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Professional Liability Litigation

By Frederick E. Connelly, Jr. on March 20, 2017

In *Faber v. Wickford Insurance Agency et al.*, plaintiff doctor sued his former insurance agent for allegedly failing to maintain his $5 million underinsured umbrella policy which was in place before he made changes to his coverages. The alleged malpractice occurred in 2002. The plaintiff claimed to never have read his annual policy updates and not to have known about the reduction in coverage until he made a claim after suffering injuries in a 2007 auto accident. A lawsuit was filed in 2009.

The defendants argued that the case was barred by the three year statute of limitations for insurance malpractice claims. In upholding the lower court's granting of the defendants' motion for summary judgment the Supreme Court rejected the plaintiff's argument that the statute did not begin to run until he suffered injuries in the auto accident. The key is not when the plaintiff learned of the extent of the damages, but rather when the plaintiff discovered or should have discovered the liability causing conduct.

In rejecting the plaintiff's argument that a reasonable person does not read his policies and that the statute of limitations should have been tolled, on March 8, 2017, the court determined that a reasonable and diligent inquiry would have placed him on notice when he received the easy to read policy update in 2002, and every year following. The recipient of a relevant document is under an obligation to examine the document.

The court also rejected the plaintiff's argument that he had the right to rely exclusively on the expert agent in procuring the maximum coverage. The court concluded that to accept the plaintiff's argument would leave an insurer exposed to whatever risks an insured could later persuade a jury he had been thinking were covered – so long as he had been careful not to read his policy.

