

Louisiana Appellate Court Holds Claims-Made Policies Are Consistent with Louisiana Statute and Public Policy

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A Louisiana appellate court has held that a claims-made policy does not cover claims first made outside of the policy period. The court concluded that claims-made policies place enforceable contractual limits on the risk insured and do not violate Louisiana public policy or a Louisiana statute that prohibits certain time limits on when a claim may be brought against an insurer. *Guthrie v. Louisiana Med. Mut. Ins. Co.*, 2008 WL 373706 (La. Ct. App. Feb. 13, 2008).

An insurer issued a claims-made malpractice policy to a physician for a policy period ending June 20, 2004. The policy provided coverage for "any claim for damages filed during the term of this policy, based on professional services rendered . . . by the insured."

Survivors of a patient who died of complications from surgery filed a claim with the Louisiana Patient's Compensation Fund on July 19, 2004, alleging malpractice by the physician and wrongful death, and subsequently filed a lawsuit on May 16, 2006. The insurer denied coverage because the claim was first made in July 2004, after the expiration of the policy on June 20, 2004. The trial court granted summary judgment for the insurer on this ground.

On appeal, the plaintiffs argued that the claims-made policy was void because it violated La. Rev. Stat. § 22.629, which provided that insurance contracts cannot limit a right of action against the insurer to a period of less than one year from the time when the cause of action accrues. The court rejected this argument, concluding that claims-made policies do not limit the time in which a plaintiff may file suit following an alleged act of malpractice but instead place contractual limits on the risk insured. The court relied in part on the Louisiana Supreme Court's holding in *Anderson v. Ichinose*, 760 So. 2d 302 (La. 1999), that a claims-made policy does not violate Louisiana public policy.

The court noted that other appellate courts in Louisiana have come to the opposite conclusion and found that claims-made policies are inconsistent with the Louisiana statute. Among other contrary opinions from other circuits, the court cited *Hood v. Cotter*, 2007 WL 4554253 (La. Ct. App. Dec. 28, 2007), which was summarized

in the February 2008 *Executive Summary*.