

Without Regard to Prejudice, No Coverage for Claim Reported to Prior Insurer

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A Texas appellate court has held that a claims-made-and-reported policy did not provide coverage for a claim that previously had been reported to the insured's prior carrier. *Oceanus Ins. Co. v. White*, 2012 WL 1898919 (Tex. Ct. App. May 25, 2012).

The underlying claim involved allegations of medical malpractice against an insured clinic and a physician. Claimants, on behalf of their minor child, first made a verbal demand of their physician in 2005, before the current insurer began providing coverage. The doctor reported this "possible claim" to the prior insurer, which provided a defense to the doctor when claims subsequently were brought in 2008. Claims also were made against the clinic in 2008, which provided notice to its new insurer, the appellant in this case. In settlement of the malpractice claims, the new insurer and the claimants agreed to file this action seeking a determination of whether the new policy provided separate coverage to the doctor and, if so, whether that coverage had been triggered. The trial court ruled in favor of the claimants and this appeal followed.

After first holding that the insurer had not waived its right to appeal in the settlement agreement, the court of appeals reversed the trial court and rendered judgment for the insurer. Analyzing the claims-made-and-reported policy at issue, the court—assuming that separate coverage for the doctor potentially existed—held that there was no coverage because the policy unambiguously precluded coverage "for any medical incident, claim or potentially compensable event which has been reported to . . . the Named Insured's previous insurance company." Additionally, the court held that no potential coverage was triggered as no claim had been made against the doctor during the policy period and no claim was reported during the policy period. The court further stated that "[b]ecause the essential report of a claim against [the doctor] was not made, and could not have been made . . . [the insurer] need not demonstrate prejudice to deny coverage."