

Michigan Court: No Prejudice Necessary To Disclaim Coverage for Claim Made After Expiration of Claims-Made Policy

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The Michigan Court of Appeals has held that an insurer need not establish prejudice to disclaim coverage for a claim reported over a year after the expiration of the relevant claims-made policy. *Westport Ins. Corp. v. Al Boudreau Ins. Svcs.*, 2010 WL 1507785 (Mich. App. Apr. 15, 2010). The court also held that the insurer did not waive the right to raise untimely notice as a defense to coverage by failing to address the reporting requirements for a "potential claim" in its denial letter.

The case involved an insurance company professional liability policy with a policy period of December 14, 2005 to December 14, 2006. The policy provided specified coverage for losses resulting from claims first made against the insured during the policy period. The policy defined a "claim" as notice of any suit or the receipt of "a summons, a subpoena, or any other notice of legal process." The policy also provided that the insured must provide written notice to the insurer "as soon as practical."

The claim at issue involved a dram shop action that resulted in a \$3 million default judgment against the defendant tavern. In May 2005, the underlying claimant brought a suit for negligence arising out of the default judgment against the insured as an assignee of the tavern. In September 2006, following a bench trial, the trial court awarded the underlying claimant damages of \$1.5 million from the insured. On December 1, 2006, the policyholder provided notice of the negligence action to its professional liability insurer, seeking indemnification for the judgment. On May 2, 2007, the insurer denied coverage for failure to adhere to the reporting and notice requirements of the policy, noting that the insured "did not report the claim until almost one year after the policy expired." Subsequently, the insurer filed the coverage action and sought a declaration that the policy did not provide coverage because the insured provided notice of the claim almost a year after the expiration of the triggered policy, in violation of the policy's notice and reporting requirements. On cross-motions for summary judgment, the trial court ruled that the insured waived the right to assert that the policy had expired. Alternatively, the trial court found that, while the insured's notice was untimely, the insurer failed to present any evidence of actual prejudice, and thus could not assert late notice as a defense to coverage.

On appeal, the court addressed the differences between claims-made and occurrence-based policies, stating that claims-made policies "generally protect[] the insured only against claims made during the life of the policy." The court noted that, in light of the claims-made policy's notice provision, "it was not necessary that the [insurer] demonstrate prejudice." It also found no evidence to support the policyholder's argument that the insurer had waived the right to assert the expiration of the policy as a defense to coverage by failing to address the reporting requirements for a "potential claim" in the denial letter. The court pointed out that the denial letter clearly disclaimed coverage for failure to comply with the policy's notice and reporting requirements, and explicitly stated that the insurer "considered the applicable policy to have expired." Accordingly, the appellate court reversed and remanded the case for entry of judgment in favor of the insurer.