

Court Finds No Coverage for a Claim First Made During Policy Period of a Claims-Made-and-Reported Policy But Not Reported Until After Inception of Successive Policy

August 2013

The United States District Court for the District of South Carolina has held that there was no coverage for a claim first made during the policy period of a claims-made-and-reported policy but not reported until the successive policy period. In so doing, the court rejected the insured's argument that the consecutive policies issued by the same insurer formed a single continuous policy. *GS2 Eng'g & Envtl. Consultants, Inc. v. Zurich Am. Ins. Co.*, 2013 WL3457098 (D.S.C. July 9, 2013).

The policyholder first purchased a claims-made-and-reported insurance policy in 2005, and it renewed that policy annually for a total of six successive one-year policies. With nearly four months remaining on its second-to-last policy, the insured was served with a lawsuit. The insured did not notify its insurer of that suit for approximately five months, however, which was 47 days into the next policy period. The policies at issue contained a provision stating that an automatic 30-day extended reporting period would apply upon termination of coverage, but that provision stated that coverage was only "terminated" by cancellation or nonrenewal. After a coverage dispute arose, the policyholder filed suit against its insurer.

The court granted summary judgment in favor of the insurer. The court first analyzed the terms of the policies, which provided that coverage applied only if "the claim is first made against the insured during the policy period and reported to us during the policy period, the automatic extended reporting period or the extended reporting period, if applicable." Relying on that policy language, the court ruled that there was no coverage for the claim at issue because it was not both made and reported during either of the policy periods. After noting the apparent "intuitive appeal" of the insured's argument in favor of a "single continuous period," the court rejected it, ruling instead that its determination of no coverage better reflected the language and nature of the policies at issue.

Additionally, the court concluded that the policies were unambiguous and that the automatic extended reporting period did not apply since the policy at issue was renewed, not terminated. The court also held that, even if the automatic extended reporting period applied, notice was untimely since the claim was first

reported more than 30 days after the close of the relevant policy period.