

No Prejudice Required for Late Notice in Claims-Made-and-Reported Policies in Massachusetts

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Applying Massachusetts law, the Superior Court of Massachusetts has held that an insurer is not required to demonstrate prejudice from a late notice under a claims-made-and-reported policy. *Catlin Spec. Ins. Co. v. Am. Superconductor Corp.*, 2014 WL 840693 (Mass. Super. Jan. 29, 2014).

The insurer issued claims-made professional and pollution legal liability policies to an energy technology company for the policy periods April 1, 2010 to April 1, 2011 and April 1, 2011 to April 1, 2012. On December 6, 2010, during the first policy period, a customer notified the policyholder that it was terminating a license agreement and that the customer might pursue a suit for gross negligence.

On May 12, 2011, during the second policy period, the customer commenced an arbitration proceeding against the policyholder based on the same allegations asserted in the December 6, 2010 letter. On May 26, 2011, the policyholder tendered the claim to the insurer. The insurer defended pursuant to a reservation of rights and brought suit seeking a declaration that the policy did not afford coverage for the lawsuit because, among other things, the policyholder was late in reporting a claim first made during the first policy period.

The trial court granted summary judgment in favor of the insurer on the issue of late notice. The court decided that, under Massachusetts law, the notice requirement of a claims-made-and-reported policy is enforceable and the insurer need not prove prejudice from late notice. Thus, the court held that insurer had no duty to defend or indemnify the policyholder in connection with the lawsuit under the 2010 or the 2011 policies due to the policyholder's failure to timely report the claim during the period of the 2010 policy.