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News

HOUSTON COURT OF APPEALS AFFIRMS SUMMARY JUDGMENT FOR LIABILITY INSURER AFTER INSURED'S BANKRUPTCY

Newsbrief
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In an interesting intersection of bankruptcy law and insurance law, a Houston court of appeals recently affirmed summary judgment for a liability insurer for a claim against a bankrupt insured. In *Valentine v. Federal Ins. Co.,* No. 14-18-00438-CV, 2020 WL 1467352 (Tex. App.—Houston [14th Dist.] Mar. 26, 2020) (slip op.), a hospital had a claims-made-and-reported liability policy with Federal. During the policy period, Valentine sued the hospital for employment discrimination, but before reporting the claim, the hospital declared bankruptcy. All claims against the hospital, including Valentine's, were immediately subject to an automatic stay. Valentine's case was later exempted from the stay and allowed to proceed on the condition that any judgment or settlement be paid from insurance proceeds alone.

Valentine proceeded against the hospital, obtained a judgment, and sought to recover it from Federal. Federal denied the claim on the ground that the claim had not been reported to it within the mandatory reporting period. In the ensuing coverage lawsuit, Valentine argued, among other things, that the automatic stay had tolled the reporting period. The court reasoned that while the automatic stay broadly prohibits affirmative pursuit of claims, it does not stop the passage of time, nor does it toll mandatory notice periods. For example, the automatic stay cannot prevent an insurance policy from expiring under its own terms. While certain parts of the Bankruptcy Code govern when an action may be commenced, providing the required notice of a claim to a liability insurer is not "commencing an action" and is not tolled by any part of the Bankruptcy Code.