

July 2, 2021

Stop the Clock: Relief from Your Insurer Claiming a Notice Time Bar During the Pandemic

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A dangerous trap for an unwary insured looking for insurance coverage can be a notice provision. To trigger certain liability insurance policies, the insurer may require that a "claim" be both made against an insured and that the insured then report such claim to its insurer during the time the single insurance policy is in effect. This is what is known as a "claims-made-and-reported" policy.

While this requirement may not be difficult for an insured in simple situations, like when a lawsuit is filed and the insured knows to quickly notify its insurer of the lawsuit and request coverage. However, in other situations, an insured may not realize that an actual "claim" has even been made until something additional later happens. This is because how the term "claim" is defined in an insurance policy may be very broad. For example, depending on the policy, even someone verbally griping to the insured about a situation and telling them to correct a problem might be enough to constitute a "claim." Or, as insurers often argue, a terminated employee's complaints about the termination and demands for additional compensation, even though most employers would view that as a mere dispute over potential severance issues. In those instances when an insured does not realize a claim has been made, it obviously does not know to tender such claim until the issue blows up into something more. By that time, insurers are quick to argue that a "claim" was made earlier but not tendered to the insurer and, therefore, coverage has been forfeited. Indeed, any delays in reporting a claim under "claims made and reported" policies can be an avenue for insurers try to avoid their duties to their insureds.

This risk of losing insurance coverage benefits, based upon strict notice requirements, was compounded further with the onset of the COVID-19 pandemic. Insureds were not only faced with concerns for themselves and their families, but also had to shut down their businesses, and many faced the risk of losing their business. Faced with these kinds of issues, it is not surprising that an insured may be unable to comply with strict notice provisions in insurance policies.

However, after the onset of the COVID-19 pandemic and in recognition of this concern, the California Insurance Commissioner Ricardo Lara issued a Notice “to protect policyholders from losing, limiting, or waiving policy benefits . . . due to the current state of emergency in California.” The Commissioner directed this April 3, 2020 Notice to all insurers and all lines of insurance.¹

The Notice notified insurers that they should not attempt to enforce either policy or statutory deadlines on insureds until 90 days after the California “state of emergency” has ended. This includes not only deadlines for the submission of a sworn proof of loss, other claim forms, examinations under oath, medical examinations, and physical inspections of insured property, but also, importantly, any other policy, statutory, or insurer imposed deadlines placed on an insured where failure to comply could result in the loss of insurance coverage benefits.

Why this matters: The Commissioner’s Notice effectively has precluded insurers from attempting to impose notice and other deadlines on their insureds during the pandemic. That means that even if an insured has delayed in giving notice of a “claim” to its insurer, the insured likely will not have forfeited coverage for a “claim” made against it. And, this Notice is still in effect. Governor Gavin Newsom has not yet lifted California’s “state of emergency” even though he has recently taken steps to loosen restrictions and reopen the state. However, it is possible that Governor Newsom will lift the “state of emergency” at some point soon. Once lifted, the clock will start ticking again on this moratorium that currently bars insurers from using a late notice defense or other time deadline issue as a basis to deny coverage. Therefore, if an insurer has denied coverage on a “claim” due to alleged late notice any time after April 3, 2020, review the facts to see if the Commissioner’s Notice could preclude the insurer’s ability to assert this defense in an attempt to avoid coverage.



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¹ The Notice is referred to as the “Extension of Policyholder Deadlines that Impact Claims or Coverage Due to the current State of Emergency Caused by the Coronavirus (COVID-19) Outbreak (the “Notice”).