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Traub Lieberman Secures Summary Judgment for Excess Insurer In Late Notice Case

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Traub Lieberman Straus & Shrewsberry LLP attorneys, Mark F. Wolfe and Jeremy S. Macklin, won summary judgment on behalf of Landmark American Insurance Company in a late notice dispute pending in the U.S. District Court for the Northern District of Illinois. Landmark issued an excess liability insurance policy to Deerfield Construction Company, whose employee was involved in an automobile accident in 2008 that injured truck driver Ryan Keeping. In 2009, Keeping sued Deerfield and its driver for injuries sustained in the accident. Deerfield, through one or more intermediaries, reported the lawsuit to its primary automobile insurer, American States Insurance Company.

Landmark did not receive actual notice of the accident or the lawsuit until December 2014, approximately six weeks before trial. A jury returned a judgment against Deerfield and its driver for \$2.368 million. Deerfield and its driver looked to Landmark to indemnify them for the judgment.

The court granted summary judgment in Landmark's favor that notice in 2014 of a 2008 accident and 2009 lawsuit was unreasonable as a matter of law. Deerfield argued that Landmark received timely notice through its "apparent agent," Arthur J. Gallagher, a broker retained by Deerfield's insurance consultant. The court rejected Deerfield's argument, reasoning "there is no evidence showing that it was reasonable for Deerfield to believe that AJG was Landmark's agent, nor is there any evidence showing that Deerfield actually harbored a belief that AJG had authority to receive notice on behalf of Landmark."

The court also rejected Deerfield's attempt to argue that Landmark was estopped from asserting a late notice defense because, after notice in December 2014, Landmark participated in settlement negotiations and sent a reservation of rights letter after the jury rendered its verdict in favor of Keeping. The court concluded that there is "no evidence that Landmark's participation in the Keeping lawsuit-induced Deerfield to surrender its right to control the defense," nor evidence that Landmark influenced Deerfield's defense strategy.

Traub Lieberman Straus & Shrewsberry LLP has achieved a national reputation for excellence in legal representation. Our philosophy is to provide quality legal representation expeditiously and efficiently. Our emphasis on client service, as well as our reputation in the legal community, has served our clients and the firm well. Traub Lieberman has been recognized by many, including Martindale-Hubbell, for outstanding legal ability and ethical standards.