IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

COREGIS INSURANCE CO.	:	CIVIL ACTION
	:	
v.	:	
	:	
LOUIS CARUSO	:	06-2189

MEMORANDUM AND ORDER

Fullam, Sr. J. December 19, 2006

In this declaratory judgment action, Coregis, as insurer of an attorney named Andrew Brekus, seeks a declaration that it has no obligation to pay the defendant, Louis Caruso, who on April 28, 2003, obtained a $ 425,382 default judgment against Brekus in a Philadelphia Court of Common Pleas lawsuit. The judgment stemmed from allegations of malpractice in connection with Brekus's handling of a disability claim for Caruso.

The Coregis policy at issue was a claims-made policy that required notice as soon as practicable and cooperation from the insured. Brekus notified Coregis in February of 2002 that a claim by Caruso might be made, but according to Coregis did not respond to follow-up inquiries. When the suit was filed in the Philadelphia court and served on Brekus in November of 2002 (during the policy's extended reporting period), Coregis contends that Brekus never notified it and failed to defend the action. Coregis alleges it did not receive notice of the suit until a letter from Caruso's attorney seeking payment in January of 2006.

Caruso cites three pieces of evidence to support his claim of adequate notice: a letter from Caruso's attorney to Coregis dated September 14, 2004, advising the insurer of the suit (more than a year after default judgment had been entered) and enclosing copies of relevant documents; a letter dated April 15, 2003, from Brekus to Caruso's attorney requesting that the suit be deferred pending mediation; and a letter dated April 17, 2003, from counsel for Caruso to the Philadelphia court stating that Brekus had advised counsel he was attempting to secure coverage and a defense from his carrier.

Although Caruso has raised an issue of whether Coregis had notice in 2004, that notice was too late, coming a year and a half after the entry of judgment. Caruso has not produced sufficient evidence from which a fact finder could conclude that Coregis had notice before that time. Brekus's 2003 letter does not mention insurance at all. Caruso's attorney's letter to the court states that Brekus "advises me he is attempting to secure coverage and a defense for this legal malpractice case from his carrier." Plff. Ex. C. As Coregis correctly notes, this is hearsay, and it does not even mention the insurer's name.

Caruso argues that even if Coregis did not receive timely notice it cannot show prejudice, because liability in the malpractice suit was not an issue. I conclude that under the law of either Pennsylvania (where the malpractice suit was filed) or

New Jersey (where the policy was issued), the notice-prejudice rule does not apply to claims-made policies. See Pizzini v. American Intern. Specialty Lines Ins. Co., 210 F. Supp. 2d 658 (E.D. Pa. 2002) *aff'd*, 107 Fed. Appx. 266 (3d Cir. 2004); Gazis v. Miller, 892 A.2d 1277 (N.J. 2006). Even if a showing of prejudice were required, I find as a matter of law that notice more than a year after default judgment was entered prejudiced Coregis by denying it the opportunity to negotiate a settlement or defend the suit.

An order follows.

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O R D E R

AND NOW, this 19th day of December 2006, for the reasons stated in the accompanying memorandum, IT IS hereby ORDERED that:

1. Plaintiff's Motion for Leave to File a Reply is GRANTED. The reply attached to the motion is DEEMED FILED.

2. Plaintiff's Motion for Summary Judgment is GRANTED. Judgment is entered IN FAVOR OF Plaintiff, COREGIS INSURANCE CO., and AGAINST Defendant, LOUIS CARUSO, declaring that Plaintiff has no obligation to pay Defendant for the amount of the default judgment entered in favor of Louis Caruso and against Andrew Brekus, in the lawsuit styled Louis Caruso v. Andrew Brekus, November Term, 2002, No. 000727 in the Philadelphia (Pennsylvania) Court of Common Pleas.

BY THE COURT:

/s/ John P. Fullam
Fullam, Sr. J.