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Alabama Court Upholds Late Notice Disclaimer

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In its recent decision in *Evanston Ins. Co. v. Yeager Painting, LLC*, 2018 U.S. Dist. LEXIS 130316 (N.D. Ala. Aug. 3, 2018), the United States District Court for the Northern District of Alabama had occasion to consider an insured's reporting obligations under a general liability policy.

Evanston's insured, Yeager, was hired to sandblast water tanks, and in turn, subcontracted out the work to a third party. On May 19, 2012, an employee of the subcontractor was severely injured in connection with a work-site accident. It is not entirely clear when Yeager provided notice of occurrence to Evanston, although Evanston advised by letter dated January 30, 2013 that it would be further investigating the matter subject to a reservation of rights. Evanston subsequently denied coverage by letter dated April 10, 2013, the disclaimer based on a subcontractor exclusion on the policy. Notably, Evanston's letter advised that Yeager should immediately contact Evanston if any facts changed or if it had any additional information concerning the matter.

Yeager was eventually sued in February 2016 in connection with the incident. Yeager, however, waited until September 2016 to tender its defense to Evanston. Evanston agreed to provide Yeager with a defense, subject to a reservation of rights. Evanston later brought suit and filed for summary judgment on two grounds: Yeager's failure to have provided timely notice of suit and the application of its policy's subcontractor endorsement.

In terms of late notice, the Evanston policy required written notice of suit as soon as practicable. The court noted that under Alabama law, the phrase "as soon as practicable" requires notice within a reasonable time in view of the facts and circumstances of the case and that prejudice is not a consideration. Rather, the only two factors to be considered are the length of the delay and the reason for the delay. Applying these factors, the court concluded that even if Yeager's initial notice of occurrence was timely, Yeager's notice of suit was not since it was seven months later and since Yeager offered no legitimate excuse for the delay. While Yeager attempted to argue that the April 2013 disclaimer created confusion, the court pointed out that the letter invited the insured to contact the claim handler directly in the event of any change in circumstances, or any additional facts that it believed would require Evanston to reconsider its coverage determination.

The court also concluded that coverage was precluded as a result of an exclusion in the Evanston policy applicable to bodily injury to "any contractor, self-employed contractor, and/or subcontractor, or an "employee", "leased worker", "contract worker", "temporary worker" or "volunteer worker" of same hired by you or on your behalf." As the claimant was an employee of Yeager's subcontractor, the court agreed that the exclusion barred coverage for both defense and indemnity purposes.

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