

## Georgia Court Rules That Insurer Is Estopped From Denying Coverage Based On Delayed Reservation

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A Georgia federal district court ruled that an insurer was estopped from denying coverage as to certain insureds based on a delay in reserving rights. *Auto-Owners Ins. Co. v. Cribb*, 2019 WL 451555 (N.D. Ga. Feb. 5, 2019).

The coverage dispute arose out of a construction site accident that occurred in May 2015. In April 2017, the injured worker sued construction company BR Mountain Homes. BR Mountain Homes promptly notified its general liability insurer, Auto-Owners, of the suit. Auto-Owners issued a reservation of rights (“ROR”) addressed to BR Mountain Homes “to the Attention of Mr. Brian Thurman,” and retained counsel to defend the underlying suit. Thereafter, in late April 2017, the injured worker amended the underlying complaint to add Thurman and Davis, an officer and employee of BR Mountain Homes. Three months later, Auto-Owners issued ROR letters to Thurman and Davis.

The court held that Auto-Owners was estopped from denying coverage as to Thurman and Davis based on the three-month delay in issuing RORs to those individuals. The court explained that the first letter was insufficient to reserve rights as to Thurman and Davis because at the time it was sent, they had not been named as defendants. Further, the court noted that the policy’s rights and obligations applied separately to each insured pursuant to a “separation of insureds” provision.

Addressing a separate issue, the court ruled that an issue of fact existed as to whether BR Mountain Homes had breached the policy’s notice requirement. The policy required notice “as soon as practicable of an ‘occurrence’ or an offense which may result in a claim.” It further stated that the insurer could not be sued “unless all of [the policy] terms have been fully complied with.” Although BR Mountain Homes notified Auto-Owners promptly after the underlying suit was filed in 2017, it did not notify Auto-Owners about the accident at any point during the previous two-year period. The court acknowledged that notice was a condition precedent to coverage, but concluded that timeliness is a question for the factfinder. More specifically, the court held that a jury must determine “whether this delay was objectively reasonable, and if not, whether appropriate justifications exist for BR Mountain Homes’ failure to provide notice to Auto-Owners in a timely fashion.”

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