

**ALERT**

# Failure to Report Claim During Claims-Made and Reported Period Not a "Coverage Defense" for Purposes of Florida Waiver Statute

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January 25, 2012

A federal district court in Florida has held that an insurer's failure to comply with the timing requirement of Section 627.426 of the Florida Statutes did not preclude it from denying coverage for a claim not reported during the policy's claims-made and reported period.

*Jennings Construction Services Corp. v. ACE American Insurance Co.*, No. 6:10-cv-1671 (M.D. Fla. Jan. 11, 2012).

The statute at issue provides that "a liability insurer shall not be permitted to deny coverage based on a particular coverage defense unless . . . [w]ithin 30 days after the liability insurer knew or should have known of the coverage defense, written notice of reservation of rights to assert a coverage defense is given to the named insured . . . ." According to the court, a "coverage defense" for purposes of this provision is "a defense to coverage that otherwise exists or could exist under the law," and an insurer does not assert such a defense "where there was no coverage in the first place." The court pointed out that, by its "very terms," coverage does not exist under a claims-made and reported policy for a claim reported outside the policy period, and found that a disclaimer on this basis does not constitute a "coverage defense" to which the statute applies. Accordingly, the court concluded that the insurer was entitled to the benefit of its late notice defense even though the insurer did not issue a coverage position within 30 days after notice of the claim.

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