

**ALERT**

# Insurer Not Required to Establish Prejudice Under Claims Made and Reported Policies

May 30, 2013

Applying Missouri law, the United States District Court for the Eastern District of Missouri has found that an insurer is not required to demonstrate that it was prejudiced by its insured's failure to provide timely notice under a claims made and reported policy. *Secure Energy, Inc. v. Philadelphia Indemnity Ins. Co.*, 2013 WL 2145927 (E.D. Mo. May 15, 2013)

The insurer issued successive annual claims-made-and-reported directors and officers liability policies to the insured from October 2007 to October 2012. In April 2009, the insured was named in a suit by a claimant seeking commissions he was allegedly owed. In June 2009, the claimant voluntarily dismissed the suit, but re-filed it in July 2009 against the same defendants. The insured did not provide notice of the claim to the insurer until May 2011.

In denying the claim, the insurer stated that the insured failed to timely report the claim as provided for in the applicable policy under which the claim had been first made. The relevant policy language provides that: "In the event that a Claim is made against the Insured, the Insured shall, as a condition precedent to the obligations of the Underwriter under this Policy, give notice . . . as soon as practicable after [it] . . . first become[s] aware of such Claim but, no later than 60 days after the expiration of this Policy, Extension Period, or Run-Off Policy, if applicable."

After the insurer denied coverage, the insured filed coverage litigation. In response to the insurer's motion for summary judgment that there was no coverage because notice was untimely, the insured argued that, since its insurer suffered no prejudice, the untimely notice does not preclude coverage. In finding in favor of the insurer, the

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court rejected the insured's argument that the insurer was required to establish prejudice in order to prevail. The court found that it is well settled under Missouri law that an insurer is not required to show prejudice in a "claims made" policy, as opposed to an "occurrence" policy, given that "claims made" policies place special reliance on notice.