

**ALERT**

# Failure to Report Claim Within Claims-Made-and-Reported Policy Period Bars Coverage

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The United States District Court for the Middle District of Florida has held that an insurer owed no coverage for a claim that the insured failed to report until after the expiration of the claims-made-and-reported policy period. *Jennings Constr. Servs. Corp. v. ACE Am. Ins. Co.*, 2011 WL 1792583 (M.D. Fla. May 10, 2011).

In June 2005, a subcontractor and a general contractor filed actions against each other alleging breaches of a construction contract. The insured subcontractor notified its insurer of the claim in December 2006, 10 months after the expiration of the subcontractor's claims-made-and-reported policy. After the subcontractor and the general contractor entered into a consent judgment requiring the subcontractor to pay \$5.7 million, the general contractor filed this action against the insurer for satisfaction of the judgment. The insurer moved to dismiss on the grounds that no coverage was available for the consent judgment due to the subcontractor's failure to notify the insurer of the claim within the policy period.

The court ruled for the insurer, holding that the subcontractor's failure to notify the insurer of the claim within the policy period breached the policy's notice provision. The general contractor contended that in order to deny coverage based on late notice the insurer was required to demonstrate prejudice. The court rejected this argument, stating that the essence of a claims-made-and-reported policy is notice to the insurer within the policy period, and thus the insurer has no obligation with respect to claims that are not reported until after the policy's expiration.

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The general contractor further contended that, regardless of whether the subcontractor timely reported the claim, the insurer had a duty to defend the subcontractor because the claim was filed during the policy period. The court disagreed, holding that notice within the policy period is a condition precedent to coverage under the policy, and, if not satisfied, the insurer's duty to defend is not triggered.