

Supreme Court of Louisiana Holds Claims-Made Policy Does Not Violate Public Policy

January 2009

The Supreme Court of Louisiana has held that a claims-made policy does not violate public policy by impermissibly restricting a claimant's rights to sue an insurer pursuant to a Louisiana statute. *Hood v. Cotter*, 2008 WL 5146659 (La. Dec. 2, 2008). In so holding, the court reversed a previous determination by a Louisiana court of appeal.

An insurer issued a claims-made medical malpractice policy covering the policy period of January 1, 2003, to January 1, 2004. The insured physician voluntarily gave up his medical license in December 2003 and did not purchase an extended reporting period for the expiring policy. In a suit filed against the insured in April 2004, a former patient alleged that the doctor committed malpractice from April 2003 through September 2003. Pursuant to Louisiana's direct action statute, the insurer was added as a co-defendant to that action. The insurer moved for summary judgment on several grounds, including that coverage was not available because no claim was made during the policy period.

The trial court denied the insurer's motion for summary judgment, and the insurer appealed. The court of appeal affirmed the trial court's denial, holding that, pursuant to La. Rev. Stat. § 22:629, as interpreted by Louisiana case law, a claims-made policy violates public policy and is unenforceable to the extent it limits the period of time to file a claim against an insurer to less than one year from the accrual of the claim. The insurer appealed.

The Louisiana Supreme Court reversed the court of appeal and granted summary judgment for the insurer. The court first determined that, under the plain language of the claims-made policy, no coverage existed because the claim was not made against the insured during the policy period. The court also noted that previous Louisiana jurisprudence established that claims-made policies are not *per se* impermissible as against public policy.

The Louisiana Supreme Court then rejected the lower court's determination that the insurer's argument based on the policy period was contrary to La. Rev. Stat. § 22:629. The lower court had relied upon *Hedgepath v. Guerin*, 691 So. 2d 1355 (La. Ct. App. 1997), which held that the statute mandated coverage under a claims-made policy where a claim was made within a year of accrual, regardless of whether the claim was made

outside of the policy period. The Louisiana Supreme Court rejected that interpretation and determined that La. Rev. Stat. § 22:629 would only be violated where the subject policy actually provided coverage for the claim but otherwise restricted a claimant's right to sue to a period of less than one year. In the instant case, the court emphasized that the policy did not provide coverage in the first instance because the claim was not made during the policy period. Accordingly, the Louisiana Supreme Court determined that the statute was not implicated and reversed the court of appeal's decision. In doing so, the court specifically determined that the *Hedgepath* decision was incorrectly decided to the extent it conflicted with the Louisiana Supreme Court's holding.