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Timely Notice For NJ Insurance Claims Just Got Harder

Law360, New York (August 07, 2014, 11:05 AM ET) -- The New Jersey Appellate Division recently examined the notice requirements provided in a claims-made insurance policy in Templo Fuente De Vida Corp. v. National Union Fire Insurance Company of Pittsburgh PA, No. A-4516-12, 2014 N.J. Super. Unpub. Lexis 1303 (App. Div. June 6, 2014), and has once again made it more difficult for policyholders to secure insurance coverage when timely notice is at issue.

It is well-established in New Jersey, and everywhere else in the country, that with a claims-made policy the policyholder must provide notice of a claim during the same policy period in which the policyholder received the claim, otherwise coverage is forfeited. New Jersey courts adhere to this principle even when the result is harsh. Templo Fuente takes this principle one giant step further.

In addition to requiring that policyholders notify insurance companies during the policy period of claims made against the policyholder, the typical claims-made policy also states that notice must be made "as soon as practicable." The "as soon as practicable" language has frequently been addressed by New Jersey courts in the context of occurrence-based policies rather than claims-made policies, and has been liberally construed when it appears in occurrence policies. Most notably, in Cooper v. Government Employees Insurance Company, 51 N.J. 86 (1968), the New Jersey Supreme Court held that a court should only allow forfeiture of coverage under the phrase "as soon as practicable" in an occurrence-based policy if the insurance company could demonstrate that it had incurred appreciable prejudice. Indeed, it is difficult to find a single case involving an occurrence policy where an insurer has triumphed on the issue of notice.

Templo Fuente takes the phrase "as soon as practicable" and allows insurance companies to avoid their coverage obligations under a claims-made policy when, although the policyholder reported the claim during the correct policy period, it did not provide notice as soon as it could have been made. Templo Fuente inappropriately mixes and mismatches claims-made and occurrence policy concepts. As such it is a major setback for policyholders and those who give notice on their behalf, such as brokers and attorneys.

A policyholder's delay in noticing a claim is often understandable. One reason for late notice is that notice is triggered by a "claim" as defined by the insurance policy. Insurance policies do not have uniform definitions. Definitions ordinarily change over time and are usually very broad. A commonly used definition for a claim is "a written demand for monetary or nonmonetary relief." On the one hand, a broad definition favors the policyholder, by sweeping more actions into coverage. However, a broad definition can result in the forfeiture of coverage, because the policyholder will not recognize a certain communication to constitute a "claim" as defined by the policy.

(See Alpine Home Inspections LLC v. Underwriters at Lloyd's London, No. A-1402-07, 2008 N.J. Super. Unpub. LEXIS 1892 (App. Div. Nov. 24, 2008) (holding that the court could not "consider a claim for increased damages a new claim that arose within the second policy period; it is simply a claim for enhanced damages for the same claim for which [the policyholder] received notification during the first policy period."), certif. denied 199 N.J. 132 (2009); Apro Mgmt. Inc. v. Royal Surplus Lines Ins. Co., No. A-3976-05, 2007 N.J. Super. Unpub. LEXIS 1188 (App. Div. Apr. 30, 2007) (holding that the policyholder was obligated to notice its insurance company of an initial complaint and cross-claim even though they did not include covered claims, as they could have lead to additional covered claims).)

The court's holding in Templo Fuente establishes a heightened burden on the policyholder while ignoring the nuances of identifying a claim. In Templo Fuente, the policy period was Jan. 1, 2006, to Jan. 1, 2007. The policyholders received a claim on or about Feb. 21, 2006, and gave notice to its insurance company on Aug. 28, 2006, well within the policy period. However, the trial court found that the notice was inexplicably six months late and therefore not "as soon as practicable." The Appellate Division affirmed the trial court decision and denied coverage, rejecting the argument that the insurance company could "only disclaim coverage if it can demonstrate that it was prejudiced by the insured's failure to provide notice as soon as practicable."

The trial court relied chiefly on Associated Metals & Minerals Corp. v. Dixon Chemical & Research Inc., 82 N.J. Super. 281 (App. Div. 1963), certif. denied 42 N.J. 501 (1964), in which the Appellate Division denied coverage because notice that was six months late was not "as soon as practicable." However, the court's reliance on Associated Metals is misplaced, as Associated Metals concerned an occurrence-based policy, not a claims-made policy. Associated Metals was overruled sub silentio by Cooper and is not good law.

Both the trial court and Appellate Division mistakenly relied upon Zuckerman v. National Union Fire Insurance Company, 100 N.J. 304 (1985). Zuckerman is the leading decision that establishes that late notice under a claims-made policy results in a forfeiture of coverage. However, Zuckerman dealt with notice that was given after the policy had lapsed. It is well-established that a policyholder forfeits coverage by first giving notice after the policy period. As Zuckerman dealt solely with notice provided after the policy expired, its application in cases where notice is provided during the policy period is unjustified. In addition, Zuckerman noted that the Cooper doctrine has "no application whatsoever to a 'claims-made' policy" because "claims-made" policies were specifically written and sold to only cover claims made during that policy period. The court reasoned that allowing claims made after the policy period would in essence broaden, without payment of additional premiums, the coverage sold.

Claims-made policies have always demanded notice during the policy period in which the claim was made. A policyholder must be vigilant in order to ensure protection under such policies. Many policyholders do not do a good job of giving notice, and many lose coverage for late notice under claims-made policies. Templo Fuente greatly increases that risk. Before Templo Fuente, a company could perform a review before a policy period ended, and make certain that it had noticed any simmering matters; this practice however, may no longer be sufficient. Templo Fuente raises the bar by requiring, in effect, "immediate" notice and vigilance at all times. Policyholders must be aware of how their insurance policies define a claim and must be cognizant of the heightened burden established by Templo Fuente. In order to protect their interests, policyholders must be over inclusive and expeditious when noticing an insurance company after receiving communication which may potentially constitute a claim.

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