

THOUGHT LEADERSHIP

News

FIFTH CIRCUIT HOLDS INSURED'S LATE NOTICE TO INSURER OF APPEALABLE FINAL JUDGMENT IS PREJUDICIAL AS A MATTER OF LAW

Newsbrief

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The Fifth Circuit recently concluded that an insured's delay in notifying its insurer of a claim until after a final judgment was entered, but while it was still appealable, prejudiced the insurer as a matter of law. In *Jamestown Insurance Company, RRG v. Reeder*, No. 12-204437 (5th Cir., Jan. 17, 2013), the insured filed suit in 2004 and numerous counterclaims were filed against him. In the trial that followed, the insured took nothing on his own claims but was found liable to several defendants in a March 2008 final judgment. Notice was finally given to the insurer in November 2010 while the case was in the appellate stages. The Texas Court of Appeals affirmed the judgment against the insured. But in August 2012, the Texas Supreme Court reversed and rendered a take nothing judgment against the insured. After notice and during the appeal, the insurer filed this separate declaratory judgment action in federal court. The federal district court granted summary judgment in favor of the insurer and this appeal followed.

The Fifth Circuit reviewed Texas law finding that an insured's failure to notify an insurer of a judgment against them until after it became final and nonappealable, prejudiced the insurer as a matter of law. They also noted that the Texas Supreme Court had not yet addressed the prejudice issue involving notice of an appealable final judgment. In this case, the insured did not tender notice to the insurer until fifty-six months after the first counterclaim was filed, and more than thirty-one months after the trial court entered final judgment. After reviewing Texas law involving late notice and prejudice, the court took an *Erie* guess and held that an insured's failure to notify its insurer of a final judgment that was still appealable nevertheless prejudiced the insurer as a matter of law.