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