

Colorado: No Prejudice Required to Enforce Date-Certain Notice Requirements in Claims-Made Policies

In Colorado, under the notice-prejudice rule, an insured who gives late notice of a claim to his or her liability insurer does not lose coverage benefits unless the insurer proves that the late notice prejudiced its interests. *Friedland v. Travelers Indem. Co.*, 105 P.3d 639, 643 (Colo. 2005). On February 17, 2015, in response to certified question of law from the 10th Circuit Court of Appeals, the Colorado Supreme Court held that the notice-prejudice rule **does not** apply to date-certain notice requirements in claims-made policies. *Craft v. Philadelphia Indem. Ins. Co.*, Case No. 14SA43. Rather, date-certain notice requirements will be enforced as written.

Craft involved a directors and officers liability insurance policy that provided coverage on a claims-made and reported basis. The policy required the insured to give notice of a claim “not later than 60 days” after the expiration of the policy. The insured (Craft), who was unaware that the policy existed until 16 months after it had expired, gave notice to the insurer (Philadelphia) immediately upon learning of the policy’s existence. Philadelphia did not respond and Craft settled the claims against him 10 days before trial. Craft then sued Philadelphia in Colorado state court for breach of contract, common law bad faith, and statutory bad faith for unreasonable delay or denial of insurance benefits in violation of C.R.S. § 10-3-1116.

Philadelphia removed the case to federal district court and moved to dismiss on the grounds that Craft failed to provide notice within 60 days of the expiration of the policy period. The district court granted Philadelphia’s motion to dismiss, rejecting Craft’s argument that the notice-prejudice rule applied to the policy. Craft appealed and the 10th Circuit certified to the Colorado Supreme Court the question of whether the notice-prejudice rule applied to claims-made policies.

The Colorado Supreme Court narrowed the certified question to whether the notice-prejudice rule applied to date-certain notice requirements in claims-made policies. Answering the question in the negative, the court held that the date-certain notice requirement in claims-made policies defines the scope of coverage. Thus, to excuse late notice in violation of such a requirement would rewrite the fundamental terms of the insurance contract. This distinguished claims-made policies from “occurrence” policies that the court interpreted in *Friedland*. The court rejected Craft’s arguments that applying a notice-prejudice rule to claims-made policies would fill the “gaps” between successive policy periods that may result when a claim is made in one policy period but not reported until the subsequent policy, after the previous policy’s reporting period had expired.

The court declined to answer the certified question of whether the notice-prejudice rule would apply to “prompt” notice requirements in claims-made policies.

To discuss any questions you may have regarding the issues discussed in this Alert, or how they may apply to your particular circumstances, please contact Christopher S. Clemenson at (720) 479-3894 or cclemenson@cozen.com.



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