

# Court Applies Texas Known-Loss Doctrine and Notice Requirements to Uphold Coverage Denial

---

August 2005

The United States District Court for the Northern District of Texas has held that two insurers properly denied coverage under D&O policies based on the known-loss doctrine and the notice provision in a claims-made policy. *Precis, Inc. v. Fed. Ins. Co.*, 2005 WL 1639319 (N.D. Tex. July 12, 2005)

A company purchased a claims-made D&O policy from an insurer that was effective from September 2002 to September 2003. The policy defined the claim to include "written demand[s] for monetary damages or non-monetary relief" made during the policy period. The policy required that written notice be provided "as soon as practicable."

After the first insurer's policy expired, the company purchased a claims-made D&O policy from a second insurer. The second insurer's policy was effective from September 2003 to September 2004. That policy defined "claim" as "written demand[s] for monetary damages" made during the policy period.

In late 2002, the company received two letters from stockholders in the corporation, asserting possible monetary claims against the corporation based on a refusal to grant consent for the exercise of stock purchase warrants. The stockholders alleged combined losses from the refusal to grant consent to exercise purchase warrants of more than \$1.7 million. The company did not notify the first insurer of the letters. The stockholders filed suit in August 2003, and in September 2003 the company notified both insurers of the litigation.

The court held that the second insurer properly denied coverage under the known-loss doctrine in light of the December 2002 letters sent to the company prior to the inception of the policy. The court explained that, under Texas law, "insurance coverage is precluded where the insured is . . . aware of . . . a known loss at the time the policy is purchased."

The court held that the December 2002 letters constituted a claim under the first policy. However, the court held that the insurer properly denied coverage based on the late notice. According to the court, as a matter of law, "the delay of over nine months from receipt of the December 2002 letters until the plaintiff notified Federal that a claim was being made was not 'as soon as practicable'" under the policy.

For more information, please contact us at 202.719.7130