

No Coverage for Amended Complaint Where Original Complaint and Cross-Claim Were Not Timely Reported

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The New Jersey Superior Court, Appellate Division, has held that failure to provide notice of a complaint and cross-claim bars coverage for any claims arising out of that action even when subsequent notice of an amended complaint is properly given. *Apro Management, Inc. v. Royal Surplus Lines Ins. Co.*, 2007 WL 1238574 (N.J. Super. Ct. App. Div. Apr. 30, 2007).

A company obtained a professional liability insurance policy under two successive one-year claims-made policies. The policies provided that "[t]he Insured must notify the Company as soon as practicable of an incident, occurrence or offense that may reasonably be expected to result in a Claim. The Insured must immediately send copies to the Company, of any demands, notices, summonses or legal papers received in connection with any Claim, and must authorize the Company to obtain records and other information." The policies defined "claim" to mean "a written or verbal demand for money or services received by the Insured, including service of suit, or the institution of arbitration proceedings against the Insured."

The company was served in March 2001 with a complaint alleging fraudulent misrepresentations and violation of the New Jersey Consumer Fraud Act. The company forwarded the complaint to its insurance agent, who stated that the policies did not provide coverage for the allegations. The insurer never received notice of the complaint. The company also failed to provide notice of a May 2001 cross-claim that made a demand for indemnification alleging that the primary cause of injury was the company's negligence. Finally, in October 2002, the company provided notice to the insurer of a May 2002 amended complaint that added two new counts asserting breach of contract and negligence. The insurer denied coverage based on late notice.

The court first rejected the company's argument that it had no obligation to report the initial complaint because the allegations were not covered under the policy. The court explained that "the lawsuit should have been reported because it was an incident, occurrence or offense that may reasonably be expected to result in claims covered by the policy." Moreover, based on the allegations in the initial complaint, the company could reasonably have anticipated that the intentional misrepresentations would be alleged in a negligence cross-claim.

The company also argued that it was entitled to coverage for the share of its fees and costs incurred in defending against the new counts added in the amended complaint. The court rejected that argument, stating that timely notice of the amended complaint did not cure the failure to provide notice of the initial suit and cross-claim. The court reasoned that this would circumvent the reporting requirement under the claims-made policies because "[s]uch a result would be inconsistent with the limitations on coverage inherent in a claims-made policy."