

Policy Application Disclosure, Action Limitation Clause Coverage Update

January 3, 2017

South Carolina, Nevada Coverage Cases

Insurance Coverage Update

Policy Application Disclosure – Fourth Circuit (South Carolina Law)

First Prof'ls Ins. Co. v. Sutton

--- Fed. Appx. ---, 2016 WL7413529 (4th Cir. Dec. 22, 2016)

The U.S. Court of Appeals for the Fourth Circuit ruled that an insurer does not have a duty to defend or indemnify a doctor in a medical malpractice lawsuit, alleging the botched delivery of a baby, because the doctor had not identified the incident on her application for the policy. The appellate court affirmed the district court's opinion, which was premised on an exclusion in the policy precluding coverage for any medical incident that was disclosed or should have been disclosed on the policy application. The district court determined that, prior to applying for the policy, the doctor received a letter containing sufficient facts to indicate that she would possibly be subject to a future medical malpractice suit. According to the district court, the doctor should have indicated her awareness of the medical incident, which could potentially give rise to a claim, when she completed the policy application. Her failure to do so, according to the district court, triggered the exclusion in the policy and relieved the insurer of any duties under the policy. The appellate court ultimately affirmed the district court's judgment for the reasons stated by the district court.

Action Limitation Clause – Ninth Circuit (Nevada Law)

Queensridge Towers LLC v. Allianz Global Risks US Ins. Co.

--- Fed. Appx. ---, 2016 WL 7384054 (9th Cir. Dec. 21, 2016)

The U.S. Court of Appeals for the Ninth Circuit ruled that an insured's lawsuit for breach of contract was untimely. The insurance policy at issue contained an "Action Against Company" provision, which "bars [the insured] from filing any action against [the insurer] for the recovery of a claim unless the action was filed within twelve months of discovery of the loss or damage 'which gives rise to the claim.'" The appellate court recognized, however, that "Nevada law equitably tolls such insurance limitation

POLICY APPLICATION DISCLOSURE, ACTION LIMITATION CLAUSE COVERAGE UPDATE Cont.

clauses during the period between the date the insured first gave notice of the loss until the date the insurer formally denies liability.” Nevertheless, the appellate court held that “[b]ecause [the insured] discovered the ... damage more than twelve months before filing [the] action – even taking into account equitable tolling – the [Action Against Company] limitation provision bars [the insured’s] claim for breach of contract.”

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