

# Failure to Report Claims Arising during Policy Period Bars Coverage

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A federal district court, applying Pennsylvania law, has held that no coverage exists under "claims made and reported" professional liability policies where the policyholder fails to report the claim in the period in which it first arose. *Pizzini, et al. v. American Int'l Specialty Lines Ins. Co.*, No. 99-CV-3297 (E.D. Pa. June 28, 2002).

In 1995, Stephen Barry Shellington, an agent of Equitable Life Assurance Society of the United States, sold certificates of interest in various oil wells to the plaintiffs. When the oil ventures failed, one group of plaintiffs sought repayment of their investments, contacting Shellington by letter on August 30, 1995, and filing suit in Pennsylvania state court in October, 1995. On January 17, 1996, Shellington gave notice of the plaintiffs' claims to American International Specialty Lines Insurance Co. ("AISLIC"), the issuer of Equitable's 1995 and 1996 professional liability insurance policies. Another group of plaintiffs thereafter filed suit in March 1996. After the state court consolidated the suits, the parties eventually reached a settlement in which Shellington assigned his rights under the insurance policies to the plaintiffs. AISLIC denied coverage, and the plaintiffs subsequently sued AISLIC for breach of contract and bad faith.

The 1995 and 1996 policies provided coverage on a "claims made and reported" basis, indemnifying "only if [the] Claim is first made against the Insured and reported in writing to the Insurer during the Policy Period." The policies deemed claims to arise when "the Insured shall have knowledge or become aware of any Wrongful Act which could reasonably be expected to give rise to a Claim." Where two or more claims arise out of a "single act, error or omission," the policies treated the claims "as a single Claim" which "shall be considered first made during the Policy Period... in which the earliest Claim... was first made." The 1995 policy covered the period from January 1, 1995 to January 1, 1996, and the 1996 policy covered the period from January 1, 1996 to January 1, 1997.

AISLIC argued that Shellington had failed to report the plaintiffs' claims in the policy period in which they were first made. The court agreed, holding that Shellington's failure to notify AISLIC of the claim during the 1995 policy period precluded coverage under the 1995 policy. It also held that the 1996 policy offered no coverage since the claims arose in 1995. The court noted that even though one group of plaintiffs had filed suit in 1996, their claim had arisen out of the same acts as the 1995 claims, and the policy thus treated both claims as arising in 1995.

The court rejected plaintiffs' argument that AISLIC had to demonstrate prejudice arising from Shellington's failure to give notice, holding that under Pennsylvania law, the notice-prejudice rule does not apply to claims-made policies. Likewise, the court refused to consult the text of one of AISLIC's insurance brochures which allegedly obfuscated the reporting requirement, holding that such a reference to extrinsic evidence was impermissible where the contract unambiguously precluded coverage. Finally, the court rejected the plaintiffs' estoppel and waiver arguments, concluding that although AISLIC had initially stated that coverage was available for the claims, AISLIC had reserved the right to deny coverage. According to the court, AISLIC could not waive a requirement directly addressing the policies' scope of coverage, and AISLIC's statements had not prejudiced Shellington, as he could not have remedied his failure to provide timely notice.