

ALERT

District Court Finds No Coverage for Claim Not Timely Reported

December 6, 2011

The United States District Court for the Middle District of Louisiana has held that no coverage exists under a claims made and reported lawyers professional liability policy because a claim first made during the policy period was not reported to the insurer until after expiration of the policy. *First American Title Ins. Co. v. Titan Title LLC*, 2011 WL 5854683 (M.D. La. Nov. 21, 2011).

The insurer issued a lawyers professional liability policy to the insureds, a law firm and title insurance broker, covering the policy period of August 2008 through August 2009. The policy required that any claim be "both first made against the insured and reported in writing to the [insurer] during the policy period." In July 2009, a lawsuit was filed against the insureds alleging errors and omissions in the insureds' handling of several property transactions. In January 2010, the underlying plaintiff amended its complaint against the insureds and added the insurer as a defendant. In the amended complaint, the underlying plaintiff alleged that the insurer was liable for any damages based on the terms of the policy. The insurer filed a motion for summary judgment asserting that no coverage existed because the lawsuit was first reported to the insurer in January 2010 when the amended complaint was filed.

The court held that no coverage existed under the policy because the claim was not timely reported to the insurer. The court noted that the Louisiana Supreme Court previously upheld the application of claims made provisions, finding that such provisions are not impermissible as against public policy. *Hood v. Carter*, 5 So.3d 819 (La. 2008). Accordingly, the court rejected the underlying plaintiff's argument that it was unaware of the policy prior to the expiration of the policy period. Moreover, the court rejected the underlying plaintiff's

Practice Areas

- E&O for Lawyers, Accountants and Other Professionals
- D&O and Financial Institution Liability
- Professional Liability Defense
- Insurance

contention that the claims made provision violated Louisiana's Direct Action Statute. According to the court, "[t]he Direct Action Statute does not confer coverage to risks which are not bargained for under the terms of the policy." Likewise, the court determined that Louisiana precedent does not distinguish between the requirement that a claim be first made during the policy period and reported during the policy period for coverage purposes.