

Claims-Made-and-Reported Policy Neither Ambiguous Nor Subject To "Notice/Prejudice" Rule Under Washington Law

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The United States District Court for the Western District of Washington has held that there is no coverage under a claims-made-and-reported policy where the insured corporation did not report the claim until six months after the policy period expired. *Manufactured Hous. Cmities. v. St. Paul Mercury Ins. Co.*, 2009 WL 3193157 (W.D. Wash. Oct. 2, 2009). In doing so, the court rejected the insured's argument that the policy was ambiguous and further rejected the argument that the insurer had to show actual prejudice from the late notice in order to deny coverage.

The insured corporation purchased two successive claims-made-and-reported policies from the insurer. Each policy required the insured, as a condition precedent to indemnification, to give written notice of claims made against it to the insurer "as soon as practicable and during the Policy Period or Discovery Period." Shortly before the expiration of the first policy, the corporation was sued. The corporation, however, did not notify the insurer of the suit until six months after the second policy expired. The insurer denied coverage, and the corporation sued the insurer.

The district court granted summary judgment in favor of the insurer. The corporation argued that the policy was ambiguous because the requirement of reporting "as soon as practicable" purportedly conflicted with the requirement to report "during the policy period." The court rejected this argument and held that the contract was not subject to more than one reasonable interpretation and was thus unambiguous as a matter of law. According to the court, the "express purpose of the claims-made policies" was to insure against claims first made and reported during the policy period and thus the denial was proper.

The court also rejected the corporation's argument that the notice/prejudice rule should apply to claims-made policies and thus that the insurer should be required to establish actual prejudice stemming from the late notice in order to deny coverage. The court reasoned that applying that rule would negate the difference between occurrence policies and claims-made policies, and would in effect rewrite the insurance contract by adding coverage for which the parties had not bargained. This, the court noted, would be against public policy.