

No Coverage Under "Claims Made and Reported" Policy For Late Reported Claim

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The United States District Court for the District of Arizona, applying Arizona law, has held that there is no coverage for a claim reported two years after the claim was first made and more than one year after expiration of the policy period under a "claims made and reported" policy. *Emissions Tech., Inc. v. Twin City Fire Ins. Co.*, 2010 WL 4579250 (D. Ariz. Nov. 4, 2010).

The policyholder received notice of a lawsuit filed by a former officer and director in October 2006, but did not report the claim to the liability insurer until November 2008. The liability policy's declarations stated that "coverage applies only to a claim first made against the policyholder during the policy period . . . [and] notice of a claim must be given to the insurer as soon as practicable, provided that such notice is given not later than 60 days after any manager becomes aware that such claim has been made." Endorsement No. 1 to the policy specified that "[a]s a condition precedent to coverage under this Policy, the Insureds shall give the Insurer written notice of any Claim as soon as practicable, but in no event later than sixty (60) days after the termination of the Policy Period, or Extended Reporting Period."

The insured contended that courts outside of Arizona drew distinctions between claims-made policies that required notice "as soon as practicable" and claims-made and reported policies that required notice during the policy period or a definitive time thereafter. The insured asserted that other jurisdictions imposed a prejudice requirement to deny coverage for late notice under the former policies but not the latter and urged the court to adopt a similar approach. The court declined to do so, noting that Endorsement No. 1 to the policy rendered it a claims-made and reported policy, so no showing of prejudice was required to deny coverage for late notice in any event.

The court also rejected the policyholder's argument that, because the notice provision was amended by endorsement, the insurer had "buried" important policy terms. In doing so, it emphasized that the endorsement contained a boldface provision advising "**This endorsement changes the policy. Please read it carefully.**"