

17-Month Delay Bars Coverage For Sign Co., Judge Says

By **Jennifer Mandato**

Law360 (November 21, 2022, 6:05 PM EST) -- An Alabama federal judge relieved Nationwide Property & Casualty of covering medical expenses stemming from a policyholder's involvement in an underlying personal injury lawsuit, ruling Monday that the policyholder's 17-month delay in notifying Nationwide revokes coverage.

In siding with the insurer, U.S. District Judge Corey L. Maze noted that the policy provides coverage of medical expenses for bodily injury provided that the insured reports the accident within one year of the date of occurrence.

"This portion of the policy strongly suggests that failing to notify Nationwide of an accident within one year will terminate Nationwide's duty to pay medical expenses," Judge Maze said in **the order**.

He relied on state law, explaining while there may be circumstances justifying delayed notice, it's clear it's the insured's responsibility to notify its insurer of any accident rather than focusing on the probability of a suit being filed.

In July 2019, an employee of Apple Signs Co., Randell Alexander, was injured when he fell off a ladder while welding for the company. Christopher Adams, the owner of Apple Signs, paid for his employee's current medical expenses but didn't report the accident to Nationwide.

According to case filings, Adams didn't notify the insurer until December 2020 after Alexander filed suit against the company for any future medical expenses.

Nationwide brought the claim to Alabama federal court, asking the court to rule it has no obligation to Apple Signs or Adams because of the commercial general liability policy's exclusions and Adams' untimely notice.

While the policy does provide coverage should Adams be legally obligated to pay damages stemming from bodily injury, it excludes injuries of Apple Signs' employees, according to the order.

Under the policy, Adams is also required to notify Nationwide of any potential claims "as soon as practicable."

The policy lacks a definition for "as soon as practicable," but it does say medical expenses for bodily injury must be incurred and reported within one year of the accident.

Because Adams waited 17 months to notify the insurer, the notice was untimely.

Adams should have notified Nationwide of the incident when he first paid for a portion of the medical bills so Nationwide could conduct its own investigation and determine its coverage responsibilities, according to Maze.

Adams argued his delay was justified because he believed he wasn't liable for the accident, according to case filings.

"Adams had to know that Apple Signs was potentially liable for the costs of Alexander's injuries because Adams knew that Alexander fell off an Apple Signs' ladder while working on a job for Apple

Signs," Judge Maze said.

It's implausible that Adams believed neither he nor his company had any potential liability for the accident because he paid some medical bills, the judge said. So, he had a responsibility to report the incident in a timely manner to Nationwide and his failure to do so justifies coverage revocation.

"There's no doubt they knew this guy was hurt on the job," Nationwide's attorney, Kile T. Turner of Norman Wood Kendrick & Turner, told Law360, adding that the company wanted to notify the insurer only when the matter was brought to court.

"I think the judge got it right on the law," Turner said, noting that this is an area of law favorable to insurers.

Counsel for Adams did not immediately respond to a request for comment Tuesday.

Nationwide Property & Casualty Co. is represented by Kile T. Turner of Norman Wood Kendrick & Turner.

Christopher Adams is represented by Enza D. Giles of Sand Mountain Law Firm.

The case is Nationwide Property & Casualty Insurance Co. v. Adams et al., case number 4:21-cv-00626, in the U.S. District Court for the Northern District of Alabama.

--Editing by Roy LeBlanc.