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ALERT

Insurer Required to Prove Prejudice to Deny Coverage for Late Notice Under Claims-Made-and-Reported Policy

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Applying Maryland law, the United States District Court for the District of Maryland has held that an insurer must demonstrate prejudice to support a late notice defense to coverage under a claims-made-and-reported policy. *Navigators Spec. Ins. Co. v. Med. Benefits Admin. of Md., Inc.*, 2014 WL 768822 (D. Md. Feb. 21, 2014).

A professional liability insurer issued successive claims-made-and-reported policies to a third-party underwriting entity for the policy period of October 31, 2009 to October 31, 2010 (the "09-10 Policy") and the policy period of October 31, 2010 to October 31, 2011 (the "10-11 Policy"). The underwriting entity contracted with a Lloyd's of London syndicate to issue policies on behalf of the syndicate, and the syndicate appointed the underwriting entity's affiliate as the claims administrator for the policies. The claims administrator was named as an additional insured in the underwriting entity's professional liability policies. The syndicate terminated the underwriting and claims administration contracts in 2007, audited the claims handling of the policies, and, in January 2010, ultimately demanded that the claims administrator pay $1 million to the syndicate for mismanagement of the program. Subsequently, on June 30, 2011 and during the policy period of the 10-11 Policy, the syndicate filed suit against the underwriting entity and the claims administrator for mismanagement of the syndicates' insurance program and sought more than $1 million in damages. The insureds tendered the suit for coverage, and the insurer denied coverage on the grounds that the claim was not first made and reported during the policy period of either the 09-10 Policy or the 10-11 Policy.

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In the coverage litigation that followed, the court held that the syndicate had made a claim during the 09-10 Policy. The 09-10 Policy defined "claim" as a "demand for money or services." The court held that two communications from June 2009 did not constitute a claim because they did not demand payment of money, threaten litigation, or signify that the syndicate was investigating more than a discrepancy in an accounting matter. However, according to the court, a January 2010 letter constituted a claim because it expressly accused the claims administrator of wrongdoing, demanded payment of $1.1 million, and threatened litigation if the matter was not resolved. In reaching this conclusion, the court noted that the insured's belief that the allegations in the January 2010 letter lacked merit was immaterial to whether the letter was a claim. The court also found that the June 2011 lawsuit was a claim related to the January 2010 letter such that the lawsuit and letter constituted a single claim first made during the 09-10 Policy. In this regard, because the claim was first made during the 09-10 Policy and before the inception of the 10-11 Policy, the court concluded that the 10-11 Policy did not afford coverage for the lawsuit.

With respect to the 09-10 Policy, despite the fact that the insured failed to report the claim during the policy period, the court held that the insurer could not deny coverage without demonstrating prejudice. In reaching this conclusion, the court recognized that there was a difference of opinion among the federal courts in Maryland whether the notice-prejudice rule imposed by Maryland Code § 19-110 applied in the context of a claims-made-and-reported policy, and concluded that it did. The court also found that the insurer here could not prove as a matter of law that it had been prejudiced by the late notice of the claim because the insurer had no evidence that its earlier involvement in the claim could have resolved the dispute short of litigation.