

## **“Stop Loss” Policy Not Claims-Made Policy; Notice Prejudice Rule Applies**

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The Northern District of California, applying California law, has determined that a "stop loss" policy is not a claims-made policy and that, as a result, an insurer must show actual prejudice in order to deny a claim based on late notice. *Operating Eng'rs Health & Welfare Trust Fund v. Mega Life & Health Ins. Co.*, 2003 WL 22416395 (N.D. Cal. Oct. 21, 2003).

The insurer issued a "stop loss" policy to an employee trust fund that provided medical and welfare benefits to union members and their dependents. The policy provided coverage for catastrophic medical claims by providing that the insurer would reimburse the trust fund for claims in excess of \$250,000 and up to \$1 million per claimant. The policy stated that "[r]eimbursement...will be made when the Company receives all of the information it requires for payment of reimbursements (Proof of Loss) [and the] Proof of Loss must be satisfactory to the Company and received by the Company no later than 90 days after the date Plan Benefits are paid...."

More than 90 days after the trust fund had paid medical benefits to five separate claimants totaling \$1.3 million dollars, it submitted the proof of loss to the insurer seeking reimbursement. The insurer denied the claims, contending that the notice was both late and failed to provide "satisfactory" proof of loss. Litigation ensued.

Ruling on the parties' cross-motions for summary judgment, the court first addressed whether the 90-day notice provision set forth in the reimbursement section of the policy applied despite the absence of any mention of a time limit in the coverage part. The court determined that, in order to give effect to all terms and parts of the policy, the 90-day notice limitation applied to the claims regardless of the absence of a time limitation in the coverage part.

With respect to the sufficiency of the information provided in the notice, the court held that the terms "satisfactory" and "proof of loss" were ambiguous. The court concluded because these terms were not defined in the policy, the trust fund's reasonable expectations would apply. Since, based on the record, the court could not discern the trust fund's reasonable expectations, it simply read the ambiguity against the insurer.

Finally, the court addressed the trust fund's argument that the insurer must demonstrate that it was prejudiced by the trust fund's non-compliance with the 90-day notice provision. The insurer argued that the policy was similar to a claims-made policy and therefore not subject to the notice prejudice rule. The court disagreed, holding that there was nothing in the policy to suggest that a claim for coverage must be made during a policy period. After determining that the excess policy was subject to the notice prejudice rule, the court focused on whether the insurer had shown that it was actually prejudiced by the policyholder's late notice of the claims. The insurer argued that the late notice impaired its ability to investigate the claims and increase premiums. The court, however, determined that the question of prejudice was a genuine issue of material fact and could not be resolved at the summary judgment stage.

For more information, please contact us at 202.719.7130.