

# Court Holds Tennessee's Notice-Prejudice Rule Does Not Apply to Claims-Made-and-Reported Policy

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The United States District Court for the Eastern District of Tennessee, applying Tennessee law, has held that a professional liability insurer may deny coverage when a policyholder provides notice after the expiration of a claims-made-and-reported policy regardless of whether the insurer was prejudiced by the late notice. *Wallace v. Gen. Star Indem. Co.*, 2007 WL 1624071 (E.D. Tenn. June 1, 2007).

The insurer issued a claims-made-and-reported professional liability policy to a doctor that afforded coverage only for claims arising out of professional services rendered during the policy period, which ran from September 1, 2003, through September 1, 2004. The policy contained a notice provision requiring, in relevant part, that notice (i) be given "within ten (10) days of receipt by the [doctor] of a written notice of a claim," and (ii) be received by the insurer prior to the expiration of the policy period. On August 30, 2004, the doctor was sued for malpractice. Two days later, he was served with a summons and complaint, which he immediately sent to his insurance agent by facsimile. Despite the doctor's prompt actions, the insurer denied coverage based on late notice. Ultimately, the plaintiffs in the malpractice action won a default judgment against the doctor, and litigation ensued over whether their claims were covered by the doctor's professional liability policy.

The plaintiffs, as putative third-party beneficiaries, advanced two arguments for why their claims were covered under the doctor's policy despite the late notice. First, they argued that the claim reporting deadlines in the doctor's policy were contradictory and that the court should resolve the resulting ambiguity in favor of coverage. In particular, the plaintiffs contended that the provision requiring that notice of a claim be received by the insurer prior to the expiration of the policy period conflicted with the provision requiring the doctor to give notice of a claim within 10 days after learning of the claim against him. The court rejected the plaintiffs' argument, explaining that it was not logically inconsistent to require a policyholder to adhere to both provisions.

The plaintiffs' second argument in favor of coverage was that the court should apply the notice-prejudice rule adopted by the Tennessee Supreme Court in *Alcazar v. Hayes*, 982 S.W.2d 845 (Tenn. 1998), and excuse the

doctor's late notice because the insurer was not prejudiced by the delay. The court also rejected this argument, distinguishing *Alcazar*, which concerned a pure occurrence-based policy, from the present case. The court explained that reporting deadlines in occurrence policies ensure that insurers have adequate time to investigate claims, and that the *Alcazar* court adopted the notice-prejudice rule because it believed the "only reason for denying a claim that is reported outside the reporting deadline in an occurrence policy, but still prompt enough to give [the] insurer time for an adequate investigation, is to deny coverage on a so-called 'technicality.'"

According to the court, the reasoning behind *Alcazar* does not apply to claims-made policies, because the reporting deadlines in such policies define the duration of coverage, thus making the deadlines substantive, and not technical. The court also noted that the *Alcazar* court had explicitly reserved ruling on whether the notice-prejudice rule applies to claims-made policies, and that a Tennessee intermediate appellate court had held, in accord with the majority of courts in other jurisdictions, that the notice-prejudice rule does not apply to claims-made policies. In light of the foregoing, the court predicted that the Tennessee Supreme Court would not apply the *Alcazar* notice-prejudice rule to the doctor's late notice.