

## Insurance Counseling Attorney John G. Koch Quoted in Law360 Article About Drug Maker's Coverage Suit

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**Shane Dilworth**

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Law360 Reporter Shane Dilworth wrote about KVK-Tech, Inc. a Pennsylvania-based opioid maker facing the daunting task in convincing an Eleventh Circuit panel that an Alabama federal judge erred when finding that its late notice of an injury suit relieved a Hartford unit of its excess coverage obligations.

Insurance recovery attorney John Koch, a shareholder at Flaster Greenberg PC, told Law360 that failure to comply with a notice requirement can be accidental or the result of the policyholder's underdeveloped understanding of the potentially involved policies.

"Sometimes a policyholder may not be sophisticated, and might just blow it," he said. "Other times, the policyholder might make a conscientious decision not to proceed with notice. But when you do that, you really proceed at your own peril."

This tends to happen more often with occurrence-based policies with high retentions or deductibles, or excess policies, he said.

Koch went on to say that there may be several reasons a policyholder decides not to provide notice in those situations. A belief that the retention or deductible will not be exhausted or the excess layer will never be pierced are all possible reasons a policyholder may fail to provide timely notice, especially if the policyholder is in the midst of a difficult renewal of its insurance program. In cases involving old occurrence-based policies, such as legacy environmental or toxic tort claims, sometimes the specter of retrospective premiums may discourage a policyholder from putting its insurers on notice, Koch explained.

"Still, policyholders should always be extremely careful and diligent when it comes to providing notice to insurers," he said.

### **ATTORNEYS MENTIONED**

John Koch