on has to provide notice to the carrier. If one has provided notice to the carrier, on is entitled to notice of the carrier's position.

The Webster decision is certainly applicable to the husband and wife situation but also may apply to other "secondary insureds" as well. An argument can be made, based upon the Webster decision, that regardless of whether the insured is the primary or secondary insured, an insurer's duty to disclaim to a particular insured is not triggered unless notice is received from that particular insured and notice provided by one insured in accordance with the policy terms will not be imputed to another insured.

Miranda & Sokoloff LLP attorneys, Steven Verveniotis and Benjamin P. Malerba, III, represented Mount Vernon Fire Insurance Company in Webster v. Mount Vernon Fire Ins. Co., 2004 WL 859177 (2d Cir. 2004), both at the District Court level, before the United States District Court, Eastern District of New York, and before the Second Circuit Court of Appeals.

The Second Circuit held… "[b]ecause an insurer's obligation to disclaim coverage as to a particular insured does not arise until that insured has provided notice of the occurrence or claim, Ina's failure to provide any notice relieved Mount Vernon of its obligation to disclaim coverage as to her."

The Webster decision provides a simple and clear cut approach to notice. If one wants coverage, on has to provide notice to the carrier. If one has provided notice to the carrier, on is entitled to notice of the carrier's position.