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ALERT

No Coverage for a Claim First Made During Extended Reporting Period

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The Louisiana Court of Appeals, applying Louisiana law, has held that a claims-made policy provided no coverage to an insured physician for a claim first made against him during the extended reporting period because the related-claims and extended reporting period clauses do not extend the claims-made policy period. *Wright v. Willis-Knighton Medical Center*, 2011 WL 149504 (La. Ct. App. Jan. 19, 2011).

The physician was insured under a policy with a November 1, 1999 to November 1, 2000 claims-made policy period. The plaintiff filed a complaint on November 5, 1999 with the Patients' Compensation Fund, which named the medical center where the doctor worked. The insured doctor was not named in the complaint until November 2, 2000, which was one day after the expiration of the claims-made policy period. The plaintiff then filed suit against the medical center, two physicians and the insurer in Louisiana state court. That court dismissed the claims against the medical center and one of the physicians on exceptions of prescription, but denied the insurer's motion to dismiss. The appellate court granted supervisory review of the judgment that denied the insurer's motion.

The appellate court rejected the plaintiff's argument that the extended reporting period also extended the claims-made policy period. The policy provided for an "automatic 60 day extended reporting period" but also stated that a claim "must be made before the end of the policy period stated on the Declarations of this policy." The court found the distinction between the "claims-made" and "reporting" periods "crucial" and refused to "conflate the definitions of claim and reporting" which would "disregard the policy period stated on the declarations page."

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The court also held that the policy's "relation back" clause did not apply to render the insured's claim timely made during the policy period. The policy provided that "[a]ll claims whenever made, shall be considered first made during the policy period in which the earliest claim arising out of the same or related medical incident was made, and all such claims shall be subject to the same limit of liability." The plaintiff argued that his claim against the insured arose from the same facts as his prior claim against the medical center and "should be considered first made when the first claim occurred." The court rejected this argument, noting that the prior claim against the medical center was not a claim against an insured. The plaintiff also relied on La. C.C.P. art. 1153, which provides that when "the action or defense asserted in the amended petition or answer arises out of the . . . original pleading, the amendment relates back to the date of filing the original pleading." The court found this statute inapplicable because the prior "events at issue in this case are not pleadings" but are the plaintiff's initial and amended Patient Compensation Fund claims and no authority was indentified to hold that the statute could "apply to supersede the claims-made period of an insurance policy."

Finally, the court rejected the plaintiff's statutory argument that "the prospect of solidary liability creates a genuine issue precluding summary judgment." First, the court stated that "nothing in the policy extends coverage to a named insured based [on] the filing of a claim against an entity that is not a named insured." Second, the court held that under the relevant statutes, the "importance of solidary liability is that the interruption of prescriptions against one solidary obligor is effective against all obligors" but "this case is not about prescription." Rather, according to the court, this case is about "whether [Plaintiff] filed a claim against [the Insured] during the policy period." As no such claim was filed, the court granted the insurer's motion for summary judgment.

One judge of five dissented. Citing the policy's declaration page, which states "[n]o coverage exists for the claims first made against 'you' after the end of the policy period unless, and to the extent, an extended reporting period applies," the dissent concluded that the extended reporting period also extended the claims-made period for events that occurred during the policy period. Because the application of the extended reporting period was uncontested, the dissent would have found coverage for the claim first made during the extended reporting period.