

## Rejecting Policy Renewal-Continuous Coverage Argument, Ohio Appellate Court Says Late Notice Bars Coverage

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An Ohio appellate court ruled that an insurer had no duty to defend or indemnify underlying claims based on the policyholder's failure to comply with the notice provision in the claims-made policy. *ISCO Indus., Inc. v. Great American Ins. Co.*, 2019 WL 6353709 (Ohio. App. Ct. Nov. 27, 2019).

Great American issued three consecutive one-year policies to ISCO from March 19, 2013 through March 19, 2016. ISCO was sued in Canada in February 2014, but did not notify Great American of the lawsuit until August 2015. Great American denied coverage based on ISCO's failure to comply with the "condition precedent" notice provision, which requires notice to be given during the policy period or "as soon as practicable from the date [of] . . . knowledge of the Claim, and in no event later than ninety (90) days after the end of the Policy Period." After the coverage denial, ISCO sued Great American, alleging breach of contract. An Ohio trial court dismissed ISCO's suit, and the appellate court affirmed.

The appellate court rejected ISCO's assertion that the notice provision was ambiguous by virtue of ISCO's annual renewal of the policy. ISCO relied on Ohio case law holding that renewals of consecutive claims-made policies created an expectation of continuous coverage, such that notice would not be deemed untimely so long as it was reported within a "reasonable time." In those cases, the courts expressed concerns about a "trap wherein claims spanning the renewal are denied." The court distinguished those decisions, explaining that the policy in one case included a renewal clause that was ambiguous about the timing of claim reporting and continuous coverage, and in the other case, there was a factual issue as to the timing of notice. The court emphasized that where, as here, a notice provision requires claims to be reported within a specific time frame, it must be enforced as written.

Courts in several other jurisdictions have rejected similar "seamless coverage" arguments based on back-to-back policy renewals of claims-made policies. See [June](#) and [March 2019 Alerts](#); [March](#) and [February 2015 Alerts](#). However, at least two courts have ruled that consecutive claims-made policies create continuous coverage for notice purposes. See [December 2016 Alert](#); [November 2010 Alert](#).

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