

ALERT

No Coverage for Claim Not Reported Within 30 Days After Notice to the Insured

March 22, 2012

The United States Court of Appeals for the Ninth Circuit has held that an insured failed to provide timely notice to an insurer by reporting a claim to the insurer two months after the policy's thirty day reporting period expired. *Re/Max Mega Group v. Maxum Indemnity Co.*, 2012 WL 767417 (9th Cir. Mar. 12, 2012). The court further held that the insurer did not waive the policy's reporting requirement and was not estopped from denying coverage based on late notice even though it did not rely on that point in its initial denial.

The court held that a third-party made a claim, which the court explained was defined in the policy as "a written demand[] for money or services," when the third-party sent letters to the insured alleging negligence and fraud, threatening to file a lawsuit, requesting mediation, and enclosing a copy of a civil complaint for damages. The court further held that the policy provision requiring the insured to provide notice of claims "as soon as practicable, but in no event later than thirty days after notice to the insured" was unambiguous and that the insured failed to provide timely notice by reporting the claim three months after the insured received the third-party's letters. In addition, the court held that the insurer did not waive the reporting requirement by failing to mention untimely notice in its initial coverage disclaimer because the insurer was unaware of the letters at the time the coverage disclaimer was provided and the insurer expressly stated in the coverage disclaimer that it was not waiving any rights under the policy. The court also held that the insurer was not estopped from denying coverage for the claim because the insured was not induced belatedly to report the claim and did not detrimentally rely on the insurer's initial grounds for denying coverage for the claim.

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