

Insurance

Compliance With Ambiguous Notice Requirements: A Familiar Rule “Or” An Outlier?

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Commentary

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I. Compliance With a Policy’s Notice Provision

Insurance policies typically require a policyholder to provide notice to the insurer. But not all notice requirements are the same. Some notice clauses constitute a condition precedent, meaning the requirements must be satisfied to obtain coverage.¹ In some situations, notice that may be deemed untimely is not fatal because the insurer may be required to establish prejudice to deny coverage.² And like many issues in the insurance arena, the language of the provision is critical and can help inform a court’s approach in interpreting the requirements.

A recent decision from Arkansas is illustrative.³ This case revolved around the ambiguous use of the word “or” in a policy’s notice provision.

II. Background of the Case

The coverage dispute stemmed from a person who was injured when he fell while using an air hose to paint

a pickup truck at an auto shop. Almost three years after the injury occurred, the person filed a personal injury lawsuit against the auto shop and its employee. Less than a month after the lawsuit was filed, the auto shop notified the insurer, Southern Pioneer Property & Casualty Company, about the lawsuit.⁴

The policy included the following notice provision: “in the event of ‘accident,’ claim, ‘suit’ or ‘loss,’ you must give us or our authorized representative prompt notice of the accident or ‘loss.’”⁵ As noted, the policyholder provided notice after the lawsuit was filed, and there was no prior notice of the underlying accident years earlier. The insurer argued there was no coverage because the policyholder did not provide timely notice of the accident.

III. The Court’s Interpretation

The Arkansas Court of Appeals held that the policyholder satisfied the notice provision’s requirements.⁶

The court explained that under Arkansas law, like many other states, policy language is ambiguous where its meaning is uncertain and where it is susceptible to more than one reasonable interpretation.⁷ Here, the court decided that the notice provision was ambiguous.

In doing so, the court focused on the use of the word “or” in the notice provision. The court reasoned that “or” implied a choice among several events—accident, claim, suit, or loss—after which the policyholder could notify the insurer. This interpretation suggested that notifying the insurer after any one of these events would suffice. In the words of the court: “Reading the

'or' in the disjunctive, the policy language thus can be construed as requiring notice upon the occurrence of an accident, *or* a claim, *or* a suit, *or* a loss."⁸

The court then applied Arkansas law which says that when language is ambiguous, courts should construe the policy liberally in favor of the policyholder and strictly against the insurer. In practical terms, that required the court to adopt the interpretation most favorable to the policyholder.⁹ This meant that notice provided only after a lawsuit was reasonable since a "suit" was one of the notice-triggering events specified by the policy. Thus, the court found the policyholder satisfied the notice provision.

IV. Practical Considerations for Policyholders

The court's ruling underscores the importance of focusing on the specific language in your policy. Policy terms can vary in significant ways between policies. What the notice requirements obligate a policyholder to do in one policy might differ from another. It will depend on the particular language used in the policy's notice provision. For that reason, a policyholder should pay careful attention to the precise language at issue.

Furthermore, how the policy language will be interpreted can be subject to different rules and principles based on the applicable law. As seen here, the Arkansas court found that the notice provision was ambiguous. In addition, Arkansas law interprets ambiguous terms in favor of coverage. The combination of these factors led the court to conclude that timely notice for the lawsuit itself satisfied the notice obligations, notwithstanding the lack of a separate notice about the underlying accident.

Notwithstanding the outcome in this case, a policyholder can avoid the issue altogether by providing notice early even if there is an argument that notice later on could suffice. Erring on the side of caution helps prevent disputes. Based on the particular notice language and circumstances, it might be difficult to predict which way a court might decide if an insurer raises a notice defense. Providing notice as soon as possible can help avoid the issue from coming up in the first place. The lesson is to play it safe when possible.

That said, there will be situations when an insurer tries to deny a claim based on deficient notice. In such cases, focus on the specific language in the notice

provision and how it applies. As the Arkansas decision shows, the notice requirements may be drafted in a way that affords the policyholder options of when to give notice. Policy language varies and when notice becomes an issue, make sure to examine the language and applicable law closely.

In sum, notice provisions, the law applied to late notice issues, and the circumstances surrounding claims of delayed notice are not always the same. The specific circumstances will require careful examination of the foregoing factors. And even though a policyholder should be cautious when providing notice, the Arkansas decision shows that the right policy language and applicable law can help when an insurer makes notice an issue.

Endnotes

1. *See, e.g., Fireman's Fund Ins. Co. v. Care Mgmt., Inc.*, 2010 Ark. 110, at 5-6 (2010) (recognizing that Arkansas law considers compliance with a notice requirement a condition precedent to obtaining coverage).
2. *See, e.g., Lat v. Farmers New World Life Ins. Co.*, 29 Cal. App. 5th 191, 196 (2018) ("Under the notice prejudice rule, an insurance company may not deny an insured's claim under an occurrence policy based on lack of timely notice or proof of claim unless it can show actual prejudice from the delay.")
3. *S. Pioneer Prop. & Cas. Ins. Co. v. Sharrah, et al.*, No. CV-22-760 (Ct. App. Ark. May 8, 2024).
4. *Id.* at 2.
5. *Id.* (emphasis added).
6. *Id.* at 11.
7. *See, e.g., Harasyn v. St. Paul Guardian Ins. Co.*, 349 Ark. 9, 18 (2002) ("Language is ambiguous if there is doubt or uncertainty as to its meaning and it is fairly susceptible to more than one reasonable interpretation."); *State Farm Mut. Auto. Ins. Co. v. Stein*, 940 P.2d 384, 387 (Colo. 1997) ("A policy provision is ambiguous if it is reasonably susceptible on its face to more than one interpretation.")
8. *Sharrah*, No. CV-22-760, at 9 (emphasis in original).
9. *Id.* at 8. ■

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