

## Late Notice Precludes Coverage

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The United States District Court for the Southern District of Texas, applying Texas law, has held that an insured's untimely notice of a class action suit precludes coverage under a claims-made pollution liability policy. *Pennzoil-Quaker State Co. v. Am. Int'l Specialty Lines Ins. Co.*, 2009 WL 2905823 (S.D. Texas Sept. 4, 2009). The court also held that four lawsuits filed against the insured did not allege a single instance of pollution, but rather four separate pollution incidents for which the insured was required to satisfy separate deductible obligations.

The insurer in this case had issued to the insured a claims-made pollution liability policy for the period October 1, 1999 to October 1, 2002, with relevant policy limits of \$25 million for "Each Incident," subject to a \$2 million deductible for "Each Incident."

The court denied the insured's motion for summary judgment as to the lawsuit for which the insurer denied coverage because of late notice. The court stated that the suit was filed in May 2001, during the policy period, but the insured did not provide written notice until November 2007, well after reporting period had expired. The court rejected the insured's argument that the insurer was not prejudiced by the delay, noting that Texas law recognized the "critical distinction" between the role of notice in occurrence policies and claims-made policies such as the policy at issue in this case, and stated that prejudice was deemed irrelevant for the latter policies.