

# Late Notice, Suicide Exclusion Coverage Update

October 1, 2019  
*The e-POST*

## Late Notice - Northern District of Illinois (New York Law)

### ***Frankenmuth Mut. Ins. Co. v. The Hockey Cup LLC***

18-C-8142, 2019 WL 4573080 (N.D. Ill. Sept. 20, 2019)

The U.S. District Court for the Northern District of Illinois ruled that Frankenmuth Mutual Insurance Company (Frankenmuth) had no obligation to pay the remaining defense costs and settlement amounts for its insured, A&R Collectibles Inc. and its owner (A&R), because A&R did not timely notify Frankenmuth of a potential claim by the National Hockey League (NHL).

A&R and other related companies sold a plastic beer stein that was designed to look like a replica of the Stanley Cup. The NHL advised A&R that the beer stein violated the NHL's intellectual property rights with respect to the image of the Stanley Cup, and that A&R was, otherwise, trying to "free-ride on the fame, good will and commercial value" of the NHL. The NHL sent A&R a cease and desist letter in March 2017, but A&R did not report the potential claim to Frankenmuth. A&R first notified Frankenmuth of the dispute with the NHL 16 months later, after the NHL sued A&R. Frankenmuth agreed to defend A&R under a reservation of rights, and eventually paid one-third of its defense costs and was paying toward a settlement reached between A&R and the NHL. Frankenmuth then filed a declaratory judgment action, seeking a ruling that it had no further duty to defend or indemnify A&R or its co-defendants because of A&R's delay in notifying Frankenmuth of the claim.

Under New York law, "compliance with the notice provision of an insurance contract is a condition precedent to all of the insurer's duties and liability under the policy, including the duty to defend." Relying upon this standard, the district court held that the policy's requirement that the insured notify Frankenmuth of potential claims "as soon as practicable" required A&R to notify Frankenmuth when it received the March 2017 letter. Because it did not, A&R was not entitled to coverage. The district court rejected A&R's argument that New York's statute prohibiting an insurer from denying coverage on the basis of late notice without establishing resulting prejudice did not apply because the policy was not issued or delivered in New York. Finally, the district court held that Frankenmuth's reservation of the right to deny coverage based on late notice, contained in its agreement to defend, was sufficient to allow Frankenmuth to deny coverage once the facts relating to the late notice defense became apparent.

## **Suicide Exclusion – Third Circuit (New Jersey Law)**

### ***Arena v. RiverSource Life Ins. Co.***

--- Fed. Appx. ---, 2019 WL 4463995 (3d Cir. Sept. 18, 2019)

The U.S. Court of Appeals for the Third Circuit held that the husband of a woman who took her own life was barred from collecting life insurance proceeds by the policy's suicide exclusion. This coverage dispute arose out of the suicide of Christine Arena, who had been prescribed various antidepressants prior to hanging herself at her family's New Jersey home. Christine's husband, Gianfranco Arena, sought to collect on Christine's life insurance policy with RiverSource Life Insurance Company (RiverSource). Death by suicide was excluded from coverage under RiverSource's policy. However, Gianfranco argued that the antidepressants prescribed to Christine rendered her incapable of acting with intent when she hanged herself and, therefore, that her death did not meet the legal definition of suicide.

The trial court granted summary judgment to RiverSource, holding that Christine's death qualified as a suicide. The appellate court affirmed the judgment of the trial court and found that Christine acted intentionally when she decided to hang herself. Specifically, the appellate court stated that "[t]he parties do not dispute that Christine took two of her husband's leather belts, moved a chair from another bedroom into a bathroom, fastened the belts together and wrapped one around her neck, and arranged the belts in a manner to effect a hanging. Nor do they dispute that she in fact stepped off the chair and hanged herself. Those actions are sufficient circumstantial evidence to establish not only that Christine had 'awareness' that those actions would end her life but also that she intended to do so." Therefore, the appellate court concluded that the policy's suicide exclusion applied to preclude coverage.

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LATE NOTICE, SUICIDE EXCLUSION COVERAGE UPDATE Cont.

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