

# Insurer's Defense of Claim Made after Policy Period Waived Right to Deny Coverage

---

October 2001

A federal district court for the Eastern District of Louisiana has found that an insurer that defended a policyholder's claim, which was asserted after the expiration of the claims-made policy period, waived its right to deny coverage for the claim. *North American Capacity Ins. Co. v. Brister's Thunder Karts, Inc.*, No. 00-429, 2001 U.S. Dist. LEXIS 9994 (E.D. La. July 9, 2001).

The plaintiff insurer sought a declaratory judgment that there was no coverage for a claim first made against its insured after the expiration of the policy period. The applicable claims-made policy provided coverage from October 1995 to October 1996. In August 1997, a suit was filed against the insured. Upon receiving a loss notice from the policy-holder's broker, the insurer appointed counsel to defend the policyholder's claim. The carrier did not raise the issue of the lack of a claim made during the policy period until three years later, when it filed the declaratory judgment action.

The insurer asserted that its defense of the post-policy suit did not waive its right to raise a coverage defense on the grounds that a "waiver cannot be used to extend insurance coverage to a risk not within the coverage as written." Rejecting this argument, the court reasoned that because the insurer assumed the policyholder's defense "without reserving its rights or protecting its interests, it waived any coverage defense it may have had under its policy . . . ."

The court further found that the insurer was fully responsible for the claim even though the policyholder also had a policy in force with another insurer when the claim was made. The other policy contained an other insurance clause that barred coverage for a claim covered by another insurance policy. Applying this "escape clause," the court concluded that the first insurer was fully liable for the claim.