

No Coverage under Claims-Made Policy Where Policyholder Received Written Notice of a Potential Claim Prior to Inception of Policy

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In an unreported decision, an Ohio appellate court held that a radiologist was not entitled to coverage under a claims-made medical malpractice policy because he had received written notice of the potential claim prior to the inception of the policy. *Kentucky Medical Ins. v. Jones*, 2003 WL 21453941 (Ohio App. June 24, 2003).

The insurer issued a claims-made medical professional liability policy to a radiologist and her employer. The policy provided coverage for claims "made against you and reported to us for the first time during the policy period." The policy defined claim to include "the receipt by you of express notification of an intention to investigate a potential legal action against you or of an intention to hold you responsible for damages." The policy also addressed when a claim is made, providing that "[a] claim is considered to be made on the first date you receive notice of a legal action against you or the date of your receipt of express notification of an intention to investigate a potential legal action against you or to hold you responsible for damages."

Prior to the inception date of the policy, the radiologist received a letter from a former patient stating that he was investigating a potential legal action. The radiologist disclosed the letter in her application for insurance. A few years later, the patient died and his wife brought a wrongful death action against the radiologist. The insurer disclaimed coverage on grounds that the claim was not first made during the policy period. Coverage litigation ensued.

The court held that the policy barred coverage because the claim had been made prior to the inception of the policy. The court rejected the radiologist's argument that the use of the term "first" in the provision governing when a claim is made modified only information about a legal action, and not notice of an intention to investigate a potential legal action, reasoning that such an approach was inconsistent with the usual and ordinary meaning of the language in the policy provision. The court also rejected the argument that the wrongful death action was a distinct claim from the medical malpractice claim. The court reasoned that the policy drew no such distinction, and that "the receipt of notification of a potential action relating to defendants' rendering of professional medical services includes all potential damages that could result from

the malpractice, and certainly would encompass complications resulting in death." The court further noted that while Ohio courts have held that a wrongful death action constitutes a separate, independent cause of action from one for medical malpractice, those cases do not address whether the two causes of action are separate "claims" for purposes of insurance coverage.

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