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NEWSLETTER

Reporting Condition in Claims-Made-and-Reported Policy Binds Third-Party Claimants

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Applying Louisiana law, the U.S. Court of Appeals for the Fifth Circuit has held that a claimant suing under Louisiana's Direct Action Statute may not recover from its adversary's insurer when neither the claimant nor the insured complied with the reporting requirement in the insured's claims-made-and-reported policy. *First Am. Title Ins. Co. v. Cont'l Cas. Co.*, 2013 WL 757655 (5th Cir. Feb. 28, 2013).

A title insurance company sued its agent for negligently issuing title insurance policies on its behalf. Although the company filed suit within the policy period for the agent's liability policy, no party to the litigation notified the insurer until after the policy period expired. The plaintiff belatedly added the insurer as a defendant under Louisiana's Direct Action Statute, but the trial court ruled in the insurer's favor because the underlying claim was not first made and reported during the policy period, as required by the policy.

The Fifth Circuit affirmed, drawing a distinction between the reporting condition in a claims-made-and-reported policy and the notice provision in an "occurrence" policy. While Louisiana law holds that "the absence of prejudice-preventing notice generally does not bar a third-party action under the Direct Action Statute," the Fifth Circuit reasoned, the same could not be said for the "claim-triggering reporting" condition in a claims-made-and-reported policy. Like the requirement that a claim be made against an insured during the policy period, the reporting condition "defin[es] the scope of the bargained-for agreement and provid[es] predictability to the insurer." And because the Direct Action Statute "does not extend the scope of a policy to insure against risks that were not part of the bargained-for agreement," a third party suing under that statute cannot recover if its claim is not reported to the insurer within the policy period.