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NEW JERSEY ALERT

In New Jersey, Timely Notice Provisions Can Trigger the Untimely Death of Insurance Coverage

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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, P.A.*, 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 a well-established approach 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. Most notably, in *Cooper v. Government Employees Insurance Company*, 51 N.J. 86 (1968), the 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.

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*

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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.

In *Templo Fuente*, the policy period was January 1, 2006, to January 1, 2007. The policyholders received a claim on or about February 21, 2006, and gave notice to its insurance company on August 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 insureds' 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.

The trial court and Appellate Division both 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.

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.

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