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NEWSLETTER

Extended Reporting Period Applies Where Insurer Issues Consecutive Policies; No Bad Faith Where Insurer's Interpretation Is Plausible

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Applying Massachusetts law, the United States District Court for the District of Massachusetts has ruled that a claim first made during the policy period but reported to the insurer about four days after the end of the policy period fell within the scope of the policy's automatic extended reporting period. *New England Envtl. Technologies v. Am. Safety Risk Retention Group, Inc.,* 2010 WL 3622250 (D. Mass. Sept. 15, 2010). The court also granted summary judgment for the insurer on the insured's claims that the insurer violated Massachusetts unfair trade practices laws because the insurer reasonably contested coverage.

The insurer issued consecutive insurance policies to the insured for the March 2, 2007 to March 2, 2008 and March 2, 2008 to March 2, 2009 policy periods. The policies afforded claims-made-and-reported coverage and contained an automatic extended reporting period that provided: "Upon termination of this policy for any reason other than nonpayment of premium or noncompliance with the terms and conditions of this policy, a 'claim' first made against the Insured and reported to us, in writing, within 30 days of the end of the policy period will be deemed to have been made on the last day of the policy period." The extended reporting period applied only "if no other similar insurance is in force at the time of the Automatic Extended Reporting Period."

The insured received a demand letter dated February 7, 2008, asserting that it had improperly installed heating oil tanks at a client's apartment complex and was legally responsible for remediating the resulting oil contamination. The insured forwarded the demand letter to its insurance agent on March 6, 2008. In July 2008, the former client filed a lawsuit against the insured based on the allegations in its demand letter. The insurer denied coverage on the grounds that the claim was first made during the 2007-2008 policy period but was reported to the insurer during the 2008-2009 policy period. The insurer also asserted that the extended reporting period for the earlier policy did not apply because the insured maintained "other similar insurance" in effect after the end of the policy period, i.e., the policy issued for the 2008-2009 period.

The court concluded that the claim fell within the extended reporting period of the 2007-2008 policy. First, the court rejected the insurer's argument that the extended reporting period required that a claim be both first made during the 30-day period following the expiration of the policy and reported to the insurer during that period. The court determined that the provision reasonably could be interpreted to allow an insured to report claims made during the policy period for a 30-day period following the policy's expiration, reasoning in part that this view was consistent with the way Massachusetts and other courts had construed similar provisions. The court also reasoned that this view was consistent with the purpose of extended reporting periods and the expectations of the objectively reasonable insured, and that the insurer could not "reasonably suggest" that the delay in reporting meaningfully impacted the insurer's ability to set future premiums.

The court also determined that the policy issued for the 2008-2009 period did not constitute "similar other insurance" that would preclude applicability of the extended reporting period. The court distinguished cases cited by the insurer, in which courts ruled that extended reporting periods were not activated when an insured renews its policy with the same company, on the basis that the extended reporting periods at issue in those cases were not automatic and could only be purchased if the policy were cancelled or nonrenewed. The court also reasoned that a sentence in the extended reporting period clause stating that it applies "upon termination of this policy for any reason other than non-payment of premium or non-compliance with the terms and conditions of this policy" implied to the insured that the extended reporting period was effective unless the insured's relationship with the insurer ended poorly. The court concluded that an interpretation under which the extended reporting period applies so long as the policy expires in the ordinary course was the "more logical" interpretation in light of the expectations of a reasonable insured.

Finally, the court ruled that the insured could not show that the insurer engaged in unfair or deceptive trade practices in denying coverage. The court reasoned that the extended reporting period "is reasonably subject to multiple interpretations" and that the insurer's coverage position "was based on a 'plausible interpretation' of the policy's terms." As a result, the court concluded that the insured could not establish that the insurer acted in bad faith.