

# Michigan Federal Court: Late Notice Bars Coverage

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Applying Michigan law, the United States District Court for the Eastern District of Michigan has held that an escrow agent was not entitled to coverage under a claims-made miscellaneous professional liability policy because it did not report a lawsuit to its insurer until three years after the end of the policy period during which the lawsuit was first filed. *Title One, Inc. v. Nat'l Union Fire Ins. Co.*, 2009 WL 3059144 (E.D. Mich. Sept. 24, 2009).

The policy at issue was expressly designated a "claims made policy" and stated that "the coverage of this policy is limited to liability for only those claims that are first made against you and reported in writing to us during the policy period." The policyholder contended that the policy was governed by Mich. Comp. Law § 500.3008, which states in pertinent part that failure to give notice required by a policy within the time specified therein shall not invalidate any claim made by the insured if it was not reasonably possible to give notice within the prescribed amount of time and notice was given as soon as reasonably possible.

The court rejected the policyholder's argument that the insurer must show that it was prejudiced by the delay in reporting the claim. The court explained that, in Michigan, the prejudice requirement cited by the policyholder only applies to occurrence policies. The policyholder further argued that the policy was a "claims made" policy and not a "claims made and reported" policy, contending that notice was not a condition precedent for coverage, but instead must be given "as soon as practicable" under § 500.3008. The court chose not to address the purported distinction between "claims made" and "claims made and reported" policies, but ruled that, regardless of the type of policy, the delay here was unreasonable as a matter of law. According to the court, "[b]y no stretch of the imagination can [the insured's] 41-month delay in reporting the lawsuit be deemed 'as soon as practicable.'"

Finally, for the same reasons, the court rejected the argument that the insurer should afford coverage because it had issued a "claims made" policy during the period when the lawsuit was reported.