

David Smith Wins Appeal in Late-Notice Coverage Case

By May 13, 2009

David Russell Smith, a partner in our insurance coverage section, recently won an appeal on a late-notice coverage case. In *Advocate Networks, LLC v. Hartford Fire Insurance Company*, Case No.: A08A2409, the Georgia Court of Appeals affirmed a summary judgment for a liability carrier in a case where the insured waited four months before sending a copy of a lawsuit to its carrier. The insured argued that a jury question existed on whether it had a reasonable excuse for the late notice. The complaint had not been served on the insured, and the insured argued that it reasonably thought it could convince the plaintiff to dismiss the suit before it was served and needed to be answered. The insured further argued that the policy's standard notice provisions were ambiguous in that, on the one hand, the policy required the insured to provide notice of a lawsuit "as soon as practicable," but on the other hand, copies of lawsuits were required to be "immediately" sent to the insurer.

The Court of Appeals rejected the insured's arguments, noting that the insured was essentially arguing that it was not liable, which was not an excuse for failing to provide proper notice of a lawsuit. The Court also held the policy's notice provisions were unambiguous. These provisions required different types of notice depending on what the insured knew.

Advocate Networks v. Hartford confirms that an insurance carrier need not prove prejudice in order to deny coverage for a breach of a policy's notice provisions. It also demonstrates that Georgia courts will apply clearly-written policy language even when it results in the insured losing coverage.