

Iowa Supreme Court Requires Strict Compliance With Notice Provision In Claims-Made-and-Reported Policy

June 2010

The Supreme Court of Iowa has held that an insured forfeited any right to coverage under a claims-made-and-reported policy by failing to report the claim to the insurer within time prescribed in the policy. *Farm Bureau Life Ins. Co. v. Chubb Custom Ins. Co.*, 2010 WL 1404976 (Iowa Apr. 9, 2010).

The case involved an insurance company professional liability policy issued to a life insurance company for the policy period of February 15, 2002 to February 15, 2003. The policy provided specified coverage for losses resulting from claims first made against the insured during the policy period. The policy also provided that "as a condition precedent" to coverage, the insured must provide written notice to the insurer at its home office claims department "as soon as practical, but in no event later than ninety (90) days after the termination of the Policy Period."

The claim at issue was a lawsuit filed against the insured in June 2002. The insured reported the suit to its insurance broker on February 11, 2003. The broker, however, did not report the claim to the insurer until June 2005, by which point the insured had settled the claim. The insurer denied coverage for the settlement on a number of grounds, including that the insured failed to provide timely notice as required by the policy.

In the coverage litigation that followed, the court recognized the differences between claims-made and occurrence-based policies and the principle that the "purposes and characteristics of a claims-made policy necessitated strict compliance with [its] notice requirements." The court rejected the notion put forth by the insured that "substantial" compliance was sufficient. In this regard, the court found unavailing the fact that the insured had notified its insurance broker within the time prescribed because the insured's contractual obligation was to provide notice to the insurer. The court further concluded that strict enforcement of the notice provision meant that a "prejudice analysis . . . was not appropriate." It also found no evidence to support the insured's argument that the insurer had waived the right to enforce the notice provision as written by having accepted on prior occasions, without objection, notice from the broker. The court pointed out that there was no indication that on any of these prior occasions the insurer had received notice more than 90 days after the expiration of the policy period.