



## Alerts

### Massachusetts District Court Sides With Insurer Because of Insured's Failure to Provide Timely Notice of the Claim

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*Stormo v. State Nat'l Ins. Co., Civil Action No. 19-10034-FDS, 2023 U.S. Dist. LEXIS 149899 (D. Mass. Aug. 25, 2023).*

#### Brief Summary

The United States District Court for the District of Massachusetts held that the insured failed to comply with the notice provisions of a claims-made policy. Whether the insurer had actual notice of the claim or was prejudiced by the lack of notice was irrelevant under Massachusetts law.

#### Complete Summary

Joan Stormo (Stormo) retained attorney Peter Clark (Clark) to represent her in the sale of real estate to KGM Custom Homes, Inc. (KGM). That transaction ultimately failed, which was partially due to Clark's actions. Clark was insured under a claims-made policy issued by State National Insurance Company (State National). KGM filed a cause of action against Stormo and Clark, which was later settled.

After the KGM claim was resolved, Stormo filed a legal malpractice action against Clark. Clark did not report the claim to State National until approximately fourteen months later. State National denied coverage because Clark failed to provide timely written notice following the policy's provisions. In June 2018, the trial court entered judgment in favor of Stormo and assigned Clark's claims against his insurer to Stormo.

Stormo then initiated the instant cause of action against State National in federal district court, wherein she alleged a breach of contract and violations of Massachusetts law. The *Stormo* court granted summary judgment in favor of State National regarding the Chapter 93A claim. However, a jury would later award her \$1,106,138.10 on the breach of contract claim. State National then filed a motion for judgment notwithstanding the verdict and argued that Clark did not provide timely notice of the malpractice claim. Therefore, State National was not required to defend and indemnify Clark. In addition, State National contended that it was not necessary to establish prejudice to avoid coverage.

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The *Stormo* court granted State National's motion. In making that determination, the court first examined Massachusetts law, which provided that failing to notify an insurer could not result in a denial of coverage unless the insurer demonstrated prejudice. G.L. c. 175, § 112. However, Massachusetts law has also long held that Section 112 does not apply to a claims-made policy with specific notice provisions. *Chas. T. Main, Inc. v. Fireman's Fund Ins. Co.*, 406 Mass. 862, 866 n.3 (1990).

That principle was recently outlined by the First Circuit Court of Appeals in *President & Fellows of Harvard College v. Zurich Am. Ins. Co.*, 77 F.4th 33 (1st Cir. 2023). There, the policy provided coverage for claims made and reported to the insurer within the policy period or ninety days thereafter. In November 2014, Harvard College was sued for violating federal anti-discrimination laws. Harvard College did not report the claim to its excess carrier, Zurich, until May 2017. Zurich denied coverage, and the lower court granted summary judgment in its favor.

Consistent with Massachusetts law, the *Zurich* court held that an insurer was not required to demonstrate prejudice before denying coverage when the insured failed to comply with a policy's notice provisions. The court noted that "[t]o honor such an argument would impermissibly collapse the critical distinction that [Massachusetts law] has made between occurrence-based and claims-made policies." The *Zurich* court further declined to take a position on the purported policy implications of enforcing such notice provisions, *i.e.*, an insurer's use of convoluted notice provisions to deceive customers into defaulting on coverage. That was a matter for the state legislature, not a court sitting in diversity.

With Massachusetts law as the background, the *Stormo* court granted State National's motion for judgment notwithstanding the verdict. The instant action involved a claim-made policy that covered claims made during the policy period or within sixty days after. Notice was not provided to State National within the requisite period. Whether State National had actual notice of the claim or whether it was prejudiced was not relevant to the inquiry. Instead, the only relevant concern was the timing of the notice. Since Clark did not provide written notice of the claim until fourteen months after the coverage period, the policy's terms and Massachusetts law required the *Stormo* court to grant the motion for judgment notwithstanding the verdict.

## Significance of Decision

This decision is significant because it underscores the importance of providing timely notice to one's insurer to obtain coverage for a claim.