

Court Finds No Coverage for \$42 Million False Claims Act Suit Due To Late Reporting

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A federal court has found no coverage for a \$42 million whistleblower settlement due to the insured's failure to timely report the claim to its carrier. *PAMC, Ltd. v. National Union Fire Insurance Company of Pittsburgh, Pa.*, Case No. 18-6001 (C.D. Cal. February 12, 2019),

The insurance suit arose from an underlying whistleblower action. On June 14, 2013, Paul Chan filed a *qui tam* lawsuit under seal against PAMC, the insured hospital, and various other defendants ("the Whistleblower Suit"). The Whistleblower Suit sought recovery of treble damages and civil penalties for the defendants' submission of false claims to the Medicare and Medicaid programs.

On June 9, 2015, the Department of Justice served a subpoena on PAMC in connection with the investigation and asked PAMC not to disclose the subpoena "for an indefinite period of time or until a court orders disclosure." PAMC did not report the subpoena to its D&O insurer, National Union Fire Insurance Company ("National Union"). On December 15, 2015, the court unsealed the Whistleblower Suit. PAMC was served on March 14, 2016. PAMC did not report the Whistleblower Suit to National Union.

On January 5, 2017, the DOJ advised PAMC that the investigation was complete. On February 11, 2017, the case settled for \$42 million. Two months after the settlement, PAMC reported the Whistleblower Suit to National Union under a claims-made-and-reported liability policy.

National Union denied coverage for the Whistleblower Suit based on, among other things, PAMC's failure to comply with the policy's reporting requirements. PAMC argued that the DOJ's request for confidentiality tolled its reporting requirements and that, in any event, it should be "equitably excused" from strict compliance. PAMC filed suit, and National Union moved to dismiss.

The court agreed with National Union and dismissed the coverage suit with prejudice, finding that the policy “unambiguously required plaintiff to report any claims of which plaintiff first became aware within the applicable Policy Period plus 90 days.” The court refused to apply any equitable exception, noting that PAMC never asked the DOJ for permission to report the claim to National Union and that PAMC still failed to report the Whistleblower Suit months after it became public.

In a strong statement regarding the viability of claims-made-and-reported policies, the court said that: “To hold [National Union] equitably liable for [the whistleblower action] settlement amount would be far more inequitable than the ‘forfeiture’ of plaintiff’s coverage for the subpoena and the whistleblower action based on plaintiff’s idleness and disregard for the policy’s reporting requirements.”

Carlton Fields represented National Union in this matter.

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