

Summary judgment granted for umbrella insurer for late notice in Federal declaratory judgment action

By January 8, 2015

Kim M. Jackson obtained summary judgment for his insurance company client (Insurer) in a declaratory judgment action filed in the Northern District of Georgia.

Comcast contracted with the Insured to do cable related work in the southeast. Insured subcontracted some of this work in Florida. A June 2007 motor vehicle incident in Florida involving one of Insured's subcontractors resulted in multiple serious injuries and a deceased infant. The Insured was given notice of the lawsuit and a demand of indemnity was made in mid-2008. The Insured was made a party to the suit in 2009. Insured gave notice to its primary insurer but not its excess carrier. A summary judgment motion was denied in October of 2012. The Insured then gave first notice of the incident, the claim and the lawsuit to its excess carrier in November of 2012. The Insurer reserved rights and filed a declaratory judgment action.

The trial court considered cross-summary judgment motions. The Insured argued that its decision not to notify its excess insurer of the claim was reasonable because it had a strong liability defense to the tort claims and that the Insurer was not prejudiced by the delay. The Federal Judge rejected these arguments, holding that the failure to notify the Insurer was unreasonable as a matter of law, the delay of over three years was unreasonable as a matter of law, and that prejudice was not required under Georgia law or the terms of the policy.

Kim M. Jackson is a Litigation Partner whose practice focuses on Insurance Coverage, Professional Liability and Premises Liability.