Client Alert

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Policyholder Is Under No Obligation to Notify General Liability Insurer of Threatened Litigation Absent A Written Demand for Monetary or Non-Monetary Relief

In *SNL Financial, LC v. Philadelphia Indemnity Insurance Company*, No. 09-2182, 2011 WL 5865983 (4th Cir. Nov. 23, 2011), the U.S. Court of Appeals for the Fourth Circuit affirmed a summary judgment in favor of a policyholder, finding that the policyholder timely notified its insurer of a "claim," even though the policyholder waited some 10 months and until after litigation had commenced before providing notice. The court also held that no misrepresentation occurred when the policyholder renewed its insurance policy without informing the insurer of threatened or "potential litigation," since the renewal application only called for disclosure of "litigation" during the preceding 12 months.

Background

SNL Financial, LC ("SNL") was insured by Philadelphia Indemnity Insurance Company ("Philadelphia Indemnity") under a contract for general liability insurance. The policy afforded, among other things, a defense for "claims" made against SNL involving certain employment actions occurring during the policy period, which ran from August 1, 2007 through August 1, 2008. The policy defined a "claim" as: 1. "a written demand for monetary or non-monetary relief; [or] 2. a judicial or civil proceeding commenced by the service of a complaint or similar pleading." The policy further provided that SNL must provide notice of any claim to Philadelphia Indemnity "as soon as practicable," but not later than 60 days after the expiration date of the policy.

In January 2008, SNL received a letter from Murray Schwartz, an attorney representing a former SNL employee, Stephen Greenberg. The letter sought a meeting with SNL representatives to discuss "certain discriminatory conduct that occurred during the course of [Greenberg's] employment with [SNL]." After receiving the letter, SNL retained an attorney named Sean Gibbons. Soon thereafter, SNL received a second letter from Schwartz in which Schwartz again requested to meet with SNL representatives. In this letter, Schwartz expressed his desire to "pursue a possible amicable resolution of the issues." At no time, in either letter, however, did Schwartz threaten litigation or make a demand for monetary or non-monetary relief.[1]

In June 2008, Gibbons learned that Schwartz had prepared, but not filed, a draft complaint against SNL on behalf of Greenberg. Gibbons asked to see the complaint, but Schwartz refused to provide him with a copy. Schwartz also expressly declined to "present [Gibbons] with a demand" that Gibbons could take to SNL.

[1] Although Schwartz made a demand of $1.2 million during an August 2008 telephone conversation with Gibbons, neither party argued that this demand constituted a "*written*" demand for monetary or non-monetary relief" as required by the insurance contract. (emphasis added).

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On July 30, 2008, Schwartz allowed James Clark, another attorney for SNL, to review the draft complaint in Schwartz's office. During his review, Clark asked Schwartz whether he "had a demand that he was prepared to make." Schwartz again explicitly declined to make a demand, stating that he was waiting to receive a report from Greenberg's doctor. After the meeting, Clark sent Gibbons a memorandum explaining that the draft complaint alleged two causes of action and sought $16 million in damages.

On the same day as Clark's meeting, SNL submitted a renewal application to Philadelphia Indemnity seeking renewal of its policy for the 2008–2009 policy year. In its application, SNL avowed that it had not been involved in any *litigation* during the previous 12 months. Based on SNL's application, Philadelphia Indemnity issued a renewal policy for the period August 1, 2008 through August 1, 2009.

On October 3, 2008, Schwartz filed the complaint against SNL, alleging age and employment discrimination against Greenberg. SNL received a copy of the complaint on October 20, 2008, and, on October 27, 2008, notified Philadelphia Indemnity. Philadelphia Indemnity denied both a defense and indemnity, contending that SNL failed to provide timely notice of the claim and also failed to disclose the existence of pending litigation in its renewal application.

SNL filed suit seeking a declaration that Philadelphia Indemnity was obligated to defend and indemnify SNL against the claims asserted in the underlying age and employment discrimination litigation. On cross motions for summary judgment, the district court granted judgment in favor of SNL, holding that SNL satisfied the policy's notice conditions to coverage. Philadelphia Indemnity appealed.

On appeal, Philadelphia Indemnity argued two points of error. First, Philadelphia Indemnity argued that the district court erred in concluding that SNL did not receive notice of the claim until October 2008, when it received a copy of the filed complaint. According to Philadelphia Indemnity, SNL had notice of the claim as early as January 2008, when Schwartz wrote two letters to SNL concerning the alleged misconduct, and then again in July 2008, when Clark reviewed the unsigned draft complaint in Schwartz's office. Second, Philadelphia argued that it was entitled to rescind the policy because SNL materially misrepresented in its renewal application that it had not been the subject of any litigation during the preceding 12 months.

Holding

The Fourth Circuit rejected Philadelphia Indemnity's points of error and affirmed the district court's decision in favor of SNL. First, the court found that SNL's notice was timely. The court reasoned that, under the plain and unambiguous language of the policy, SNL was obligated to provide notice as soon as practicable of any claim made against SNL. The policy defined a "claim" as a "written demand for monetary or non-monetary relief." The January 2008 letters, however, made no demand for relief and, instead, expressed only a "desire" to meet with SNL representatives to "discuss" the issues, with a "hope" of arriving at an "amicable resolution." These statements, according to the Fourth Circuit, did not constitute a demand for relief, either monetary or non-monetary.

Likewise, the unsigned draft complaint reviewed by Clark in July 2008 did not constitute a "claim" as that term was defined in the policy. In particular, the court noted that the complaint was unsigned and that Schwartz refused to send a copy to Gibbons. The court also emphasized that Schwartz expressly declined to "make a demand" even after SNL requested that he do so. This, the court reasoned, "expressly disavowed any suggestion that the unsigned draft complaint was intended as a 'written demand for monetary or non-monetary relief.'" Consequently, the court concluded that a "claim" had not been made against SNL until the complaint was filed and served in October 2008. Because SNL forwarded the complaint to Philadelphia Indemnity promptly upon receipt in October 2008, the court concluded that SNL complied with the policy's notice conditions.

Finally, the Fourth Circuit held that no misrepresentation occurred when SNL stated that it was not involved in litigation during the 12 months preceding its August 2008 policy renewal. The court concluded that, prior to October 2008, "there was no pending 'litigation,' but only potential litigation." And, further, to

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accept Philadelphia Indemnity's argument that the renewal application was false would effectively rewrite the policy to require SNL to disclose its knowledge of a "dispute" or of "potential litigation," rather than its knowledge of "litigation" as required by the plain language of the policy.

Implications

The *SNL* decision underscores the fundamental proposition that clear and unambiguous policy terms will be given their plain, ordinary and popular meaning and shall be interpreted in favor of coverage. The decision also reiterates that courts will not interpret insurance policies in a manner that effectively rewrites the contracts. Finally, *SNL* illustrates that courts will strive to uniformly enforce unambiguous policy terms regardless of the particular circumstances under which those terms are being applied, thereby fostering greater predictability of how policy terms will be construed in future disputes. Indeed, in *SNL*, the court refused to broaden the meaning of the term "claim" in the context of construing the policy's notice provision, just as some courts have traditionally refused to broaden the term when assessing whether a demand constitutes a "claim" for purposes of triggering coverage under a policy.

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