

10-Month Delay in Reporting Loss Breached the Policy's Notice Requirement

Insurance Law Update

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In *Hudson Ins. Co. v. Oppenheim*, 916 N.Y.S.2d 68 (N.Y.A.D. February 3, 2011), the New York Appellate Division upheld an insurer's denial of coverage under a fidelity bond based on late notice because the insured's corporate risk manager failed to exercise reasonable diligence to discover losses.

The insured's legal department learned of a loss in July 2002. The insured, however, did not report the loss to its insurer until May 2003, after its chief actuary reminded the insured's subsidiaries to report claims directly to its insurers. The policy at issue required the insured to provide notice of a loss "[a]t the earliest practicable moment after discovery of [the] loss by the Corporate Risk Manager," and provided that "[d]iscovery occurs when the Corporate Risk Manager first becomes aware of facts which would cause a reasonable person to assume that a loss ... has been or will be incurred." The insured did not, however, designate a corporate risk manager. Rather, the insured asserted that its chief actuary was its "de facto corporate risk manager," and that its actuary did not learn of the loss until after it was reported by the legal department in May 2003.

The Appellate Division rejected this argument and instead held that the insured breached its duty to exercise reasonable diligence to acquire knowledge of covered losses. The court also held that, because the chief actuary delegated the risk management role to the legal department by directing subsidiaries to report losses directly to the insurer, the legal department's knowledge of the claimed loss would be imputed to the chief actuary. As a result, the insured's failure to report the claim as soon as practicable after the legal department discovered the loss was a breach of the policy.

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