

# Court Certifies Whether Insurer Can Deny Coverage for Claims Made Hours after Policy Expired

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A United States District Court in New Hampshire has certified two questions to the New Hampshire Supreme Court relating to a policyholder's compliance with the notice provision in its claims-made liability policy, including whether an insurer must show prejudice to deny coverage for late notice. *Catholic Med. Ctr. v. Exec. Risk Indem., Inc.*, 2004 WL 957952 (D.N.H. May 4, 2004).

The insurer issued a claims-made policy to a medical organization. On the last day of the policy period, which expired at midnight, the medical organization sent by overnight mail to the insurer seven notices of potential claims. The insurer received the materials at 9:03 am the next day. The insurer denied coverage since it did not receive notice until nine hours after the policy expired.

Because the case presented "unresolved questions of New Hampshire law," the district court certified the following questions to the New Hampshire Supreme Court:

(1) Does an insured comply with a provision in a claims-made liability insurance policy requiring the insured to give written notice of acts that may result in future claims before the policy expires if the insured sends written notice via Federal Express while the policy is in effect but the notice is not received until after the policy expires?

(2) If the answer to question one is no, is the insured nonetheless entitled to coverage if the insured substantially complies with the notice requirement and the insurer does not suffer prejudice as a result of the late notice?

For more information, contact us at 202.719.7130.