

Speak Now, Or . . . Else!

by Lawrence Savell

It is said, "he (or she) who hesitates is lost." The law often echoes such sentiment.

In the context of insurance, an insurer's duty to indemnify (reimburse) its policyholders generally arises only when it receives timely notice of a loss connected with its policies. Obviously, if you suffer or cause a loss which you feel is covered, you should promptly report such an occurrence to your insurer pursuant to the terms of your policy.

In certain circumstances, tardy notice may not bar coverage if there are good reasons for, or if the insurance company suffers no prejudice from, the delay.

But what if the late notice comes, not from the policyholder, but rather from the victim of the policyholder's actions? The recent case of *Republic-Franklin Insurance Company vs. Silcox*, decided on August 16, 1996 by the United States Court of Appeals for the Seventh Circuit, examined this question in the context of an accident involving a collector vehicle. In that case, the Court ruled that, under Indiana law, the late notice from the third party was not enough to require coverage.

According to the Court, on January 28, 1992, a driver ran over Dianna Silcox with a 1950 Chevrolet pickup truck and fled. Within a few weeks, the police identified the driver and the truck, which was owned by the driver's mother.

Silcox and her husband eventually learned of the driver's family connection with the accident, and, about a year after the accident, began to pursue compensation. They first turned to the driver's mother's auto and homeowners insurer, Republic-Franklin. In March 1993, the Silcoxes' lawyer informed the company of the accident, and noted that the Silcoxes had a claim against the insureds homeowner's policy. Apparently nothing came

of this conversation. In July 1993, the Silcoxes continued their pursuit of compensation by suing the insured in state court. The insured did not defend the suit, and did not tell Republic-Franklin about it or about the \$60,000 default judgment against them that was entered in November 1993. Once again, the Silcoxes' lawyer had to inform Republic-Franklin.

Republic-Franklin believed that the insureds failure to provide timely notice about the Silcoxes' claims relieved it of the duty to indemnify her, under either of her insurance policies. In May 1994, it sued the Silcoxes and the insured in federal court, asking for a declaratory judgment (for the court to rule) that its duty to indemnify was discharged (removed).

The District Court granted this request and entered summary judgment for Republic-Franklin. The District Court held that Republic-Franklin had no duty to indemnify under the homeowner's policy because that policy expressly excluded coverage for claims arising from the use of a motor vehicle. And it held that the company had no duty to indemnify under the auto insurance policy because that policy required prompt notice of accidents, which the insured did not provide.

The Silcoxes appealed only the judgment with respect to the auto insurance policy. In its opinion, the Court of Appeals affirmed the District Court ruling for the insurance company.

The Court of Appeals noted that the insured's auto policy required her to provide Republic-Franklin with prompt notice of any accident or loss. Because the insurer's ability to discharge its duty to indemnify depends so heavily upon its receipt of prompt notice, fulfillment of the duty of prompt notice is therefore a condition precedent (prerequisite) to the insurer's duty to indemnify. A breach of the notification duty

relieves the insurer of any duty to indemnify.

The Court observed that the duty to notify exists to prevent policyholders from disregarding risks of liability because they have a right to indemnification. If the policyholder had no insurance, he or she would, of course, do everything necessary to avoid or minimize liability. This effort involves acquiring relevant evidence about the accident while the evidence is still fresh and seizing every opportunity to negotiate with the injured party or parties.

Here, the Court noted that the insured herself never notified Republic-Franklin at all, but that the insurance company did receive notice of the accident from the Silcoxes in March 1993, more than a year after its occurrence. The Court concluded that this delay in notification was sufficient in itself to constitute a breach and that the Silcoxes were not able to introduce any evidence to rebut the presumption of prejudice that accompanies a breach.

With prompt notice from the insured, the insurance company might have had an opportunity to collect evidence relevant to the damages that the Silcoxes suffered, and this evidence might have helped the company prove that the Silcoxes were entitled to less than \$60,000. Moreover, the company might have been able to negotiate an early settlement with the Silcoxes for less than that amount. The Court therefore held that Republic-Franklin's duty to indemnify was discharged.

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