

# Absent Prejudice, Insurer May Not Deny Coverage Under Claims-Made Policy Where Notice Was Late, But Within Policy Period, Says New Hampshire Court

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Addressing a matter of first impression under New Hampshire law, a federal district court ruled that an insurer may not deny coverage under a claims-made policy where notice was late, but within the policy period, and the insurer did not suffer prejudice from the delay. *TRT Dev. Co., Inc. v. ACE Am. Ins. Co.*, 2021 WL 4777240 (D.N.H. Oct. 13, 2021).

A hotel discovered an oil leak near its fuel storage tank, and promptly contacted local authorities. However, the hotel did not notify its insurer until twenty-two days later, which was within the policy period, but not within the seven-day notice period applicable to a “storage tank incident.” The insurer denied coverage based on the insured’s failure to comply with the seven-day notice provision. In ensuing litigation, the court granted the hotel’s summary judgment motion, predicting that the New Hampshire Supreme Court would require an insurer to show prejudice where, as here, notice is late under a time-specific provision, but within the policy period.

The court distinguished cases in which insureds failed to provide notice under a claims-made policy within the policy period, explaining that prejudice is not required in those scenarios because doing so “effectively expands the policy’s grant of coverage.” In contrast, here “ACE had yet to ‘close the books’ on the Policy because the policy period was still in effect when the incident was reported” and thus “excusing late notice would not rewrite a fundamental term of the insurance contract and expand the scope of coverage.”

As the court noted, decisions in other jurisdictions are mixed. While some courts have held that a claims-made insurer must establish prejudice when an insured notifies it of a claim within the policy period but outside a time period specified in the policy, others have refused to apply a notice-prejudice rule under such circumstances.

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