

Consecutive Claims-Made Policies Create Continuous Coverage Period For Notice Purposes, Says Delaware Court

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A Delaware court ruled that coverage is not barred under a claims-made policy even when the policyholder fails to provide notice of a claim within the policy period. The court reasoned that coverage is available pursuant to the “claims-made relationship” because notice was provided during a subsequent renewal policy period. *Med. Depot, Inc. v. RSUI Indem. Co.*, 2016 WL 5539879 (Del. Superior Ct. Sept. 29, 2016).

RSUI issued a claims-made policy to Medical Depot in effect from June 15, 2013 through June 15, 2014, and then renewed the policy for the June 15, 2014 – June 15, 2015 period. The policies required notice of any claim to be provided “as soon as practicable” or within 60 days after the policy’s expiration. On June 18, 2013, Tony Mezzadri sent a demand letter to Medical Depot threatening to sue. In March 2014, Mezzadri filed a complaint seeking monetary and injunctive relief. Although Mezzadri did not serve the complaint on Medical Depot, the company was aware of it, but did not notify RSUI of its existence or the demand letter. On September 2, 2014, during the policy renewal period, Mezzadri served an amended complaint on Medical Depot. Medical Depot notified RSUI within a week. RSUI denied coverage based on Medical Depot’s failure to give notice of the demand letter or initial complaint. Ruling on the parties’ cross-motions for summary judgment, the court held that: (1) the demand letter is not a claim; (2) the initial complaint is a claim; (3) Medical Depot failed to give notice of the initial complaint as soon as practicable or within the first policy period; and (4) the claim is nonetheless covered because it falls within RSUI’s coverage as part of the “claims-made relationship.”

The court ruled that the demand letter is not a claim because it did not seek monetary relief. However, the court concluded that the initial complaint constitutes a “claim” because it is a written demand for money. The court rejected Medical Depot’s argument that a “claim” does not exist until a complaint is served. The court further held that Medical Depot failed to comply with the policy’s condition precedent notice requirements because it did not notify RSUI of the initial complaint as soon as practicable or within 60 days of the policy’s expiration.

Nonetheless, the court ruled that coverage was not precluded based on a “New York Regulation 121 Disclosure Supplement” that defines “Claims-Made Relationship” as “the period of time between the effective date of the first claims-made policy between Us and You and the cancellation and nonrenewal of the last consecutive claims-made policy between Us and You, where there has been no gap in coverage.” The Disclosure Supplement further states that “coverage is provided for liability ONLY IF THE CLAIM FOR DAMAGES IS FIRST MADE

AGAINST THE INSURED AND REPORTED TO US IN WRITING DURING THE POLICY PERIOD, ANY SUBSEQUENT RENEWAL AND ANY APPLICABLE DISCOVERY PERIOD.” The court ruled that these provisions operate to provide a seamless two-year period of coverage, rejecting RSUT’s argument that the policy’s notice provisions override the Disclosure Statement. The court acknowledged that the Disclosure Statement explicitly states that “the provisions of the policy and the endorsements attached thereto are controlling,” but concluded that no conflict exists between the policy provisions and Disclosure Statement. The court reasoned that the notice provisions would bar coverage if there had been no renewal policy, but that once a renewal was issued, the Disclosure Statement became operative.

Finally, the court ruled that prejudice is required to deny coverage based on late notice under a claims-made policy where, as here, notice is untimely but still within the coverage period. Under Delaware law, prejudice is not required in the claims-made context when notice is provided outside the policy period.

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