

ALERT

Failure to Provide Timely Notice of Original Complaint Does Not Negate Coverage for Amended Complaint

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Applying Georgia law, the United States Court of Appeals for the Eleventh Circuit has held that an insureds' failure to provide timely notice of a suit at the outset did not as a matter of law render untimely notice of a subsequent amended complaint in the same action. *State Farm Fire & Cas. Co. v. LeBlanc*, 2012 WL 5199253 (11th Cir. Oct. 22, 2012).

A group of wholesale importers were insured under three separate policies issued by the same insurer, each of which required either that the insureds provide "prompt" notice of a claim or suit or that they provide notice "right away." The insureds were first sued in December 6, 2007, at which time an original complaint was filed, asserting various claims for trademark infringement and unfair competition. Four months later, after having retained defense counsel, the insureds provided notice to their insurer, which proceeded to defend the case subject to a reservation of rights. An amended complaint, adding more defendants and asserting additional causes of action, was filed on March 19, 2010. The insureds immediately provided notice of the new pleading to the insurer, which at that point had initiated an action for a declaration of no coverage based on late notice as to the initial complaint.

On review from the entry of summary judgment for the insurer, the court of appeals held that the notice provisions in the policies constituted conditions precedent to coverage and therefore the insurer did not need to demonstrate prejudice from the delay in notice to deny coverage. The court also found that the insureds' delay of four months was unreasonable as a matter of law in the absence

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of “a valid excuse.” In this regard, the court pointed out that the only justification offered by the insureds for not providing notice sooner was that they “did not realize they might have coverage.” The court rejected this excuse, holding that “Georgia law ‘requires more than just ignorance’ to avoid the enforcement of a notice provision.” Accordingly, the court concluded the policies did not respond to the initial complaint.

Turning to the amended complaint, the court refused to adopt “a blanket rule that if notice of an initial complaint is untimely, then notice of an amended version of that complaint is also untimely.” Pointing out that the amended complaint asserted new claims, the court held that it was necessary to “separately analyze the timeliness of notice for each claim asserted.” The court therefore concluded that because the insured provided prompt notice of the amended complaint, the insurer was not entitled to summary judgment as to the claims added to the case by the amended pleading.

The opinion is available [here](#).