

Insurer Can Deny Coverage Where Notice Arrives Hours after Policy Expired

March 2005

The Supreme Court of New Hampshire has held that an insured failed to comply with the notice provision of a claims-made policy when it sent notice of several potential claims to its liability insurer in a package that left the insured's premise hours before the policy expired and arrived nine hours after expiration. *Catholic Med. Ctr. v. Exec. Risk Indem.*, 2005 WL 265259 (N.H. Feb. 4, 2005). The court additionally rejected the insured's assertion that it was entitled to coverage under a theory of substantial compliance, holding that the insurer was conclusively presumed to have suffered prejudice from the insured's untimely notice.

A medical center purchased a claims-made liability policy from the insurer covering a one-year period from 12:01 am on August 1, 2001, to 12:01 am on August 1, 2002. On July 31, 2002, the insured's risk manager forwarded notice of seven potential claims to the insurer's claims manager by overnight delivery. The package arrived at 9:03 am on August 1, 2002. The insurer denied coverage on the basis of untimely notice.

The court assessed whether the insured had complied with the policy's notice provision, which required that the insured "give the underwriter written notice" of a potential claim before the policy expired. The phrase "give...written notice" was not specifically defined under the policy.

The insured contended that time was not of the essence under claims-made policies and argued that the phrase "give...written notice" should be interpreted to include instances where an insured sends written notice to the insurer the day before policy expiration on the expectation that it will arrive within 12 hours of expiration. The court declined to adopt this interpretation and instead held that the phrase was unambiguous and required that notice be received by the insurer in order to be effective. The court explained that it "believe[s] the term 'notice' itself connotes the receipt of information," and that "the implication of receipt is even stronger when the terms 'give' and 'notice' are taken together."

The insured also advanced the alternative argument that it had substantially complied with the policy's notice requirement and that the court should therefore deem rebuttable the presumption that the insurer had been prejudiced by the nine-hour delay. Citing *Bianco Professional Association v. Home Insurance Co.*, 144 N.H. 288 (N.H. 1999), the supreme court held instead that an insurer is entitled under New Hampshire law to a conclusive presumption of prejudice when an insured does not strictly comply with the notice requirements of a claims-made policy, which are to be strictly construed.

For more information, please contact us at 202.719.7130.