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Illinois Appellate Court Addresses Scope Of Estoppel In Late Reporting Context

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In *Southwest Disabilities Services & Support v. ProAssurance Specialty Ins. Co.*, 2018 IL App (1st) 171670, the Illinois Appellate Court held that insurers are not estopped from denying coverage under claims-made and reported policies when the claim was made and reported after the policy expired, even where the insurer fails to file a declaratory judgment action.

ProAssurance issued a claims-made and reported policy to Southwest Disabilities Services & Support (Southwest). The policy stated that the claim reporting period terminated with the expiration of the policy. The policy period was September 26, 2012 through May 26, 2013. In February 2014, Southwest was sued for negligence for an incident that occurred in November 2012. Southwest tendered the claim to ProAssurance in March 2014. ProAssurance denied coverage because the claim was reported after the policy period expired.

In 2016, Southwest filed a declaratory action against ProAssurance alleging that ProAssurance breached its duty to defend the underlying negligence lawsuit and was estopped from asserted coverage defenses because it failed to defend Southwest under a reservation of rights or file a declaratory judgment action. ProAssurance filed a counterclaim and moved for judgment on the pleadings. After a hearing, the trial court found ProAssurance was not obligated to defend or indemnify Southwest.

The appellate court addressed the difference between a “claims-made and reported” policy and an “occurrence” policy. In a “claims-made” policy, the court explained, the claim must be made and reported within the policy period. In an “occurrence” policy, the occurrence must occur within the policy and the claim can be reported even after the policy period expires. Because the claim was not reported within the policy period, as required by the policy, ProAssurance had no duty to defend or indemnify Southwest in the underlying lawsuit.

Southwest challenged that ruling, arguing that ProAssurance was estopped from denying coverage because it failed to file a declaratory judgment action or defend Southwest under a reservation of rights. The court rejected that argument, finding that estoppel only applies where the insurer has breached its duty to defend. As the policy only afforded coverage for claims reported during the policy period, ProAssurance did not have a duty to defend and estoppel could not apply.

The appellate court affirmed the trial court’s holding that ProAssurance was not required to defend or indemnify Southwest for claims reported outside of the policy period of a claims-made and reported policy.