

Louisiana Court Holds Coverage Available Under Claims-Made Policy for Claim Made After Policy Expires

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A Louisiana Court of Appeal has held that a claims-made policy affords coverage for a malpractice claim made subsequent to the policy period if the claim is made within a year of accrual and the alleged malpractice occurred within the policy period. *Hood v. Cotter*, 2007 WL 4554253 (La. Ct. App. Dec. 28, 2007).

An insurer issued a claims-made medical malpractice policy to a physician covering the policy period of January 1, 2003 to January 1, 2004. The doctor voluntarily gave up his medical license in December 2003 and did not purchase an extended reporting endorsement from the insurer.

A patient alleged that the doctor committed malpractice from April 2003 through September 2003 and filed suit against the doctor in April 2004. The insurer was added as a codefendant in February 2005. The insurer moved for summary judgment on several grounds, including that coverage was not available because no claim was made during the policy period. The trial court denied the insurer's motion for summary judgment, and the insurer appealed.

The court of appeal affirmed the denial of the insurer's motion. Under a Louisiana statute, as interpreted in Louisiana case law, a claims-made policy is unenforceable to the extent it limits the period for filing a claim against an insurer to less than one year from the accrual of the claim, as long as the malpractice was committed during the policy period and reported to the insurer within one year after accrual. The court found that the alleged malpractice occurred during the policy period and the initial claim against the doctor was filed within one year of the accrual of the claim. The court then concluded that although the insurer was added more than a year after the claim accrued, the filing of the initial malpractice claim against the doctor was sufficient to satisfy the one-year reporting requirement with regard to the insurer because the insurer and the doctor were jointly liable.