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WWM OBTAINS SUMMARY JUDGMENT FOR CLIENT INSURER: NO DUTY TO DEFEND OR INDEMNIFY LEGAL MALPRACTICE CLAIMS

In January 2012, Gilbert Sollek brought a declaratory judgment complaint seeking a declaration of rights under a claims-made-and-reported legal malpractice policy that Westport Insurance Corporation had issued to Sollek's former lawyer, Vann Leonard. Sollek asserted a claim against Leonard in an underlying lawsuit alleging negligence, legal malpractice, and unjust enrichment due to Leonard's alleged failure to negotiate a successful settlement of Sollek's home equity line of credit with Sollek's bank. Westport denied coverage for Sollek's claim against Leonard, and for the claims of other former clients against Leonard, after Leonard pled guilty to multiple counts of embezzling clients' funds from his trust account. Sollek sued Westport in Mississippi state court seeking to recover under Leonard's malpractice policy. Westport subsequently removed the action to the U.S. District Court for the Southern District of Mississippi.

The policy required that the insured report a claim no later than June 7, 2011. Here, Leonard did not report Sollek's claim to Westport at all; rather, Sollek advised Westport of his claim against Leonard on June 15, 2011, after learning that Leonard had been incarcerated for embezzlement. On cross-motions for summary judgment, Westport argued that there was no coverage for Sollek's claim against Leonard because it was not a claim both first made against Leonard during the policy period and reported to Westport during the 60 day reporting period. Sollek argued that Westport had constructive notice of his claim because Leonard's independent defense counsel, retained by Westport under a reservation of rights to defend Leonard against claims brought by other clients before the defense was withdrawn, allegedly had knowledge of Sollek's claim. Sollek also argued that, if the claim had not been timely reported, Westport had waived that condition or was estopped to assert it because Westport had not specifically addressed that ground in its declination letter to Leonard.

On November 2, 2012, the United States District Court for the Southern District of Mississippi, Jacksonville Division, entered its Order granting Westport's motion for summary judgment and denying Sollek's cross-motion in its entirety.

Addressing two questions of first impression under Mississippi law, the Court first found that the requirement that a claim be reported by a certain date is a valid, unambiguous condition precedent to coverage under a claims-made-and-reported policy such as Westport's. The court further held that Westport had not waived the reporting condition, nor was Westport estopped from asserting untimely claim reporting as a defense to coverage. Rather, the Court concluded, the reporting requirements in the Westport policy "are akin to coverage-creating provisions that cannot be waived or overcome by estoppel." *Gilbert Sollek v. Westport Insurance Corporation and Vann Leonard*, Civ. Action No. 3:12cv115-DPJ-FKB (S.D. Miss., Nov. 2, 2012).

Westport was represented by Robert P. Conlon. A copy of the court's ruling is attached here (PDF).

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LexisNexis® Mealey's™ Emerging Insurance Disputes Legal News article regarding this case is available here.