

Prejudice Required To Deny Coverage For Claim Reported After End Of Claims-Made Policy Period

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Applying Texas law, the United States District Court for the Northern District of Texas has held that an insurer was required to demonstrate prejudice in order to deny coverage for a claim reported after the end of a claims-made policy period where the policy required the insured to provide written notice of claims "as soon as practicable." *Evanston Ins. Co. v. Keeway America, LLC*, 2010 WL 2652330 (N.D. Tex. June 29, 2010). The court further ruled that the insurer had failed to show that it was prejudiced by the insured's notice, which it received 27 days after the end of the policy period.

The insurer issued a general liability insurance policy to the insured for the April 1, 2008 to April 1, 2009 period. The policy afforded coverage for claims first made against the insured during the policy period and reported to the insurer pursuant to the policy's claims reporting provisions. The relevant reporting provision required the insured to give the insurer written notice "as soon as practicable" of any claims made against it during the policy period.

The insured was served with a products liability lawsuit on January 26, 2009 and answered the complaint on February 23, 2009. However, the insured did not provide notice to the insurer of the lawsuit until April 28, 2009. The insurer provided the insured with a defense in the underlying lawsuit subject to a reservation of rights and asserted that it owed no duty to defend or indemnify the insured because notice was given after the policy period and was not provided "as soon as practicable."

Predicting Texas law, the court ruled that the insurer was required to demonstrate that it was prejudiced by the late notice in order to deny coverage on that basis. The court reasoned that the Supreme Court of Texas had recently held that, when an insured provides untimely notice of a claim within the specified reporting period of a claims-made policy, or during the policy period of a claims-made policy that does not include a specific reporting deadline, the insurer must show that it was prejudiced by the insured's failure to provide notice "as soon as practicable" before it may deny coverage. In light of these decisions, the court predicted that the Texas Supreme Court would require the insurer to demonstrate prejudice where, as here, the insured provided notice after the end of the policy period and the policy did not include a specific reporting deadline.

In addition, the court held that the insurer had failed to demonstrate prejudice and granted the insured's motion to dismiss. The court stated that "the crucial inquiry in determining whether an insurer was prejudiced as a matter of law is whether the insurer's ability to defend against the claim has been irreparably impaired by an insured's failure to comply with a notice-of-suit provision," such as where a default judgment has been entered against the insured or trial date is imminent when the insurer receives notice. Applying this standard, the court rejected the insurer's argument that it was prejudiced because it was not able to close its books after the end of the policy period and because the insured's failure to report the claim affected the rating of the premiums for the policy and the calculations of premiums for a renewal quote provided to the insured. The court noted that the insurer had not alleged that it was unable to investigate or defend the underlying lawsuit, or that it had issued an inaccurately priced renewal policy to the insured. Accordingly, the court concluded that the alleged prejudice was insufficient to be actionable.