

Eleventh Circuit Rules That Innocent Insured Provision Applies To Both Notice And Reporting Provisions

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Reversing a Georgia district court decision, the Eleventh Circuit ruled that an innocent insured provision applies not only when the principal insured fails to give timely notice of a claim under a claims-made-and-reported policy, but also when the principal insured fails to comply with an extended reporting period provision. *Maxum Indem. Co. v. Colliers Int'l-Atlanta, LLC*, 2021 WL 2434350 (11th Cir. June 15, 2021).

When a company and its executive officer were sued, the company promptly provided notice of the claim to Maxum Indemnity, which issued a reservation of rights. The executive asked the company for any applicable insurance policies, but the company failed to provide the Maxum policy. Several months later, the executive learned about the Maxum policy and requested coverage. In response, Maxum sought a declaration it had no duty to provide coverage to the executive based on a failure (of both the company and executive) to comply with the policy's reporting provision. A Georgia district court granted Maxum's summary judgment motion, holding that an innocent insured provision did not apply to violations of the reporting provision.

The Eleventh Circuit reversed, ruling that the innocent insured provision unambiguously applies to violations of both the policy's notice provision and its extended reporting period provision. The court noted that the innocent insured provision applies when coverage "would be excluded, suspended or lost . . . [b]ecause of noncompliance with any condition relating to the giving of notice to [Maxum] with respect to which any other 'insured' shall be in default solely because of the failure to give such notice," so long as the innocent insured complies with such condition "promptly after obtaining knowledge of the failure of any other 'insured' to comply therewith." Maxum argued that the provision is limited to violations of the notice provision because it refers only to "giving of notice" and makes no mention of "reporting." Rejecting this contention, the court held that both provisions operate in unison in providing instructions and timeframe for "the transfer of information."

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