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California Court of Appeal Upholds Strict Compliance with Reporting Requirements in Claims-Made Policies

WRITTEN BY

Jennifer Mathis | Jenni K. Katzer

On Tuesday, February 25, 2020, the California Court of Appeal added another opinion to its growing body of case law on claims made and reported issues, holding that there is no coverage under a claims-made employment practices liability policy for a claim that was not timely reported when it was first made in an administrative proceeding, and that the insurer need not show it was prejudiced to deny coverage on that ground. The Court's decision affirmed the judgment of the Los Angeles County Superior Court sustaining the demurrer of Greenwich Insurance Company and XL Insurance America Inc (XL).

In 2018, Troutman Sanders obtained a judgment in favor of XL after the trial court sustained its demurrer, without leave to amend. The trial court held that Charges of Discrimination filed with the Department of Fair Employment and Housing (DFEH Charge) were Claims, as that term was defined under the employment practices liability policy. Because the policy provided claims-made coverage, the insured was required to report the DFEH Charge to the program administrator identified in the declarations "as soon as practicable" but no later than 60 days after the expiration of the policy period. Even though the insured reported the DFEH Charge to its insurance broker within the policy period, the trial court held that such notice did not satisfy the reporting requirements of the policy, which required notice to the insurer's program administrator. The insured's failure to provide timely notice of the DFEH Charge precluded coverage for both the DFEH Charge and the subsequent civil complaint filed against the insured, as the trial court also held that the insured's subsequent tender of the civil complaint to the program administrator, after the end of the policy period, was untimely.

On appeal, the insured argued that the trial court erred in sustaining the demurrer because the insured sufficiently alleged that its tender was timely, and even if it was not, the insurer could not deny coverage for the Claim without demonstrating prejudice. In a 19-page unpublished opinion, the Court of Appeal affirmed the judgment in full. The opinion touched upon several heavily litigated areas of insurance law, including whether an administrative charge constitutes a claim under an employment practices liability policy (here, it was), whether an insured's broker may be deemed to be an agent of notice for an insurer (not in this case), and whether the notice-prejudice rule applies to claims-made coverage (not in California). The Troutman Sanders team consisted of Jennifer Mathis and Jenni Katzer.

The opinion is available on Westlaw as AHSL Enters. v. Greenwich Ins. Co., No. B292484, 2020 WL 897259 (Cal. Ct. App. Feb. 25, 2020) and on Lexis as AHSL Enters. v. Greenwich Ins. Co., No. B292484, 2020 Cal. App. Unpub. LEXIS 1279 (Feb. 25, 2020).

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