

Arkansas Court Reaffirms No Prejudice Rule for Late Notice Under Claims-Made Policies

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The Arkansas Court of Appeals has reaffirmed the rule that a claims-made insurer is not required to demonstrate prejudice to sustain a late notice defense to coverage. *Dardanelle & Russellville R.R., Inc. v. Certain Underwriters at Lloyd's London*, 2010 WL 4890934 (Ark. Ct. App. Dec. 1, 2010).

On January 9, 2004, an insured employer notified its insurer of a lawsuit filed by an employee regarding an injury the employee had allegedly suffered on the job. The insurer denied coverage for the claim, arguing that the employer had knowledge of the employee's injury since January 2002, and thus the employer had violated the policy's requirement to notify the insurer "as soon as practicable" of any occurrences which may result in a claim.

The court reaffirmed the rule in Arkansas that, in order to deny coverage under a claims-made policy, an insurer need not show that it was prejudiced by an insured's failure to give timely notice. However, because issues of fact existed regarding whether the employer's notice was timely, the court held that it could not determine as a matter of law that the employer had not notified the insurer of the claim "as soon as practicable."