

N.J. Supreme Court Holds No Prejudice Required for Late Notice Defense Under Claims Made Policy

Templo Fuente De Vida Corp., et al. v. Nat'l Union Fire Ins. Co. of Pittsburgh, P.A.
2016 WL 529602 (N.J. 2/11/16)

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In an important decision for insurers and insureds in New Jersey, the state's Supreme Court ruled on February 11, 2016 that an insurer disclaiming coverage under a claims made policy issued to a "sophisticated" insured is not required to establish prejudice resulting from delayed notice of the claim. In a unanimous decision, the court affirmed an appellate court's ruling that the insurer, National Union Fire Insurance Company of Pittsburgh, PA, is not responsible for a settlement entered after the insurer disclaimed coverage based on late notice.

The claims made insurance policy required that the policyholder notify the insurer of a claim "as soon as practicable" and within the policy period. More than six months after being served with a lawsuit, and after retaining counsel and filing an answer, the policyholder provided notice of the suit to National Union. Although the suit was reported within the policy period, the insurer denied coverage, asserting that, among other things, notice was not given as soon as practicable.

In affirming the appellate court's and trial court's decisions, the court rejected the policyholder's argument that long-standing New Jersey precedent, specifically the New Jersey Supreme Court's 1968 decision in *Cooper v. Government Employees Ins. Co.*, 51 N.J. 86 (1968), required the insurer to show prejudice. In *Cooper*, the court required a showing of prejudice when an insurer disclaimed coverage based on late notice under an "occurrence" policy. However, the *Templo Fuente* court discussed, at length, the differences between "claims made" and "occurrence" policies, and declined to apply the

Cooper rationale in the context of a "claims made" policy. Among other things, the court noted that the policyholder in this case was a sophisticated insured, while the policyholder in the *Cooper* case was not. Accordingly, the court found that the directors and officers claims made policy was not a contract of adhesion, but was agreed to by sophisticated parties. So the insurer was not required to show that it suffered prejudice before disclaiming coverage on the basis of the insured's failure to give timely notice of the claim.

The *Templo Fuente* court also noted that it had previously declined to require a showing of prejudice from late notice in the context of a "claims made and reported" insurance policy. *Zuckerman v. National Union Fire Ins. Co.*, 100 N.J. 304 (1985).

Comment

New Jersey courts will likely continue to be asked to resolve disputes over "late notice" disclaimers, including questions as to the time periods involved, asserted justifications for delay, and the sophistication level of the insured. Nevertheless, the *Templo Fuente* decision provides helpful guidance on the important issue of late notice within a claims made policy period.

If you have any questions about this Insurance Coverage Update, please contact the author listed below or the Aronberg Goldgehn coverage attorney with whom you normally consult.

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